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Titles 46 through 57

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REVISED CODE OF WASHINGTON

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Containing all laws of a general and permanent nature through the 1989 2nd extraordinary session, which adjourned sine die May 20, 1989.

REVISED CODE OF WASHINGTON
1989 Edition

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CERTIFICATE

The 1989 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.

A handwritten signature in black ink that reads "Raymond W. Haman". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

RAYMOND W. HAMAN, Chairman,
STATUTE LAW COMMITTEE

PREFACE

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

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

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

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

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

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

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

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

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

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

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

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

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Title 46

MOTOR VEHICLES

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"legislative transportation committee" by authority of RCW 44.40-.010; (2) "public service commission" have been changed to "utilities and transportation commission" by authority of 1961 c 290 § 1.

Aircraft and airman regulations: Chapter 14.16 RCW.

Aircraft dealers: Chapter 14.20 RCW.

Ambulances and drivers: RCW 70.54.060, 70.54.065.

Auto transportation companies: Title 81 RCW.

Bicycles, regulation by cities: Chapter 35.75 RCW.

Buses, unlawful conduct on: RCW 9.91.025.

Campers, excise tax: Chapter 82.50 RCW.

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Crimes

controlled substances, seizure and forfeiture of vehicles: RCW 69.50.505.

criminal possession of leased or rented motor vehicle: RCW 9A.56.095.

driving while intoxicated while engaged in occupational duties: RCW 9.91.020.

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taking motor vehicle without permission: RCW 9A.56.070.

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Emission control program: Chapter 70.120 RCW.

Explosives, regulation: Chapter 70.74 RCW.

Fireworks, regulation, transportation: Chapter 70.77 RCW.

Highway funds, use, constitutional limitations: State Constitution Art. 2 § 40 (Amendment 18).

Hulk haulers' or scrap processors' licenses: Chapter 46.79 RCW.

Juveniles, court to forward record to director of licensing: RCW 13.50.200.

"Lemon Law": Chapter 19.118 RCW.

Limited access highways, violations: RCW 47.52.120.

Marine employees—Public employment relations: Chapter 47.64 RCW.

Mobile home, travel trailer, and camper excise tax: Chapter 82.50 RCW.

Mobile homes, excise tax: Chapter 82.50 RCW.

Motor boat regulation: Chapter 88.12 RCW.

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fuel tax: Chapter 82.36 RCW.

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Motor vehicle fund income from United States securities—Exemption from reserve fund requirement: RCW 43.84.095.

State patrol: Chapter 43.43 RCW.

Toll bridge authority: Chapters 47.56, 47.60 RCW.

Traffic control at work sites: RCW 47.36.200 through 47.36.230.

Traffic safety commission: Chapter 43.59 RCW.

Travel trailers, excise tax: Chapter 82.50 RCW.

Warranties, express: Chapter 19.118 RCW.

Chapter 46.01

DEPARTMENT OF LICENSING

Sections

- | | |
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| 46.01.011 | Purpose. |
| 46.01.020 | Department created. |
| 46.01.030 | Department to administer and recommend improvement of certain motor vehicle laws. |

Reviser's note: Throughout Title 46 RCW references to (1) "joint committee on highways, streets and bridges" have been changed to

- 46.01.040 Powers, duties, and functions relating to motor vehicle laws vested in department.
- 46.01.050 Other powers, duties, and functions of division of professional licensing transferred to business and professions administration—Divisions created.
- 46.01.055 Business and professions administration—Supervision.
- 46.01.056 Director or director's designee ex officio member of health professional licensure and disciplinary boards.
- 46.01.070 Functions performed by state patrol as agent for director of licenses transferred to department.
- 46.01.090 Director—Appointment—Qualifications.
- 46.01.100 Organization of department.
- 46.01.110 Rules and regulations.
- 46.01.130 Powers of department and director—Personnel—Appointment of county auditors as agents.
- 46.01.140 County auditors, others, as agents of director—Disposition of application fees.
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- 46.01.170 Seal.
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- 46.01.230 Payment by check or money order—Regulations—Penalty for nonsurrender upon cancellation—Handling fee for dishonored checks.
- 46.01.250 Certified copies of records—Fee.
- 46.01.260 Destruction of records by director.
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- 46.01.290 Director to make annual reports to governor.
- 46.01.310 Immunity of licensing agents.

Extension or modification of licensing, certification, or registration period authorized—Rules and regulations, manner and content: RCW 43.24.140.

Gambling commission, administrator and staff for: RCW 9.46.080.

Health, department of, functions transferred to: RCW 43.70.901.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

46.01.011 Purpose. The legislature finds that the department of licensing administers laws relating to the licensing and regulation of professions, businesses, securities, gambling, and other activities in addition to administering laws relating to the licensing and regulation of vehicles and vehicle operators, dealers, and manufacturers. The laws administered by the department have the common denominator of licensing and regulation and are directed toward protecting and enhancing the well-being of the residents of the state. [1979 c 158 § 113; 1977 ex.s. c 334 § 1.]

Effective date—1977 ex.s. c 334: "This 1977 amendatory act shall take effect on July 1, 1977." [1977 ex.s. c 334 § 8.]

46.01.020 Department created. A department of the government of this state to be known as the "department of licensing" is hereby created. [1979 c 158 § 114; 1977 ex.s. c 334 § 2; 1965 c 156 § 2.]

Effective date—1977 ex.s. c 334: See note following RCW 46.01.011.

46.01.030 Department to administer and recommend improvement of certain motor vehicle laws. The department shall be responsible for administering and recommending the improvement of the motor vehicle laws of this state relating to:

- (1) driver examining and licensing;
- (2) driver improvement;

- (3) driver records;
- (4) financial responsibility;
- (5) certificates of ownership;
- (6) certificates of license registration and license plates;
- (7) proration and reciprocity;
- (8) liquid fuel tax collections;
- (9) licensing of dealers, motor vehicle transporters, motor vehicle wreckers, for hire vehicles, and drivers' schools;
- (10) general highway safety promotion in cooperation with the Washington state patrol and state safety council;
- (11) such other activities as the legislature may provide. [1965 c 156 § 3.]

Reviser's note: Chapter 43.60 RCW, the state safety council, was repealed by 1967 ex.s. c 147 § 15. For provisions relating to the transfer of powers and duties to the traffic safety commission, see chapter 43.59 RCW.

46.01.040 Powers, duties, and functions relating to motor vehicle laws vested in department. The department of licensing is vested with all powers, functions, and duties with respect to and including the following:

- (1) The motor vehicle fuel excise tax as provided in chapter 82.36 RCW;
- (2) The special fuel tax as provided in chapter 82.38 RCW;
- (3) The motor vehicle excise tax as provided in chapter 82.44 RCW;
- (4) The house trailer excise tax as provided in chapter 82.50 RCW;
- (5) All general powers and duties relating to motor vehicles as provided in chapter 46.08 RCW;
- (6) Certificates of ownership and registration as provided in chapters 46.12 and 46.16 RCW;
- (7) The registration and licensing of motor vehicles as provided in chapters 46.12 and 46.16 RCW;
- (8) Dealers' licenses as provided in chapter 46.70 RCW;
- (9) The licensing of motor vehicle transporters as provided in chapter 46.76 RCW;
- (10) The licensing of motor vehicle wreckers as provided in chapter 46.80 RCW;
- (11) The administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW;
- (12) The licensing of passenger vehicles for hire as provided in chapter 46.72 RCW;
- (13) Operators' licenses as provided in chapter 46.20 RCW;
- (14) Commercial driver training schools as provided in chapter 46.82 RCW;
- (15) Financial responsibility as provided in chapter 46.29 RCW;
- (16) Accident reporting as provided in chapter 46.52 RCW;
- (17) Disposition of revenues as provided in chapter 46.68 RCW; and
- (18) The administration of all other laws relating to motor vehicles vested in the director of licenses on June

30, 1965. [1983 c 3 § 117; 1979 c 158 § 115; 1965 c 156 § 4.]

46.01.050 Other powers, duties, and functions of division of professional licensing transferred to business and professions administration—Divisions created. All powers, functions and duties vested by law in the division of professional licensing in the department of licensing on August 9, 1969, other than those enumerated in RCW 46.01.040, shall be transferred to the business and professions administration hereby created consisting of the divisions of securities, real estate, and professional licensing, within the department of licensing. [1979 c 158 § 116; 1969 ex.s. c 281 § 34; 1965 c 156 § 5.]

Delegation of authority to business and professions administration: RCW 43.24.024.

46.01.055 Business and professions administration—Supervision. The director of licensing shall appoint and deputize an assistant director of business and professions administration, who shall have charge and supervision of the business and professions administration. [1979 c 158 § 117; 1969 ex.s. c 281 § 35; 1967 c 32 § 117.]

46.01.056 Director or director's designee ex officio member of health professional licensure and disciplinary boards. See RCW 43.24.015.

46.01.070 Functions performed by state patrol as agent for director of licenses transferred to department. Functions named in RCW 46.01.030 which have been performed by the state patrol as agent of the director of licenses before June 30, 1965 shall be performed by the department of licensing after June 30, 1965. [1979 c 158 § 118; 1965 c 156 § 7.]

46.01.090 Director—Appointment—Qualifications. The department shall be under the control of an executive officer to be known as the director of licensing. He shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director shall be selected with special reference to his experience, capacity and interest in the field of motor vehicle administration or highway safety. [1979 c 158 § 119; 1965 c 156 § 9.]

Appointment of director: RCW 43.17.020.

Authority of director: RCW 43.24.010.

46.01.100 Organization of department. The director shall organize the department in such manner as he may deem necessary properly to segregate and conduct the work of the department effectively. [1965 c 156 § 10.]

46.01.110 Rules and regulations. The director of licensing is hereby authorized to adopt and enforce such reasonable rules and regulations as may be consistent with and necessary to carry out the provisions relating to vehicle licenses, certificates of ownership and license registration and drivers' licenses not in conflict with the provisions of Title 46 RCW. [1979 c 158 § 120; 1965 c

156 § 11; 1961 c 12 § 46.08.140. Prior: 1937 c 188 § 79; RRS § 6312-79. Formerly RCW 46.08.140.]

46.01.130 Powers of department and director—Personnel—Appointment of county auditors as agents. The department of licensing shall have the general supervision and control of the issuing of vehicle licenses and vehicle license number plates and shall have the full power to do all things necessary and proper to carry out the provisions of the law relating to the licensing of vehicles; the director shall have the power to appoint and employ deputies, assistants and representatives, and such clerks as may be required from time to time, and to provide for their operation in different parts of the state, and the director shall have the power to appoint the county auditors of the several counties as his agents for the licensing of vehicles. [1979 c 158 § 121; 1973 c 103 § 2; 1971 ex.s. c 231 § 8; 1965 c 156 § 13; 1961 c 12 § 46.08.090. Prior: 1937 c 188 § 26; RRS § 6312-26; prior: 1921 c 96 § 3, part; 1917 c 155 § 2, part; 1915 c 142 § 3, part. Formerly RCW 46.08.090.]

Severability—1973 c 103: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 103 § 9.]

Effective date—1971 ex.s. c 231: "(1) Sections 1 through 7 of this 1971 amendatory act shall take effect on January 1, 1972.

(2) Sections 8 through 23 of this 1971 amendatory act shall take effect on January 1, 1973." [1971 ex.s. c 231 § 24.] Sections 1 through 7 of Laws of 1971 ex. sess. c 231 consist of RCW 46.04.085, 46.04.302, 46.04.303, 46.04.305, 46.12.280, 46.16.111, and 46.16.505; sections 8 through 23 of Laws of 1971 ex. sess. c 231 consist of RCW 46.01.130, 46.01.140, 46.01.300, 46.12.105, 46.12.290, 46.16.100, 46.16.104 through 46.16.106, 46.16.510 through 46.16.550, 46.68.030, and 46.70.290.

46.01.140 County auditors, others, as agents of director—Disposition of application fees. The county auditor, if appointed by the director of licensing shall carry out the provisions of this title relating to the licensing of vehicles and the issuance of vehicle license number plates under the direction and supervision of the director and may with the approval of the director appoint assistants as special deputies to accept applications and collect fees for vehicle licenses and transfers and to deliver vehicle license number plates.

At any time any application is made to the director, the county auditor, or other agent pursuant to any law dealing with licenses, registration, or the right to operate any vehicle upon the public highways of this state, excluding applicants already paying such fee under RCW 46.16.070 or 46.16.085, the applicant shall pay to the director, county auditor, or other agent a fee of two dollars for each application in addition to any other fees required by law. Applicants for certificates of ownership, including applicants paying fees under RCW 46.16.070 or 46.16.085, shall pay to the director, county auditor, or other agent a fee of three dollars in addition to any other fees required by law. These additional fees, if paid to the county auditor as agent of the director, or if paid to an agent of the county auditor, shall be paid to the county treasurer in the same manner as other fees collected by the county auditor and credited to the county current

expense fund. If the fee is paid to another agent of the director, the fee shall be used by the agent to defray his expenses in handling the application: *Provided*, That an agent of the county auditor is entitled to an additional service charge of two dollars: *Provided further*, That if the fee is collected by the state patrol or the department of transportation, as agent for the director, the fee so collected shall be certified to the state treasurer and deposited to the credit of the motor vehicle fund. All such filing fees collected by the director or branches of his office shall be certified to the state treasurer and deposited to the credit of the highway safety fund. [1988 c 12 § 1; 1987 c 302 § 1; 1985 c 380 § 12. Prior: 1983 c 77 § 1; 1983 c 26 § 1; 1980 c 114 § 2; 1979 c 158 § 122; 1975 1st ex.s. c 146 § 1; 1973 c 103 § 1; 1971 ex.s. c 231 § 9; 1971 ex.s. c 91 § 3; 1965 c 156 § 14; 1963 c 85 § 1; 1961 c 12 § 46.08.100; prior: 1955 c 89 § 3; 1937 c 188 § 27; RRS § 6312-27. Formerly RCW 46.08.100.]

Severability—1987 c 302: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 302 § 5.]

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.01.150 Branch offices. The department may maintain such branch offices within the state as the director may deem necessary properly to carry out the powers and duties vested in the department. [1965 c 156 § 15.]

Office of department, maintenance at state capitol: RCW 43.17.050.

46.01.160 Forms for applications, licenses, and certificates. The director shall prescribe and provide suitable forms of applications, certificates of ownership and registration, drivers' licenses and all other forms and licenses requisite or deemed necessary to carry out the provisions of Title 46 RCW and any other laws the enforcement and administration of which are vested in the department. [1965 c 156 § 16.]

Director to prescribe forms for applications, licenses, and certificates: RCW 43.24.040.

46.01.170 Seal. The department shall have an official seal with the words "Department of Licensing of Washington" engraved thereon. [1977 ex.s. c 334 § 4; 1965 c 156 § 17.]

Effective date—1977 ex.s. c 334: See note following RCW 46.01.011.

46.01.180 Oaths and acknowledgments. Officers and employees of the department designated by the director are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures and shall do so without fee. [1965 c 156 § 18.]

Oath of director: RCW 43.17.030.

[Title 46 RCW—p 4]

46.01.190 Designation of state patrol as agent for surrender of drivers' licenses. The director of licensing may designate the Washington state patrol as an agent to secure the surrender of drivers' licenses which have been suspended, revoked, or canceled pursuant to law. [1979 c 158 § 123; 1965 c 156 § 19.]

46.01.230 Payment by check or money order—Regulations—Penalty for nonsurrender upon cancellation—Handling fee for dishonored checks. (1) The department of licensing is authorized to accept checks and money orders for payment of drivers' licenses, certificates of ownership and registration, motor vehicle excise taxes, gross weight fees, and other fees and taxes collected by the department, in accordance with regulations adopted by the director. The director's regulations shall duly provide for the public's convenience consistent with sound business practice and shall encourage the annual renewal of vehicle registrations by mail to the department, authorizing checks and money orders for payment. Such regulations shall contain provisions for cancellation of any registrations, licenses, or permits paid for by checks or money orders which are not duly paid and for the necessary accounting procedures in such cases: *Provided*, That any bona fide purchaser for value of a vehicle shall not be liable or responsible for any prior uncollected taxes and fees paid, pursuant to this section, by a check which has subsequently been dishonored: *And provided further*, That no transfer of ownership of a vehicle may be denied to a bona fide purchaser for value of a vehicle if there are outstanding uncollected fees or taxes for which a predecessor paid, pursuant to this section, by check which has subsequently been dishonored nor shall the new owner be required to pay any fee for replacement vehicle license number plates that may be required pursuant to RCW 46.16.270 as now or hereafter amended.

(2) It is a traffic infraction to fail to surrender within ten days to the department or any authorized agent of the department any certificate, license, or permit after being notified by certified mail that such certificate, license, or permit has been canceled pursuant to this section.

(3) Whenever registrations, licenses, or permits have been paid for by checks that have been dishonored by nonacceptance or nonpayment, a reasonable handling fee may be assessed for each such instrument. Notwithstanding provisions of any other laws, county auditors, agents, and subagents, appointed or approved by the director pursuant to RCW 46.01.140, may collect restitution, and where they have collected restitution may retain the reasonable handling fee. The amount of the reasonable handling fee may be set by rule by the director. [1987 c 302 § 2; 1979 ex.s. c 136 § 39; 1979 c 158 § 124; 1975 c 52 § 1; 1965 ex.s. c 170 § 44.]

Severability—1987 c 302: See note following RCW 46.01.140.

Effective date—**Severability**—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.01.250 Certified copies of records—Fee. The director shall have the power and it shall be his duty

upon request and payment of the fee as provided herein to furnish under seal of the director certified copies of any records of the department, except those for confidential use only. The director shall charge and collect therefor the actual cost to the department. Any funds accruing to the director of licensing under this section shall be certified and sent to the state treasurer and by him deposited to the credit of the highway safety fund. [1979 c 158 § 125; 1967 c 32 § 3; 1961 c 12 § 46.08-.110. Prior: 1937 c 188 § 80; RRS § 6312-80. Formerly RCW 46.08.110.]

46.01.260 Destruction of records by director. The director, in his discretion, may destroy applications for vehicle licenses, copies of vehicle licenses issued, applications for drivers' licenses, copies of issued drivers' licenses, certificates of title and registration or other documents, records or supporting papers on file in his office which have been microfilmed or photographed or are more than five years old. If the applications for vehicle licenses are renewal applications, the director may destroy such applications when the computer record thereof has been updated. [1984 c 241 § 1; 1971 ex.s. c 22 § 1; 1965 ex.s. c 170 § 45; 1961 c 12 § 46.08.120. Prior: 1955 c 76 § 1; 1951 c 241 § 1; 1937 c 188 § 77; RRS § 6312-77. Formerly RCW 46.08.120.]

46.01.270 Destruction of records by county auditor. The county auditor may destroy applications for vehicle licenses, copies of vehicle licenses issued, applications for vehicle driver's licenses, and copies of issued vehicle driver's licenses, if any there be, after such records shall have been on file in his office for a period of three years, unless otherwise directed by the director. [1967 c 32 § 4; 1961 c 12 § 46.08.130. Prior: 1937 c 188 § 78; RRS § 6312-78. Formerly RCW 46.08.130.]

46.01.290 Director to make annual reports to governor. The director shall report annually to the governor on the activities of the department. [1977 c 75 § 66; 1967 c 32 § 5; 1965 c 28 § 1; 1961 ex.s. c 21 § 29. Formerly RCW 46.08.200.]

46.01.310 Immunity of licensing agents. No civil suit or action may ever be commenced or prosecuted against any county auditor, or against any other government officer or entity, or against any other person, by reason of any act done or omitted to be done in connection with the titling, licensing, or registration of vehicles or vessels while administering duties and responsibilities as an agent of the director of licensing, or as an agent of an agent of the director of licensing, pursuant to RCW 46.01.140. However, this section does not bar the state of Washington or the director of licensing from bringing any action, whether civil or criminal, against any such agent, nor shall it bar a county auditor or other agent of the director from bringing an action against his or her agent. [1987 c 302 § 3.]

Retroactive application: "RCW 46.01.310 shall apply retroactively to all claims for which actions have not been filed before May 8, 1987." [1987 c 302 § 4.]

Severability—1987 c 302: See note following RCW 46.01.140.

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46.04.010 Scope and construction of terms. Terms used in this title shall have the meaning given to them in this chapter except where otherwise defined, and unless where used the context thereof shall clearly indicate to the contrary.

Words and phrases used herein in the past, present or future tense shall include the past, present and future tenses; words and phrases used herein in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context thereof shall indicate to the contrary. [1961 c 12 § 46.04.010. Prior: 1959 c 49 § 2; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.020 Alley. "Alley" means a public highway not designed for general travel and used primarily as a means of access to the rear of residences and business establishments. [1961 c 12 § 46.04.020. Prior: 1959 c 49 § 3; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.030 Arterial highway. "Arterial highway" means every public highway, or portion thereof, designated as such by proper authority. [1961 c 12 § 46.04.030. Prior: 1959 c 49 § 4; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.040 Authorized emergency vehicle. "Authorized emergency vehicle" means any vehicle of any fire department, police department, sheriff's office, coroner, prosecuting attorney, Washington state patrol, ambulance service, public or private, which need not be classified, registered or authorized by the state patrol, or any other vehicle authorized in writing by the state patrol. [1987 c 330 § 701; 1961 c 12 § 46.04.040. Prior: 1959 c 49 § 5; 1953 c 40 § 1; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.04.050 Auto stage. "Auto stage" means any motor vehicle used for the purpose of carrying passengers together with incidental baggage and freight or either, on a regular schedule of time and rates: *Provided*, That no motor vehicle shall be considered to be an auto stage where substantially the entire route traveled by such vehicle is within the corporate limits of any city or town or the corporate limits of any adjoining cities or towns. [1961 c 12 § 46.04.050. Prior: 1959 c 49 § 6; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 1, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.060 Axle. "Axle" means structure or structures in the same or approximately the same transverse plane with a vehicle supported by wheels and on which or with which such wheels revolve. [1961 c 12 § 46.04.060. Prior: 1959 c 49 § 7; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.071 Bicycle. "Bicycle" means every device propelled solely by human power upon which a person or persons may ride, having two tandem wheels either of which is sixteen inches or more in diameter, or three wheels, any one of which is more than twenty inches in diameter. [1982 c 55 § 4; 1965 ex.s. c 155 § 86.]

46.04.080 Business district. "Business district" means the territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway. [1975 c 62 § 2; 1961 c 12 § 46.04.080. Prior: 1959 c 49 § 9; prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.085 Camper. "Camper" means a structure designed to be mounted upon a motor vehicle which provides facilities for human habitation or for temporary outdoor or recreational lodging and which is five feet or more in overall length and five feet or more in height from its floor to its ceiling when fully extended, but shall not include motor homes as defined in RCW 46.04.305. [1971 ex.s. c 231 § 2.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.04.090 Cancel. "Cancel," in all its forms, means invalidation indefinitely. [1979 c 61 § 1; 1961 c 12 § 46.04.090. Prior: 1959 c 49 § 10; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.100 Center line. "Center line" means the line, marked or unmarked, parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers. [1975 c 62 § 3; 1961 c 12 § 46.04.100. Prior: 1959 c 49 § 11; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.110 Center of intersection. "Center of intersection" means the point of intersection of the center lines of the roadway of intersecting public highways. [1961 c 12 § 46.04.110. Prior: 1959 c 49 § 12; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.120 City street. "City street" means every public highway, or part thereof located within the limits of cities and towns, except alleys. [1961 c 12 § 46.04.120. Prior: 1959 c 49 § 13; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.130 Combination of vehicles. "Combination of vehicles" means every combination of motor vehicle and motor vehicle, motor vehicle and trailer or motor vehicle and semitrailer. [1963 c 154 § 26; 1961 c 12 § 46.04.130. Prior: 1959 c 49 § 14; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.140 Commercial vehicle. "Commercial vehicle" means any vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire. [1961 c 12 § 46.04.140. Prior: 1959 c 49 § 15; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.150 County road. "County road" means every public highway or part thereof, outside the limits of cities and towns and which has not been designated as a state highway. [1961 c 12 § 46.04.150. Prior: 1959 c 49

§ 16; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.160 Crosswalk. "Crosswalk" means the portion of the roadway between the intersection area and a prolongation or connection of the farthest sidewalk line or in the event there are no sidewalks then between the intersection area and a line ten feet therefrom, except as modified by a marked crosswalk. [1961 c 12 § 46.04.160. Prior: 1959 c 49 § 17; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.165 Driveaway-towaway operation. "Driveaway-towaway operation" means any operation in which any motor vehicle, trailer or semitrailer, singly or in combination, new or used, constitutes the commodity being transported when one set or more wheels of any such vehicle are on the roadway during the course of transportation, whether or not any such vehicle furnishes the motive power. [1963 c 154 § 27.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.170 Explosives. "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, and which contains any oxidizing or combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonation of any part of the compound mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb. [1961 c 12 § 46.04.170. Prior: 1959 c 49 § 18; prior: 1937 c 189 § 1, part; RRS § 6360-1, part. Cf. 1951 c 102 § 3.]

46.04.180 Farm tractor. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry. [1961 c 12 § 46.04.180. Prior: 1959 c 49 § 19; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.181 Farm vehicle. "Farm vehicle" means any vehicle other than a farm tractor or farm implement which is designed and/or used primarily in agricultural pursuits on farms for the purpose of transporting machinery, equipment, implements, farm products, supplies and/or farm labor thereon and is only incidentally operated on or moved along public highways for the purpose of going from one farm to another. [1967 c 202 § 1.]

46.04.182 Farmer. "Farmer" means any person, firm, partnership or corporation engaged in farming. If a person, firm, partnership or corporation is engaged in activities in addition to that of farming, the definition shall only apply to that portion of the activity that is

defined as farming in RCW 46.04.183. [1969 ex.s. c 281 § 58.]

46.04.183 Farming. "Farming" means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (except forestry or forestry operations), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices performed on a farm as an incident to or in conjunction with such farming operations. [1969 ex.s. c 281 § 59.]

46.04.190 For hire vehicle. "For hire vehicle" means any motor vehicle used for the transportation of persons for compensation, except auto stages and ride-sharing vehicles. [1979 c 111 § 13; 1961 c 12 § 46.04.190. Prior: 1959 c 49 § 20; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—1979 c 111: See note following RCW 46.74.010.
Ride-sharing vehicles defined: RCW 46.74.010.

46.04.194 Garbage truck. "Garbage truck" means a truck specially designed and used exclusively for garbage or refuse operations. [1983 c 68 § 1.]

46.04.200 Hours of darkness. "Hours of darkness" means the hours from one-half hour after sunset to one-half hour before sunrise, and any other time when persons or objects may not be clearly discernible at a distance of five hundred feet. [1961 c 12 § 46.04.200. Prior: 1959 c 49 § 21; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.210 Flammable liquid. "Flammable liquid" means any liquid which has a flash point of 70° Fahrenheit, or less, as determined by a Tagliabue or equivalent closed cup test device. [1961 c 12 § 46.04.210. Prior: 1959 c 49 § 22; prior: 1937 c 189 § 1, part; RRS § 6360-1, part. Cf. 1951 c 102 § 3.]

46.04.220 Intersection area. (1) "Intersection area" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none then the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(2) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(3) The junction of an alley with a street or highway shall not constitute an intersection. [1975 c 62 § 4; 1961

c 12 § 46.04.220. Prior: 1959 c 49 § 23; prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.240 Intersection control area. "Intersection control area" means intersection area, together with such modification of the adjacent roadway area as results from the arc of curb corners and together with any marked or unmarked crosswalks adjacent to the intersection. [1961 c 12 § 46.04.240. Prior: 1959 c 49 § 25; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.260 Laned highway. "Laned highway" means a highway the roadway of which is divided into clearly marked lanes for vehicular traffic. [1961 c 12 § 46.04.260. Prior: 1959 c 49 § 27; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.270 Legal owner. "Legal owner" means a person having a security interest in a vehicle perfected in accordance with chapter 46.12 RCW or the registered owner of a vehicle unencumbered by a security interest or the lessor of a vehicle unencumbered by a security interest. [1975 c 25 § 1; 1961 c 12 § 46.04.270. Prior: 1959 c 49 § 28; prior: 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part.]

46.04.280 Local authorities. "Local authorities" includes every county, municipal, or other local public board or body having authority to adopt local police regulations under the Constitution and laws of this state. [1961 c 12 § 46.04.280. Prior: 1959 c 49 § 29; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.290 Marked crosswalk. "Marked crosswalk" means any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface thereof. [1961 c 12 § 46.04.290. Prior: 1959 c 49 § 30; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.300 Metal tire. "Metal tire" includes every tire, the bearing surface of which in contact with the highway is wholly or partly of metal or other hard, non-resilient material. [1961 c 12 § 46.04.300. Prior: 1959 c 49 § 31; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.302 Mobile home, manufactured home (as amended by 1989 c 337). "Mobile home" or "manufactured home" means a structure, originally constructed to be transportable in one or more sections, ~~((which)) that is ((thirty-two body feet or more in length and is eight body feet or more in width, and which is))~~ built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities ~~((and includes~~

the)) that include plumbing, heating, (~~(air-conditioning,))~~ and electrical systems contained therein(~~(, except as hereinafter specifically excluded, and excluding modular homes)).~~ The structure must comply with the national Mobile Home Construction and Safety Standards Act of 1974 as adopted in chapter 43.22 RCW, if applicable. For purposes of titling and registration, a structure that met this definition when constructed continues to be a manufactured home notwithstanding that it is no longer transportable when affixed to land. [1989 c 337 § 1; 1977 ex.s. c 22 § 1; 1971 ex.s. c 231 § 4.]

46.04.302 Mobile home, manufactured home (as amended by 1989 c 343). (Effective March 1, 1990.) "Mobile home" or "manufactured home" means a structure, designed and constructed to be transportable in one or more sections, ((which is thirty-two body feet or more in length and is eight body feet or more in width, and which)) and is built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities((, and includes the)) that include plumbing, heating, ((air-conditioning,)) and electrical systems contained therein((, except as hereinafter specifically excluded, and excluding modular homes)). The structure must comply with the national mobile home construction and safety standards act of 1974 as adopted by chapter 43.22 RCW if applicable. Manufactured home does not include a modular home. A structure which met the definition of a "manufactured home" at the time of manufacture is still considered to meet this definition notwithstanding that it is no longer transportable. [1989 c 343 § 24; 1977 ex.s. c 22 § 1; 1971 ex.s. c 231 § 4.]

Reviser's note: RCW 46.04.302 was amended twice during the 1989 legislative session, each without reference to the other. The amendment by 1989 c 343 takes effect March 1, 1990. Until that date, the amendment by 1989 c 337 is the only effective version of the section. After that date, see RCW 1.12.025 for rule of construction concerning sections amended more than once during the same legislative session.

Severability—Effective date—1989 c 343: See RCW 65.20.940 and 65.20.950.

Severability—1977 ex.s. c 22: "If any section or provision of this 1977 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the section or provision to other persons or circumstances is not affected." [1977 ex.s. c 22 § 10.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.04.303 Modular home. "Modular home" means any factory-built housing designed primarily for residential occupancy by human beings which does not contain a permanent frame and must be mounted on a permanent foundation. [1971 ex.s. c 231 § 5.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.04.304 Moped. "Moped" means any two-wheeled or three-wheeled device having fully operative pedals for propulsion by human power and a motor with a cylinder displacement not exceeding fifty cubic centimeters which produces no more than two gross brake horsepower (developed by a prime mover, as measured by a brake applied to the driving shaft) and is capable of propelling the device at a maximum speed of not more than thirty miles per hour on level ground, and the wheels of which are at least sixteen inches in diameter.

The state patrol may approve of and define as a "moped" a vehicle which fails to meet these specific criteria, but which is essentially similar in performance and application to vehicles which do meet these specific criteria. [1987 c 330 § 702; 1979 ex.s. c 213 § 1.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.04.305 Motor homes. "Motor homes" means motor vehicles originally designed, reconstructed, or permanently altered to provide facilities for human habitation. [1971 ex.s. c 231 § 3.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.04.310 Motor truck. "Motor truck" means any motor vehicle designed or used for the transportation of commodities, merchandise, produce, freight, or animals. [1961 c 12 § 46.04.310. Prior: 1959 c 49 § 32; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.320 Motor vehicle. "Motor vehicle" shall mean every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. [1961 c 12 § 46.04.320. Prior: 1959 c 49 § 33; 1955 c 384 § 10; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.330 Motorcycle. "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped. [1979 ex.s. c 213 § 2; 1961 c 12 § 46.04-.330. Prior: 1959 c 49 § 34; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.332 Motor-driven cycle. "Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower (developed by a prime mover, as measured by a brake applied to the driving shaft). A motor-driven cycle does not include a moped. [1979 ex.s. c 213 § 3; 1963 c 154 § 28.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.340 Muffler. "Muffler" means a device consisting of a series of chambers, or other mechanical designs for the purpose of receiving exhaust gas from an internal combustion engine and effective in reducing noise resulting therefrom. [1961 c 12 § 46.04.340. Prior: 1959 c 49 § 35; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.350 Multiple lane highway. "Multiple lane highway" means any highway the roadway of which is of sufficient width to reasonably accommodate two or more separate lanes of vehicular traffic in the same direction, each lane of which shall be not less than the maximum legal vehicle width and whether or not such lanes are marked. [1975 c 62 § 5; 1961 c 12 § 46.04.350. Prior: 1959 c 49 § 36; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.355 Municipal transit vehicle. Municipal transit vehicle includes every motor vehicle, street car, train, trolley vehicle, and any other device, which (1) is capable of being moved within, upon, above, or below a public highway, (2) is owned or operated by a city, county, county transportation authority, public transportation benefit area, or metropolitan municipal corporation within the state, and (3) is used for the purpose of carrying passengers together with incidental baggage and freight on a regular schedule. [1984 c 167 § 2; 1974 ex.s. c 76 § 4.]

Unlawful bus conduct: RCW 9.91.025.

46.04.360 Nonresident. "Nonresident" means any person whose residence is outside this state and who is temporarily sojourning within this state. [1961 c 12 § 46.04.360. Prior: 1959 c 49 § 37; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.370 Operator or driver. "Operator or driver" means every person who drives or is in actual physical control of a vehicle. [1975 c 62 § 6; 1967 c 32 § 1; 1961 c 12 § 46.04.370. Prior: 1959 c 49 § 38; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.380 Owner. "Owner" means a person who has a lawful right of possession of a vehicle by reason of obtaining it by purchase, exchange, gift, lease, inheritance or legal action whether or not the vehicle is subject to a security interest and means registered owner where the reference to owner may be construed as either to registered or legal owner. [1975 c 25 § 2; 1961 c 12 § 46.04-380. Prior: 1959 c 49 § 39; prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.381 Park or parking. "Park or parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers. [1975 c 62 § 9.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.382 Passenger car. "Passenger car" means every motor vehicle except motorcycles and motor-driven cycles, designed for carrying ten passengers or less and used for the transportation of persons. [1963 c 154 § 29.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.391 Police officer. Police officer means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations. [1965 ex.s. c 155 § 89.]

46.04.400 Pedestrian. "Pedestrian" means any person afoot. [1961 c 12 § 46.04.400. Prior: 1959 c 49 § 41; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.405 Person. "Person" includes every natural person, firm, copartnership, corporation, association, or organization. [1961 c 12 § 46.04.405. Prior: 1959 c 49 § 42; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.410 Pneumatic tires. "Pneumatic tires" includes every tire of rubber or other resilient material designed to be inflated with compressed air to support the load thereon. [1961 c 12 § 46.04.410. Prior: 1959 c 49 § 43; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.414 Pole trailer. "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes, logs or structural members capable, generally, of sustaining themselves as beams between the supporting connections. [1961 c 12 § 46.04.414. Prior: 1959 c 49 § 44; prior: 1951 c 56 § 1.]

46.04.416 Private carrier bus. "Private carrier bus" means every motor vehicle designed for the purpose of carrying passengers (having a seating capacity for eleven or more persons) used regularly to transport persons in furtherance of any organized agricultural, religious or charitable purpose. Such term does not include buses operated by common carriers under a franchise granted by any city or town or the Washington public utilities commission. [1970 ex.s. c 100 § 3.]

46.04.420 Private road or driveway. "Private road or driveway" includes every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons. [1961 c 12 § 46.04.420. Prior: 1959 c 49 § 45; prior: 1937 c 189 § 1, part; RRS §

6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.431 Highway. Highway means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. [1965 ex.s. c 155 § 87.]

46.04.435 Public scale. "Public scale" means every scale under public or private ownership which is certified as to its accuracy and which is available for public weighing. [1961 c 12 § 46.04.435. Prior: 1959 c 49 § 47.]

46.04.440 Railroad. "Railroad" means a carrier of persons or property upon vehicles, other than street cars, operated upon stationary rails, the route of which is principally outside cities and towns. [1961 c 12 § 46.04-440. Prior: 1959 c 49 § 48; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.450 Railroad sign or signal. "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train. [1961 c 12 § 46.04-450. Prior: 1959 c 49 § 49; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.460 Registered owner. "Registered owner" means the person whose lawful right of possession of a vehicle has most recently been recorded with the department. [1975 c 25 § 3; 1961 c 12 § 46.04.460. Prior: 1959 c 49 § 50; prior: 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part.]

46.04.470 Residence district. "Residence district" means the territory contiguous to and including a public highway not comprising a business district, when the property on such public highway for a continuous distance of three hundred feet or more on either side thereof is in the main improved with residences or residences and buildings in use for business. [1961 c 12 § 46.04.470. Prior: 1959 c 49 § 51; prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.480 Revoke. "Revoke," in all its forms, means the invalidation for a period of one calendar year and thereafter until reissue: *Provided*, That under the provisions of RCW 46.20.285, 46.20.311, 46.20.265, or 46-61.515 and chapter 46.65 RCW the invalidation may last for a period other than one calendar year. [1988 c 148 § 8; 1985 c 407 § 1; 1983 c 165 § 14; 1983 c 165 § 13; 1979 c 62 § 7; 1961 c 12 § 46.04.480. Prior: 1959 c 49 § 52; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

Effective dates—1985 c 407: "Sections 2 and 4 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985. The remainder of the act shall take effect January 1, 1986." [1985 c 407 § 8.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Severability—1979 c 62: See note following RCW 46.65.020.

46.04.490 Road tractor. "Road tractor" includes every motor vehicle designed and used primarily as a road building vehicle in drawing road building machinery and devices. [1961 c 12 § 46.04.490. Prior: 1959 c 49 § 53; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.500 Roadway. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder even though such sidewalk or shoulder is used by persons riding bicycles. In the event a highway includes two or more separated roadways, the term "roadway" shall refer to any such roadway separately but shall not refer to all such roadways collectively. [1977 c 24 § 1; 1961 c 12 § 46.04.500. Prior: 1959 c 49 § 54; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.510 Safety zone. "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by painted marks, signs, buttons, standards, or otherwise, so as to be plainly discernible. [1961 c 12 § 46.04.510. Prior: 1959 c 49 § 55; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.521 School bus. School bus means every motor vehicle used regularly to transport children to and from school or in connection with school activities, which is subject to the requirements set forth in the most recent edition of "Specifications for School Buses" published by the state superintendent of public instruction, but does not include buses operated by common carriers in urban transportation of school children. [1965 ex.s. c 155 § 90.]

46.04.530 Semitrailer. "Semitrailer" includes every vehicle without motive power designed to be drawn by a vehicle, motor vehicle, or truck tractor and so constructed that an appreciable part of its weight and that of its load rests upon and is carried by such other vehicle, motor vehicle, or truck tractor. [1979 ex.s. c 149 § 1; 1961 c 12 § 46.04.530. Prior: 1959 c 49 § 57; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.540 Sidewalk. "Sidewalk" means that property between the curb lines or the lateral lines of a roadway and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a public highway and dedicated to use by pedestrians. [1961 c 12 § 46.04.540. Prior: 1959 c 49 § 58; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.550 Solid tire. "Solid tire" includes every tire of rubber or other resilient material which does not depend upon inflation with compressed air for the support of the load thereon. [1961 c 12 § 46.04.550. Prior: 1959 c 49 § 59; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.552 Special mobile equipment. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: Ditch digging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck-tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carry-alls and scrapers, power shovels and draglines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels or other vehicles designed for the transportation of persons or property to which machinery has been attached. [1973 1st ex.s. c 17 § 1; 1972 ex.s. c 5 § 1; 1963 c 154 § 30.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.555 Stand or standing. "Stand or standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers. [1975 c 62 § 10.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.560 State highway. "State highway" includes every highway or part thereof, which has been designated as a state highway or branch thereof, by legislative enactment. [1975 c 62 § 7; 1961 c 12 § 46.04.560. Prior: 1959 c 49 § 60; prior: 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.565 Stop. "Stop" when required means complete cessation from movement. [1975 c 62 § 11.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.566 Stop or stopping. "Stop or stopping" when prohibited means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with

the directions of a police officer or traffic control sign or signal. [1975 c 62 § 12.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.570 Street car. "Street car" means a vehicle other than a train for transporting persons or property and operated upon stationary rails principally within cities and towns. [1961 c 12 § 46.04.570. Prior: 1959 c 49 § 61; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.580 Suspend. "Suspend," in all its forms, means invalidation for any period less than one calendar year and thereafter until reinstatement. [1961 c 12 § 46.04.580. Prior: 1959 c 49 § 62; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.582 Tandem axle. "Tandem axle" means any two or more consecutive axles whose centers are less than seven feet apart. [1988 c 6 § 1; 1979 ex.s. c 149 § 2.]

46.04.585 Temporarily sojourning. "Temporarily sojourning," as the term is used in chapter 46.04 RCW, shall be construed to include any nonresident who is within this state for a period of not to exceed six months in any one year. [1961 c 12 § 46.04.585. Prior: 1959 c 49 § 63; prior: 1955 c 89 § 6.]

46.04.590 Traffic. "Traffic" includes pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together, while using any public highways for purposes of travel. [1961 c 12 § 46.04.590. Prior: 1959 c 49 § 64; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.600 Traffic control signal. "Traffic control signal" means any traffic device, whether manually, electrically, or mechanically operated, by which traffic alternately is directed to stop or proceed or otherwise controlled. [1961 c 12 § 46.04.600. Prior: 1959 c 49 § 65; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.611 Traffic-control devices. Official traffic-control devices means all signs, signals, markings and devices not inconsistent with Title 46 RCW placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic. [1965 ex.s. c 155 § 88.]

46.04.620 Trailer. "Trailer" includes every vehicle without motive power designed for being drawn by or used in conjunction with a motor vehicle constructed so that no appreciable part of its weight rests upon or is carried by such motor vehicle, but does not include a municipal transit vehicle, or any portion thereof. [1974 ex.s. c 76 § 3; 1961 c 12 § 46.04.620. Prior: 1959 c 49 §

67; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.622 Park trailer. "Park trailer" or "park model trailer" means a travel trailer designed to be used with temporary connections to utilities necessary for operation of installed fixtures and appliances. The trailer's gross area shall not exceed four hundred square feet when in the setup mode. "Park trailer" excludes a mobile home. [1989 c 337 § 2.]

46.04.623 Travel trailer. "Travel trailer" means a trailer built on a single chassis transportable upon the public streets and highways that is designed to be used as a temporary dwelling without a permanent foundation and may be used without being connected to utilities. [1989 c 337 § 3.]

46.04.630 Train. "Train" means a vehicle propelled by steam, electricity, or other motive power with or without cars coupled thereto, operated upon stationary rails, except street cars. [1961 c 12 § 46.04.630. Prior: 1959 c 49 § 68; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.640 Trolley vehicle. "Trolley vehicle" means a vehicle the motive power for which is supplied by means of a trolley line and which may or may not be confined in its operation to a certain portion of the roadway in order to maintain trolley line contact. [1961 c 12 § 46.04.640. Prior: 1959 c 49 § 69; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.650 Tractor. "Tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn. [1986 c 18 § 1; 1975 c 62 § 8; 1961 c 12 § 46.04.650. Prior: 1959 c 49 § 70; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Effective date—1986 c 18: See RCW 46.87.901.

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.653 Truck. "Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property. [1986 c 18 § 2.]

Effective date—1986 c 18: See RCW 46.87.901.

46.04.655 Truck tractor. "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles but so constructed as to permit carrying a load in addition to part of the weight of the vehicle and load so drawn. [1986 c 18 § 3.]

Effective date—1986 c 18: See RCW 46.87.901.

46.04.660 Used vehicle. "Used vehicle" means a vehicle which has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer or first importer, dealer, or agent of the manufacturer or importer, and so used as to have become what is commonly known as "second-hand" within the ordinary meaning thereof. [1961 c 12 § 46.04.660. Prior: 1959 c 49 § 71; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.670 Vehicle. "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks, except that mopeds shall be considered vehicles or motor vehicles for the purposes of chapter 46.12 RCW, but not for the purposes of chapter 46.70 RCW. [1979 ex.s. c 213 § 4; 1961 c 12 § 46.04.670. Prior: 1959 c 49 § 72; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.672 Vehicle or pedestrian right of way. "Vehicle or pedestrian right of way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other. [1975 c 62 § 13.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.690 Department. The term "department" shall mean the department of licensing unless a different department is specified. [1979 c 158 § 126; 1975 c 25 § 4.]

46.04.695 Director. The term "director" shall mean the director of licensing unless the director of a different department of government is specified. [1979 c 158 § 127; 1975 c 25 § 5.]

46.04.700 Driver education. Whenever the term "driver education" is used in the code, it shall be defined to mean "traffic safety education". [1969 ex.s. c 218 § 12.]

46.04.710 Wheelchair conveyance. "Wheelchair conveyance" means any vehicle specially manufactured or designed for the transportation of a physically or medically impaired wheelchair-bound person. The vehicle may be a separate vehicle used in lieu of a wheelchair or a separate vehicle used for transporting the impaired person while occupying a wheelchair. The vehicle shall be equipped with a propulsion device capable of propelling the vehicle within a speed range established by the state patrol. The state patrol may approve and define as a wheelchair conveyance, a vehicle that fails to meet

these specific criteria but is essentially similar in performance and application to vehicles that do meet these specific criteria. [1987 c 330 § 703; 1983 c 200 § 1.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1983 c 200: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 200 § 7.]

Wheelchair conveyances

licensing: RCW 46.16.640.

operator's license: RCW 46.20.550.

public roadways, operating on: RCW 46.61.730.

safety standards: RCW 46.37.610.

Chapter 46.08 GENERAL PROVISIONS

Sections

- 46.08.010 State preempts licensing field.
- 46.08.020 Precedence over local vehicle and traffic regulations.
- 46.08.030 Uniformity of application.
- 46.08.065 Publicly owned vehicles to be marked—Exceptions.
- 46.08.066 Publicly owned vehicles—Confidential license plates—Issuance, rules governing.
- 46.08.067 Publicly owned vehicles—Violations concerning marking and confidential license plates.
- 46.08.068 Publicly owned vehicles—Remarking not required, when.
- 46.08.070 Nonresidents, application to.
- 46.08.150 Control of traffic on capitol grounds.
- 46.08.160 Control of traffic on capitol grounds—Enforcing officer.
- 46.08.170 Control of traffic on capitol grounds—Violations, traffic infractions, misdemeanors—Jurisdiction.
- 46.08.172 Control of traffic on capitol grounds—Parking fees—Disposition of parking revenue—State capitol vehicle parking account—Earnings.
- 46.08.190 Jurisdiction of judges of district, municipal, and superior court.

Extension of licensing period authorized—Rules and regulations, manner and content: RCW 43.24.140.

46.08.010 State preempts licensing field. The provisions of this title relating to the certificate of ownership, certificate of license registration, vehicle license, vehicle license plates and vehicle operator's license shall be exclusive and no political subdivision of the state of Washington shall require or issue any licenses or certificates for the same or a similar purpose, nor shall any city or town in this state impose a tax, license, or other fee upon vehicles operating exclusively between points outside of such city or town limits, and to points therein. [1961 c 12 § 46.08.010. Prior: 1937 c 188 § 75; RRS § 6312-75.]

46.08.020 Precedence over local vehicle and traffic regulations. The provisions of this title relating to vehicles shall be applicable and uniform throughout this state and in all incorporated cities and towns and all political subdivisions therein and no local authority shall enact or enforce any law, ordinance, rule or regulation in conflict with the provisions of this title except and unless expressly authorized by law to do so and any laws, ordinances, rules or regulations in conflict with the provisions of this title are hereby declared to be invalid and of

no effect. Local authorities may, however, adopt additional vehicle and traffic regulations which are not in conflict with the provisions of this title. [1961 c 12 § 46.08.020. Prior: 1937 c 189 § 2; RRS § 6360-2.]

46.08.030 Uniformity of application. The provisions of this title relating to the operation of vehicles shall be applicable and uniform upon all persons operating vehicles upon the public highways of this state, except as otherwise specifically provided. [1961 c 12 § 46.08.030. Prior: 1937 c 189 § 3; RRS § 6360-3.]

46.08.065 Publicly owned vehicles to be marked—Exceptions. (1) It is unlawful for any public officer having charge of any vehicle owned or controlled by any county, city, town, or public body in this state other than the state of Washington and used in public business to operate the same upon the public highways of this state unless and until there shall be displayed upon such automobile or other motor vehicle in letters of contrasting color not less than one and one-quarter inches in height in a conspicuous place on the right and left sides thereof, the name of such county, city, town, or other public body, together with the name of the department or office upon the business of which the said vehicle is used. This section shall not apply to vehicles of a sheriff's office, local police department, or any vehicles used by local peace officers under public authority for special undercover or confidential investigative purposes. This subsection shall not apply to: (a) Any municipal transit vehicle operated for purposes of providing public mass transportation; (b) any vehicle governed by the requirements of subsection (4) of this section; nor to (c) any motor vehicle on loan to a school district for driver training purposes. It shall be lawful and constitute compliance with the provisions of this section, however, for the governing body of the appropriate county, city, town, or public body other than the state of Washington or its agencies to adopt and use a distinctive insignia which shall be not less than six inches in diameter across its smallest dimension and which shall be displayed conspicuously on the right and left sides of the vehicle. Such insignia shall be in a color or colors contrasting with the vehicle to which applied for maximum visibility. The name of the public body owning or operating the vehicle shall also be included as part of or displayed above such approved insignia in colors contrasting with the vehicle in letters not less than one and one-quarter inches in height. Immediately below the lettering identifying the public entity and agency operating the vehicle or below an approved insignia shall appear the words "for official use only" in letters at least one inch high in a color contrasting with the color of the vehicle. The appropriate governing body may provide by rule or ordinance for marking of passenger motor vehicles as prescribed in subsection (2) of this section or for exceptions to the marking requirements for local governmental agencies for the same purposes and under the same circumstances as permitted for state agencies under subsection (3) of this section.

(2) Except as provided by subsections (3) and (4) of this section, passenger motor vehicles, as defined in

RCW 43.19.552, owned or controlled by the state of Washington, and purchased after July 1, 1989, must be plainly and conspicuously marked on the lower left-hand corner of the rear window with the name of the operating agency or institution or the words "state motor pool," as appropriate, the words "state of Washington — for official use only," and the seal of the state of Washington or the appropriate agency or institution insignia, approved by the department of general administration. Markings must be on a transparent adhesive material and conform to the standards established by the department of general administration under RCW 43.19.554(1).

(3) Subsection (2) of this section shall not apply to vehicles used by the Washington state patrol for general undercover or confidential investigative purposes. Traffic control vehicles of the Washington state patrol may be exempted from the requirements of subsection (2) of this section at the discretion of the chief of the Washington state patrol. The department of general administration shall adopt general rules permitting other exceptions to the requirements of subsection (2) of this section for other vehicles used for law enforcement, confidential public health work, and public assistance fraud or support investigative purposes, for vehicles leased or rented by the state on a casual basis for a period of less than ninety days, and those provided for in RCW 46.08.066(3). The exceptions in this subsection, subsection (4) of this section, and those provided for in RCW 46.08.066(3) shall be the only exceptions permitted to the requirements of subsection (2) of this section.

(4) Any motorcycle, vehicle over 10,000 pounds gross vehicle weight, or other vehicle that for structural reasons cannot be marked as required by subsection (1) or (2) of this section that is owned or controlled by the state of Washington or by any county, city, town, or other public body in this state and used for public purposes on the public highways of this state shall be conspicuously marked in letters of a contrasting color with the words "State of Washington" or the name of such county, city, town, or other public body, together with the name of the department or office that owns or controls the vehicle.

(5) All motor vehicle markings required under the terms of this chapter shall be maintained in a legible condition at all times. [1989 c 57 § 9; 1975 1st ex.s. c 169 § 1; 1961 c 12 § 46.08.065. Prior: 1937 c 189 § 46; RRS § 6360-46. Formerly RCW 46.36.140.]

Effective date—1989 c 57: See note following RCW 43.19.550.

46.08.066 Publicly owned vehicles—Confidential license plates—Issuance, rules governing. (1) Except as provided in subsection (3) of this section, the department of licensing is authorized to issue confidential motor vehicle license plates to units of local government and to agencies of the federal government for law enforcement purposes only.

(2) Except as provided in subsections (3) and (4) of this section the use of confidential plates on vehicles owned or operated by the state of Washington by any

officer or employee thereof, shall be limited to confidential, investigative, or undercover work of state law enforcement agencies, confidential public health work, and confidential public assistance fraud or support investigations.

(3) Any state official elected on a state-wide basis shall be provided on request with one set of confidential plates for use on official business. When necessary for the personal security of any other public officer, or public employee, the chief of the Washington state patrol may recommend that the director issue confidential plates for use on an unmarked publicly owned or controlled vehicle of the appropriate governmental unit for the conduct of official business for the period of time that the personal security of such state official, public officer, or other public employee may require. The office of the state treasurer may use an unmarked state owned or controlled vehicle with confidential plates where required for the safe transportation of either state funds or negotiable securities to or from the office of the state treasurer.

(4) The director of licensing may issue rules and regulations governing applications for, and the use of, such plates by law enforcement and other public agencies. [1986 c 158 § 20; 1982 c 163 § 14; 1979 c 158 § 128; 1975 1st ex.s. c 169 § 2.]

Severability—Effective date—1982 c 163: See notes following RCW 2.10.052.

46.08.067 Publicly owned vehicles—Violations concerning marking and confidential license plates. A violation of any provision of RCW 46.08.065 as now or hereafter amended or of RCW 46.08.066 shall subject the public officer or employee committing such violation to disciplinary action by the appropriate appointing authority or employing agency. Such disciplinary action may include, but shall not be limited to, suspension without pay or termination of employment in the case of repeated or continuing noncompliance. [1975 1st ex.s. c 169 § 3.]

46.08.068 Publicly owned vehicles—Remarking not required, when. Any vehicle properly marked pursuant to statutory requirements in effect prior to September 8, 1975, need not be remarked to conform to the requirements of RCW 46.08.065 through 46.08.067 until July 1, 1977. [1975 1st ex.s. c 169 § 4.]

46.08.070 Nonresidents, application to. Subject to a compliance with the motor vehicle laws of the state and acceptance of the provisions of this title, nonresident owners and operators of vehicles hereby are granted the privilege of using the public highways of this state, and use of such public highways shall be deemed and construed to be an acceptance by such nonresident owners and operators of the provisions of this title. [1961 c 12 § 46.08.070. Prior: 1937 c 189 § 128; RRS § 6360-128.]

46.08.150 Control of traffic on capitol grounds. The director of general administration shall have power to

devise and promulgate rules and regulations for the control of vehicular and pedestrian traffic and the parking of motor vehicles on the state capitol grounds. Such rules and regulations shall be promulgated by publication in one issue of a newspaper published at the state capitol and shall be given such further publicity as the director may deem proper. [1961 c 12 § 46.08.150. Prior: 1955 c 285 § 21; 1947 c 11 § 1; Rem. Supp. 1947 § 7921-20.]

46.08.160 Control of traffic on capitol grounds—Enforcing officer. The chief of the Washington state patrol shall be the chief enforcing officer to assure the proper enforcement of such rules and regulations. [1961 c 12 § 46.08.160. Prior: 1947 c 11 § 2; Rem. Supp. 1947 § 7921-21.]

46.08.170 Control of traffic on capitol grounds—Violations, traffic infractions, misdemeanors—Jurisdiction. Any violation of a rule or regulation prescribed under RCW 46.08.150 is a traffic infraction, and the district courts of Thurston county shall have jurisdiction over such offenses: *Provided*, That violation of a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [1987 c 202 § 213; 1979 ex.s. c 136 § 40; 1963 c 158 § 2; 1961 c 12 § 46.08.170. Prior: 1947 c 11 § 3; Rem. Supp. 1947 § 7921-22.]

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

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.08.172 Control of traffic on capitol grounds—Parking fees—Disposition of parking revenue—State capitol vehicle parking account—Earnings. There is hereby established an account in the state treasury to be known as the "state capitol vehicle parking account". The director of the department of general administration shall establish an equitable and consistent employee parking rental fee for state owned or leased property, effective July 1, 1988. All fees shall take into account the market rate of comparable privately owned rental parking, as determined by the director. All unpledged parking rental income collected by the department of general administration from rental of parking space on the capitol grounds and the east capitol site shall be deposited in the "state capitol vehicle parking account". All earnings of investments of balances in the state capitol vehicle parking account shall be credited to the general fund.

The "state capitol vehicle parking account" shall be used to pay costs incurred in the operation, maintenance, regulation and enforcement of vehicle parking and parking facilities at the state capitol. [1988 ex.s. c 2 § 901; 1985 c 57 § 59; 1984 c 258 § 323; 1963 c 158 § 1.]

Effective date—1985 c 57: See note following RCW 15.52.320.

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

Intent—1984 c 258: See note following RCW 3.46.120.

46.08.190 Jurisdiction of judges of district, municipal, and superior court. Every district and municipal court judge shall have concurrent jurisdiction with superior court judges of the state for all violations of the provisions of this title and may impose any punishment provided therefor. [1984 c 258 § 136; 1961 c 12 § 46.08.190. Prior: 1955 c 393 § 4.]

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

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Chapter 46.09

OFF-ROAD AND NONHIGHWAY VEHICLES

Sections

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46.09.010 Application of chapter—Permission necessary to enter upon private lands. The provisions of this chapter shall apply to all lands in this state. Nothing in chapter 43.09 RCW, RCW 67.32.050, 67.32.080, 67.32.100, 67.32.130 or 67.32.140 shall be deemed to grant to any person the right or authority to enter upon private property without permission of the property owner. [1972 ex.s. c 153 § 2; 1971 ex.s. c 47 § 6.]

Reviser's note: Throughout chapter 46.09 RCW, with the exception of RCW 46.09.010 and 46.09.900, the phrase "this 1971 amendatory act" has been changed to "this chapter." This 1971 amendatory act [1971 ex.s. c 47] consists of the enactment of chapter 46.09 RCW and RCW 67.32.130 and 67.32.140 and the amendment of RCW 67.32.050, 67.32.080, and 67.32.100.

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.020 Definitions. As used in this chapter the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context otherwise clearly indicates:

"Person" means any individual, firm, partnership, association, or corporation.

"Nonhighway vehicle" means any motorized vehicle when used for recreation travel on trails and nonhighway roads or for recreation cross-country travel on any one of the following or a combination thereof: Land, water, snow, ice, marsh, swampland, and other natural terrain. Such vehicles include but are not limited to, off-road vehicles, two, three, or four-wheel vehicles, motorcycles, four-wheel drive vehicles, dune buggies, amphibious vehicles, ground effects or air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

Nonhighway vehicle does not include:

(1) Any vehicle designed primarily for travel on, over, or in the water;

(2) Snowmobiles or any military vehicles; or

(3) Any vehicle eligible for a motor vehicle fuel tax exemption or rebate under chapter 82.36 RCW while an exemption or rebate is claimed. This exemption includes but is not limited to farm, construction, and logging vehicles.

"Off-road vehicle" or "ORV" means any nonhighway vehicle when used for cross-country travel on trails or on any one of the following or a combination thereof: Land, water, snow, ice, marsh, swampland and other natural terrain.

"ORV use permit" means a permit issued for operation of an off-road vehicle under this chapter.

"ORV trail" means a multiple-use corridor designated and maintained for recreational travel by off-road vehicles that is not normally suitable for travel by conventional two-wheel drive vehicles and is posted or designated by the managing authority of the property that the trail traverses as permitting ORV travel.

"ORV use area" means the entire area of a parcel of land except for camping and approved buffer areas that is posted or designated for ORV use in accordance with rules adopted by the managing authority.

"ORV recreation facility" includes ORV trails and ORV use areas.

"Owner" means the person other than the lienholder, having an interest in or title to a nonhighway vehicle, and entitled to the use or possession thereof.

"Operator" means each person who operates, or is in physical control of, any nonhighway vehicle.

"Dealer" means a person, partnership, association, or corporation engaged in the business of selling off-road vehicles at wholesale or retail in this state.

"Department" means the department of licensing.

"Hunt" means any effort to kill, injure, capture, or purposely disturb a wild animal or wild bird.

"Nonhighway road" means any road owned or managed by a public agency, or any private road for which the owner has granted a permanent easement for public use of the road, other than a highway generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles and that is not built or maintained with appropriations from the motor vehicle fund.

"Highway," for the purpose of this chapter only, means the entire width between the boundary lines of every way publicly maintained by the state department of transportation or any county or city when any part thereof is generally open to the use of the public for purposes of vehicular travel as a matter of right.

"Organized competitive event" means any competition, advertised in advance through written notice to organized clubs or published in local newspapers, sponsored by recognized clubs, and conducted at a predetermined time and place. [1986 c 206 § 1; 1979 c 158 § 129; 1977 ex.s. c 220 § 1; 1972 ex.s. c 153 § 3; 1971 ex.s. c 47 § 7.]

Effective date—1986 c 206: "This act shall take effect on June 30, 1986." [1986 c 206 § 17.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.030 Use permits—Issuance—Fees. The department shall provide for the issuance of use permits for off-road vehicles and may appoint agents for collecting fees and issuing permits. The provisions of RCW 46.01.130 and 46.01.140 apply to the issuance of use permits for off-road vehicles as they do to the issuance of vehicle licenses, the appointment of agents and the collection of application fees. [1986 c 206 § 2; 1977 ex.s. c 220 § 2; 1972 ex.s. c 153 § 4; 1971 ex.s. c 47 § 8.]

Effective date—1986 c 206: See note following RCW 46.09.020.

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.040 Use permit prerequisite to operation. Except as provided in this chapter, no person shall operate any off-road vehicle within this state after January 1, 1978, unless the off-road vehicle has been assigned an ORV use permit and displays a current ORV tag in accordance with the provisions of this chapter: *Provided*, That registration and display of an unexpired ATV use permit shall be deemed to have complied with this section. [1977 ex.s. c 220 § 3; 1972 ex.s. c 153 § 5; 1971 ex.s. c 47 § 9.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.050 Vehicles exempted from ORV use permits and tags. ORV use permits and ORV tags shall be required under the provisions of this chapter except for the following:

(1) Off-road vehicles owned and operated by the United States, another state, or a political subdivision thereof.

(2) Off-road vehicles owned and operated by this state, or by any municipality or political subdivision thereof.

(3) An off-road vehicle operating in an organized competitive event on privately owned or leased land: *Provided*, That if such leased land is owned by the state of Washington this exemption shall not apply unless the state agency exercising jurisdiction over the land in question specifically authorizes said competitive event: *Provided further*, That such exemption shall be strictly construed.

(4) Off-road vehicles operated on lands owned or leased by the ORV owner or operator or on lands which

the operator has permission to operate without an ORV use permit.

(5) Off-road vehicles owned by a resident of another state that have a valid ORV permit or vehicle license issued in accordance with the laws of the other state. This exemption shall apply only to the extent that a similar exemption or privilege is granted under the laws of that state.

(6) Off-road vehicles while being used for search and rescue purposes under the authority or direction of an appropriate search and rescue or law enforcement agency.

(7) Vehicles used primarily for construction or inspection purposes during the course of a commercial operation.

(8) Vehicles which are licensed pursuant to chapter 46.16 RCW or in the case of nonresidents, vehicles which are validly licensed for operation over public highways in the jurisdiction of the owner's residence. [1986 c 206 § 3; 1977 ex.s. c 220 § 4; 1972 ex.s. c 153 § 6; 1971 ex.s. c 47 § 10.]

Effective date—1986 c 206: See note following RCW 46.09.020.

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.070 Application for ORV use permit. (1) Application for annual or temporary ORV use permits shall be made to the department or its authorized agent in such manner and upon such forms as the department shall prescribe and shall state the name and address of each owner of the off-road vehicle.

(2) An application for an annual permit shall be signed by at least one owner, and shall be accompanied by a fee of five dollars. Upon receipt of the annual permit application and the application fee, the off-road vehicle shall be assigned a use permit number tag or decal, which shall be affixed to the off-road vehicle in a manner prescribed by the department. The annual permit is valid for a period of one year and is renewable each year in such manner as the department may prescribe for an additional period of one year upon payment of a renewal fee of five dollars.

Any person acquiring an off-road vehicle for which an annual permit has been issued who desires to continue to use the permit must, within fifteen days of the acquisition of the off-road vehicle, make application to the department or its authorized agent for transfer of the permit, and the application shall be accompanied by a transfer fee of one dollar.

(3) A temporary use permit is valid for sixty days. Application for a temporary permit shall be accompanied by a fee of two dollars. The permit shall be carried on the vehicle at all times during its operation in the state.

(4) Except as provided in RCW 46.09.050, any out-of-state operator of an off-road vehicle shall, when operating in this state, comply with this chapter, and if an ORV use permit is required under this chapter, the operator shall obtain an annual or temporary permit and tag. [1986 c 206 § 4; 1977 ex.s. c 220 § 6; 1972 ex.s. c 153 § 8; 1971 ex.s. c 47 § 12.]

Effective date—1986 c 206: See note following RCW 46.09.020.

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.080 ORV dealers—Permits—Fees—Number plates—Violations. (1) Each dealer of off-road vehicles in this state who does not have a current "dealer's plate" for vehicle use pursuant to chapter 46.70 RCW shall obtain an ORV dealer permit from the department in such manner and upon such forms as the department shall prescribe. Upon receipt of an application for an ORV dealer permit and the fee under subsection (2) of this section, the dealer shall be registered and an ORV dealer permit number assigned.

(2) The fee for ORV dealer permits shall be twenty-five dollars per year, which covers all of the off-road vehicles owned by a dealer and not rented. Off-road vehicles rented on a regular, commercial basis by a dealer shall have separate use permits.

(3) Upon the issuance of an ORV dealer permit each dealer shall purchase, at a cost to be determined by the department, ORV dealer number plates of a size and color to be determined by the department, that contain the dealer ORV permit number assigned to the dealer. Each off-road vehicle operated by a dealer for the purposes of testing or demonstration shall display such number plates assigned pursuant to the dealer permit provisions in chapter 46.70 RCW or this section, in a manner prescribed by the department.

(4) No person other than a dealer or a representative thereof may display number plates as prescribed in subsection (3) of this section, and no dealer or representative thereof shall use such number plates for any purpose other than the purpose prescribed in subsection (3) of this section.

(5) ORV dealer permit numbers shall be nontransferable.

(6) It is unlawful for any dealer to sell any off-road vehicle at wholesale or retail or to test or demonstrate any off-road vehicle within the state unless he has a motor vehicle dealers' license pursuant to chapter 46.70 RCW or an ORV dealer permit number in accordance with this section. [1986 c 206 § 5; 1977 ex.s. c 220 § 7; 1972 ex.s. c 153 § 9; 1971 ex.s. c 47 § 13.]

Effective date—1986 c 206: See note following RCW 46.09.020.

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.110 Disposition of ORV moneys. The moneys collected by the department under this chapter shall be distributed from time to time but at least once a year in the following manner:

The department shall retain enough money to cover expenses incurred in the administration of this chapter: *Provided*, That such retention shall never exceed eighteen percent of fees collected.

The remaining moneys shall be distributed by the interagency committee for outdoor recreation in accordance with RCW 46.09.170(1)(d). [1986 c 206 § 6; 1985 c 57 § 60; 1977 ex.s. c 220 § 9; 1972 ex.s. c 153 § 11; 1971 ex.s. c 47 § 16.]

Effective date—1986 c 206: See note following RCW 46.09.020.

Effective date—1985 c 57: See note following RCW 15.52.320.

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.120 Operating violations. (1) It is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty percent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail which is restricted to pedestrian or animal travel; and

(i) On any public lands in violation of rules and regulations of the agency administering such lands.

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance. [1979 ex.s. c 136

§ 41; 1977 ex.s. c 220 § 10; 1972 ex.s. c 153 § 12; 1971 ex.s. c 47 § 17.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.130 Additional violations—Penalty. No person may operate a nonhighway vehicle in such a way as to endanger human life. No person shall operate a nonhighway vehicle in such a way as to run down or harass any wildlife or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt from, any nonhighway vehicle except by permit issued by the director of wildlife under RCW 77.32.237: *Provided*, That it shall not be unlawful to carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.

Violation of this section is a gross misdemeanor. [1989 c 297 § 3; 1986 c 206 § 7; 1977 ex.s. c 220 § 11; 1971 ex.s. c 47 § 18.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.140 Accident reports. The operator of any nonhighway vehicle involved in any accident resulting in injury to or death of any person, or property damage to another in the estimated amount of two hundred dollars or more, or a person acting for the operator shall submit such reports as are required under chapter 46.52 RCW, as now enacted or as hereafter amended, and the provisions of chapter 46.52 RCW shall be applicable to such reports when submitted. [1977 ex.s. c 220 § 12; 1971 ex.s. c 47 § 19.]

46.09.150 Motor vehicle fuel excise taxes on fuel for nonhighway vehicles not refundable. Motor vehicle fuel excise taxes paid on fuel used and purchased for providing the motive power for nonhighway vehicles shall not be refundable in accordance with the provisions of RCW 82.36.280 as it now exists or is hereafter amended. [1977 ex.s. c 220 § 13; 1974 ex.s. c 144 § 1; 1972 ex.s. c 153 § 13; 1971 ex.s. c 47 § 20.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.170 Refunds from motor vehicle fund—Distribution—Use. (1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090. The treasurer shall place these funds in the general fund as follows:

(a) Forty percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for planning, maintenance, and management of ORV recreation facilities, nonhighway roads, and nonhighway road recreation

facilities. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than five percent may be expended for information programs under this chapter;

(ii) Not less than ten percent and not more than fifty percent may be expended for ORV recreation facilities;

(iii) Not more than twenty-five percent may be expended for maintenance of nonhighway roads;

(iv) Not more than fifty percent may be expended for nonhighway road recreation facilities;

(v) Ten percent shall be transferred to the interagency committee for outdoor recreation for grants to law enforcement agencies in those counties where the department of natural resources maintains ORV facilities. This amount is in addition to those distributions made by the interagency committee for outdoor recreation under (d) (i) of this subsection;

(b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of wildlife solely for the acquisition, planning, development, maintenance, and management of nonhighway roads and recreation facilities;

(c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the maintenance and management of ORV use areas and facilities; and

(d) Fifty-four and one-half percent, together with the funds received by the interagency committee for outdoor recreation under RCW 46.09.110, shall be credited to the outdoor recreation account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV recreation facilities and nonhighway road recreation facilities; ORV user education and information; and ORV law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than twenty percent may be expended for ORV education, information, and law enforcement programs under this chapter;

(ii) Not less than an amount equal to the funds received by the interagency committee for outdoor recreation under RCW 46.09.110 and not more than sixty percent may be expended for ORV recreation facilities;

(iii) Not more than twenty percent may be expended for nonhighway road recreation facilities.

(2) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter. [1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]

Effective date—1986 c 206: See note following RCW 46.09.020.

Effective date—1975 1st ex.s. c 34: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 34 § 4.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.180 Regulation by local political subdivisions or state agencies. Notwithstanding any of the provisions of this chapter, any city, county, or other political subdivision of this state, or any state agency, may regulate the operation of nonhighway vehicles on public lands, waters, and other properties under its jurisdiction, and on streets or highways within its boundaries by adopting regulations or ordinances of its governing body, provided such regulations are not less stringent than the provisions of this chapter. [1977 ex.s. c 220 § 15; 1971 ex.s. c 47 § 23.]

46.09.190 General penalty—Civil liability. (1) Except as provided in RCW 46.09.120(2) and 46.09.130 as now or hereafter amended, violation of the provisions of this chapter is a traffic infraction for which a penalty of not less than twenty-five dollars may be imposed.

(2) In addition to the penalties provided in subsection (1) of this section, the owner and/or the operator of any nonhighway vehicle shall be liable for any damage to property including damage to trees, shrubs, or growing crops injured as the result of travel by the nonhighway vehicle. The owner of such property may recover from the person responsible three times the amount of damage. [1979 ex.s. c 136 § 42; 1977 ex.s. c 220 § 16; 1972 ex.s. c 153 § 16; 1971 ex.s. c 47 § 24.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.200 Enforcement. The provisions of this chapter shall be enforced by all persons having the authority to enforce any of the laws of this state, including, without limitation, officers of the state patrol, county sheriffs and their deputies, all municipal law enforcement officers within their respective jurisdictions, state wildlife agents and deputy wildlife agents, state park rangers, state fisheries patrolmen, and those employees of the department of natural resources designated by the commissioner of public lands under RCW 43.30.310, 76.04.035, and 76.04.045. [1986 c 100 § 52; 1971 ex.s. c 47 § 25.]

46.09.240 Administration and distribution of ORV moneys. (1) After deducting administrative expenses and the expense of any programs conducted under this chapter, the interagency committee for outdoor recreation shall, at least once each year, distribute the funds it receives under RCW 46.09.110 and 46.09.170 to state agencies, counties, municipalities, federal agencies, and Indian tribes.

The committee shall adopt rules governing applications for funds administered by the agency under this chapter and shall determine the amount of money distributed to each applicant. Agencies receiving funds under this chapter for capital purposes shall consider the possibility of contracting with the state parks and recreation commission, the department of natural resources, or other federal, state, and local agencies to employ the

youth development and conservation corps or other youth crews in completing the project.

(2) The interagency committee shall require each applicant for land acquisition or development funds under this section to conduct, before submitting the application, a public hearing in the nearest town of five hundred population or more, and publish notice of such hearing on the same day of each week for two consecutive weeks as follows:

(a) In the newspaper of general circulation published nearest the proposed project;

(b) In the newspaper having the largest circulation in the county or counties where the proposed project is located; and

(c) If the proposed project is located in a county of class four or lower, the notice shall also be published in the newspaper having the largest circulation published in the nearest county that is class three or above.

(3) The notice shall state that the purpose of the hearing is to solicit comments regarding an application being prepared for submission to the interagency committee for outdoor recreation for acquisition or development funds under the off-road and nonhighway vehicle program. The applicant shall file notice of the hearing with the department of ecology at the main office in Olympia and shall comply with the State Environmental Policy Act, chapter 43.21C RCW. A written record and a magnetic tape recording of the hearing shall be included in the application. [1986 c 206 § 9; 1977 ex.s. c 220 § 17.]

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.250 State-wide plan. The interagency committee for outdoor recreation shall maintain a state-wide plan which shall be updated at least once every third biennium and shall be used by all participating agencies to guide distribution and expenditure of funds under this chapter. [1986 c 206 § 11; 1977 ex.s. c 220 § 18.]

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.280 Committee to advise on administration of chapter. The interagency committee for outdoor recreation shall establish a committee of nonhighway road recreationists, including representatives of organized ORV groups, to provide advice regarding the administration of this chapter. Only representatives of organized ORV groups may be voting members of the committee with respect to expenditure of funds received under RCW 46.09.110. [1986 c 206 § 13.]

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.290 Earnings of ORV and nonhighway vehicle account. All earnings of investments of balances in the ORV and nonhighway vehicle account and the outdoor recreation account shall be credited to the general fund. [1986 c 206 § 14.]

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.900 Severability—1971 ex.s. c 47. If any provision of this 1971 amendatory act, or its application

to any person or circumstance is held invalid, the remainder of this 1971 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 47 § 26.]

Chapter 46.10 SNOWMOBILES

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46.10.010 Definitions. As used in this chapter the words and phrases in this section shall have the designated meanings unless a different meaning is expressly provided or the context otherwise clearly indicated.

(1) "Person" shall mean any individual, firm, partnership, association, or corporation.

(2) "Snowmobile" shall mean any self-propelled vehicle capable of traveling over snow or ice, which utilizes as its means of propulsion an endless belt tread, or cleats, or any combination of these or other similar means of contact with the surface upon which it is operated, and which is steered wholly or in part by skis or sled type runners, and which is not otherwise registered as, or subject to the motor vehicle excise tax in the state of Washington.

(3) "All terrain vehicle" shall mean any self-propelled vehicle other than a snowmobile, capable of cross-country travel on or immediately over land, water, snow, ice, marsh, swampland, and other natural terrain, including, but not limited to, four-wheel vehicles, amphibious vehicles, ground effect or air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind; except any vehicle designed primarily for travel on, over, or in the water, farm vehicles, or any military or law enforcement vehicles.

(4) "Owner" shall mean the person, other than a lienholder, having the property in or title to a snowmobile or all terrain vehicle, and entitled to the use or possession thereof.

(5) "Operator" means each person who operates, or is in physical control of, any snowmobile or all terrain vehicle.

(6) "Public roadway" shall mean the entire width of the right of way of any road or street designed and ordinarily used for travel or parking of motor vehicles, which is controlled by a public authority other than the Washington state department of transportation, and which is open as a matter of right to the general public for ordinary vehicular traffic.

(7) "Highways" shall mean the entire width of the right of way of all primary and secondary state highways, including all portions of the interstate highway system.

(8) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling snowmobiles or all terrain vehicles at wholesale or retail in this state.

(9) "Department" shall mean the department of licensing.

(10) "Director" shall mean the director of the department of licensing.

(11) "Commission" shall mean the Washington state parks and recreation commission.

(12) "Hunt" shall mean any effort to kill, injure, capture, or disturb a wild animal or wild bird.

(13) "Committee" means the Washington state parks and recreation commission snowmobile advisory committee. [1979 ex.s. c 182 § 1; 1979 c 158 § 131; 1971 ex.s. c 29 § 1.]

46.10.020 Ownership, transport, or operation of snowmobile without registration prohibited. (1) Except as provided in this chapter, no person shall own, transport, or operate any snowmobile within this state unless such snowmobile has been registered in accordance with the provisions of this chapter.

(2) A registration number shall be assigned, without payment of a fee, to snowmobiles owned by the state of Washington or its political subdivisions, and the assigned registration number shall be displayed upon each snowmobile in such manner as provided by rules adopted by the department. [1982 c 17 § 1; 1979 ex.s. c 182 § 3; 1971 ex.s. c 29 § 2.]

46.10.030 Ownership or operation of snowmobile without registration prohibited—Exceptions. No registration shall be required under the provisions of this chapter for the following described snowmobiles:

(1) Snowmobiles owned and operated by the United States, another state, or a political subdivision thereof.

(2) A snowmobile owned by a resident of another state or Canadian province if that snowmobile is registered in accordance with the laws of the state or province in which its owner resides, but only to the extent that a similar exemption or privilege is granted under the laws of that state or province for snowmobiles registered in this state: *Provided*, That any snowmobile which is validly registered in another state or province and which is physically located in this state for a period of more than fifteen consecutive days shall be subject to registration under the provisions of this chapter. [1986 c 16 § 1; 1979 ex.s. c 182 § 4; 1975 1st ex.s. c 181 § 1; 1971 ex.s. c 29 § 3.]

46.10.040 Application for registration—Annual fee—Registration number—Term—Renewal—Transfer—Nonresident permit—Decals. Application for registration shall be made to the department in such manner and upon such forms as the department shall prescribe, and shall state the name and address of each owner of the snowmobile to be registered, and shall be signed by at least one such owner, and shall be accompanied by an annual registration fee to be established by the commission, after consultation with the committee, at no more than fifteen dollars. However, the fee shall be ten dollars pending action by the commission to increase the fee. Any increase in the fee shall not exceed two dollars and fifty cents annually, up to the registration fee limit of fifteen dollars. Upon receipt of the application and the application fee, such snowmobile shall be registered and a registration number assigned, which shall be affixed to the snowmobile in a manner provided in RCW 46.10.070.

The registration provided in this section shall be valid for a period of one year. At the end of such period of registration, every owner of a snowmobile in this state shall renew his registration in such manner as the department shall prescribe, for an additional period of one year, upon payment of the annual registration fee as determined by the commission.

Any person acquiring a snowmobile already validly registered under the provisions of this chapter must, within ten days of the acquisition or purchase of such snowmobile, make application to the department for transfer of such registration, and such application shall be accompanied by a transfer fee of one dollar.

A snowmobile owned by a resident of another state or Canadian province where registration is not required by law may be issued a nonresident registration permit valid for not more than sixty days. Application for such a permit shall state the name and address of each owner of the snowmobile to be registered and shall be signed by at least one such owner and shall be accompanied by a registration fee of five dollars. The registration permit

shall be carried on the vehicle at all times during its operation in this state.

The registration fees provided in this section shall be in lieu of any personal property or excise tax heretofore imposed on snowmobiles by this state or any political subdivision thereof, and no city, county, or other municipality, and no state agency shall hereafter impose any other registration or license fee on any snowmobile in this state.

The department shall make available a pair of uniform decals consistent with the provisions of RCW 46.10.070. In addition to the registration fee provided herein the department shall charge each applicant for registration the actual cost of said decal. The department shall make available replacement decals for a fee equivalent to the actual cost of the decals. [1986 c 16 § 2; 1982 c 17 § 2; 1979 ex.s. c 182 § 5; 1973 1st ex.s. c 128 § 1; 1972 ex.s. c 153 § 20; 1971 ex.s. c 29 § 4.]

Purpose (including policy statement as to certain state lands)—1972 ex.s. c 153: See RCW 67.32.080.

46.10.043 Registration or transfer of registration pursuant to sale by dealer—Temporary registration. Each snowmobile dealer registered pursuant to the provisions of RCW 46.10.050 shall register the snowmobile or, in the event the snowmobile is currently registered, transfer the registration to the new owner prior to delivering the snowmobile to that new owner subsequent to the sale thereof by the dealer. Applications for registration and transfer of registration of snowmobiles shall be made to agents of the department authorized as such in accordance with RCW 46.01.140 and 46.01.150 as now or hereafter amended.

All registrations for snowmobiles must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer. Upon the sale of a snowmobile by a dealer, the dealer may issue a temporary registration as provided by rules adopted by the department. [1982 c 17 § 3; 1979 ex.s. c 182 § 6; 1975 1st ex.s. c 181 § 4.]

46.10.050 Snowmobile dealers' registration—Fee—Dealer number plates, use—Sale or demonstration unlawful without registration. (1) Each dealer of snowmobiles in this state shall register with the department in such manner and upon such forms as the department shall prescribe. Upon receipt of a dealer's application for registration and the registration fee provided for in subsection (2) of this section, such dealer shall be registered and a registration number assigned.

(2) The registration fee for dealers shall be twenty-five dollars per year, and such fee shall cover all of the snowmobiles owned by a dealer for other than personal use and not rented on a regular, commercial basis: *Provided*, That snowmobiles rented on a regular commercial basis by a dealer shall be registered separately under the provisions of RCW 46.10.020, 46.10.040, 46.10.060, and 46.10.070.

(3) Upon registration each dealer shall purchase, at a cost to be determined by the department, dealer number

plates of a size and color to be determined by the department, which shall contain the registration number assigned to that dealer. Each snowmobile operated by a dealer for the purposes enumerated in subsection (2) of this section shall display such number plates in a clearly visible manner.

(4) No person other than a dealer or a representative thereof shall display a dealer number plate, and no dealer or a representative thereof shall use a dealer's number plate for any purpose other than the purposes described in subsection (2) of this section.

(5) Dealer registration numbers shall be nontransferable.

(6) It shall be unlawful for any dealer to sell any snowmobile at wholesale or retail, or to test or demonstrate any snowmobile, within the state, unless registered in accordance with the provisions of this section. [1982 c 17 § 5; 1971 ex.s. c 29 § 5.]

46.10.055 Denial, suspension, or revocation of dealer registration or assessment of monetary civil penalty, when. The director may by order deny, suspend, or revoke the registration of any snowmobile dealer or, in lieu thereof or in addition thereto, may by order assess monetary civil penalties not to exceed five hundred dollars per violation, if the director finds that the order is in the public interest and that the applicant or registrant, or any partner, officer, director, or owner of ten percent of the assets of the firm, or any employee or agent:

(1) Has failed to comply with the applicable provisions of this chapter or any rules adopted under this chapter; or

(2) Has failed to pay any monetary civil penalty assessed by the director under this section within ten days after the assessment becomes final. [1982 c 17 § 4.]

46.10.060 Registration number permanent—Certificate of registration, date tags. The registration number assigned to a snowmobile in this state at the time of its original registration shall remain with that snowmobile until the vehicle is destroyed, abandoned, or permanently removed from this state, or until changed or terminated by the department. The department shall, upon assignment of such registration number, issue and deliver to the owner a certificate of registration, in such form as the department shall prescribe. The certificate of registration shall not be valid unless signed by the person who signed the application for registration.

At the time of the original registration, and at the time of each subsequent renewal thereof, the department shall issue to the registrant a date tag or tags indicating the validity of the current registration and the expiration date thereof, which validating date, tag, or tags shall be affixed to the snowmobile in such manner as the department may prescribe. Notwithstanding the fact that a snowmobile has been assigned a registration number, it shall not be considered as validly registered within the meaning of this section unless a validating date tag and current registration certificate has been issued. [1971 ex.s. c 29 § 6.]

46.10.070 Affixing and displaying registration number. The registration number assigned to each snowmobile shall be permanently affixed to and displayed upon each snowmobile in such manner as provided by rules adopted by the department, and shall be maintained in a legible condition; except dealer number plates as provided for in RCW 46.10.050 may be temporarily affixed. [1973 1st ex.s. c 128 § 2; 1972 ex.s. c 153 § 21; 1971 ex.s. c 29 § 7.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.10.075 Snowmobile account—Deposits—Appropriations, use, earnings. There is created a snowmobile account within the state treasury. Snowmobile registration fees, monetary civil penalties from snowmobile dealers, and snowmobile fuel tax moneys collected under this chapter and in excess of the amounts fixed for the administration of the registration and fuel tax provisions of this chapter shall be deposited in the snowmobile account and shall be appropriated only to the state parks and recreation commission for the administration and coordination of this chapter. All earnings of investments of balances in the snowmobile account shall be credited to the general fund. [1985 c 57 § 61; 1982 c 17 § 6; 1979 ex.s. c 182 § 7.]

Effective date—1985 c 57: See note following RCW 15.52.320.

46.10.080 Distribution of snowmobile registration fees, civil penalties, and fuel tax moneys. The moneys collected by the department as snowmobile registration fees, monetary civil penalties from snowmobile dealers, and fuel tax moneys placed in the snowmobile account shall be distributed in the following manner:

(1) Actual expenses not to exceed three percent for each year shall be retained by the department to cover expenses incurred in the administration of the registration and fuel tax provisions of this chapter.

(2) The remainder of such funds each year shall be remitted to the state treasurer to be deposited in the snowmobile account of the general fund and shall be appropriated only to the commission to be expended for snowmobile purposes. Such purposes may include but not necessarily be limited to the administration, acquisition, development, operation, and maintenance of snowmobile facilities and development and implementation of snowmobile safety, enforcement, and education programs.

(3) Nothing in this section is intended to discourage any public agency in this state from developing and implementing snowmobile programs. The commission is authorized to make grants to public agencies and to contract with any public or private agency or person for the purpose of developing and implementing snowmobile programs, provided that the programs are not inconsistent with the rules adopted by the commission. [1982 c 17 § 7; 1979 ex.s. c 182 § 8; 1975 1st ex.s. c 181 § 2; 1973 1st ex.s. c 128 § 3; 1972 ex.s. c 153 § 22; 1971 ex.s. c 29 § 8.]

Purpose (including policy statement as to certain state lands)—1972 ex.s. c 153: See RCW 67.32.080.

46.10.090 Operating violations. (1) It is a traffic infraction for any person to operate any snowmobile:

(a) At a rate of speed greater than reasonable and prudent under the existing conditions.

(b) In a manner so as to endanger the property of another.

(c) Without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others.

(d) Without an adequate braking device which may be operated either by hand or foot.

(e) Without an adequate and operating muffling device which shall effectively blend the exhaust and motor noise in such a manner so as to preclude excessive or unusual noise, and, (i) on snowmobiles manufactured on or before January 4, 1973, which shall effectively limit such noise at a level of eighty-six decibels, or below, on the "A" scale at fifty feet, and (ii) on snowmobiles manufactured after January 4, 1973, which shall effectively limit such noise at a level of eighty-two decibels, or below, on the "A" scale at fifty feet, and (iii) on snowmobiles manufactured after January 1, 1975, which shall effectively limit such noise at a level of seventy-eight decibels, or below, as measured on the "A" scale at a distance of fifty feet, under testing procedures as established by the department of ecology; except snowmobiles used in organized racing events in an area designated for that purpose may use a bypass or cutout device. This section shall not affect the power of the department of ecology to adopt noise performance standards for snowmobiles. Noise performance standards adopted or to be adopted by the department of ecology shall be in addition to the standards contained in this section, but the department's standards shall supersede this section to the extent of any inconsistency.

(f) Upon the paved portion or upon the shoulder or inside bank or slope of any public roadway or highway, or upon the median of any divided highway, except as provided in RCW 46.10.100 and 46.10.110.

(g) In any area or in such a manner so as to expose the underlying soil or vegetation, or to injure, damage, or destroy trees or growing crops.

(h) Without a current registration decal affixed thereon, if not exempted under RCW 46.10.030 as now or hereafter amended.

(2) It is a misdemeanor for any person to operate any snowmobile so as to endanger the person of another or while under the influence of intoxicating liquor or narcotics or habit-forming drugs. [1980 c 148 § 1. Prior: 1979 ex.s. c 182 § 10; 1979 ex.s. c 136 § 43; 1975 1st ex.s. c 181 § 5; 1971 ex.s. c 29 § 9.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Effective date—1980 c 148: "Sections 1 through 7 of this 1980 act shall take effect January 1, 1981. Section 8 of this 1980 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately." [1980 c 148 § 9.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.10.100 Crossing public roadways and highways lawful, when. It shall be lawful to drive or operate a snowmobile across public roadways and highways other than limited access highways when:

The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing; and

The snowmobile is brought to a complete stop before entering the public roadway or highway; and

The operator of the snowmobile yields the right of way to motor vehicles using the public roadway or highway; and

The crossing is made at a place which is greater than one hundred feet from any public roadway or highway intersection. [1971 ex.s. c 29 § 10.]

46.10.110 Operating upon public road or highway lawful, when. Notwithstanding the provisions of RCW 46.10.100, it shall be lawful to operate a snowmobile upon a public roadway or highway:

Where such roadway or highway is completely covered with snow or ice and has been closed by the responsible governing body to motor vehicle traffic during the winter months; or

When the responsible governing body gives notice that such roadway or highway is open to snowmobiles or all-terrain vehicle use; or

In an emergency during the period of time when and at locations where snow upon the roadway or highway renders such impassible to travel by automobile; or

When traveling along a designated snowmobile trail. [1972 ex.s. c 153 § 23; 1971 ex.s. c 29 § 11.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.10.120 Restrictions on age of operators—Qualifications. No person under twelve years of age shall operate a snowmobile on or across a public roadway or highway in this state, and no person between the ages of twelve and sixteen years of age shall operate a snowmobile on or across a public road or highway in this state unless he has taken a snowmobile safety education course and been certified as qualified to operate a snowmobile by an instructor designated by the commission as qualified to conduct such a course and issue such a certificate, and he has on his person at the time he is operating a snowmobile evidence of such certification: *Provided*, That persons under sixteen years of age who have not been certified as qualified snowmobile operators may operate a snowmobile under the direct supervision of a qualified snowmobile operator. [1972 ex.s. c 153 § 24; 1971 ex.s. c 29 § 12.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.10.130 Additional violations—Penalty. No person shall operate a snowmobile in such a way as to endanger human life. No person shall operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal, nor shall he carry any loaded weapon upon, nor hunt from, any snowmobile except by permit issued by the director of

wildlife under RCW 77.32.237. Any person violating the provisions of this section shall be guilty of a gross misdemeanor. [1989 c 297 § 4; 1979 ex.s. c 182 § 11; 1971 ex.s. c 29 § 13.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

46.10.140 Accident reports. The operator of any snowmobile involved in any accident resulting in injury to or death of any person, or property damage in the estimated amount of two hundred dollars or more, or a person acting for the operator, or the owner of the snowmobile having knowledge of the accident, should the operator of the snowmobile be unknown, shall submit such reports as are required under chapter 46.52 RCW, as now enacted or as hereafter amended, and the provisions of chapter 46.52 RCW shall be applicable to such reports when submitted. [1971 ex.s. c 29 § 14.]

46.10.150 Treasurer's duty to refund snowmobile fuel tax to snowmobile account. From time to time, but at least once each biennium, the director shall request the state treasurer to refund from the motor vehicle fund amounts which have been determined to be a tax on snowmobile fuel, and the treasurer shall refund such amounts, less the cost of making the determination under RCW 46.10.170, and place them in the snowmobile account in the general fund. [1979 ex.s. c 182 § 12; 1975 1st ex.s. c 181 § 3; 1973 1st ex.s. c 128 § 4; 1971 ex.s. c 29 § 15.]

46.10.160 Snowmobile fuel excise tax nonrefundable. Motor vehicle fuel used and purchased for providing the motive power for snowmobiles shall be considered a nonhighway use of fuel, but persons so purchasing and using motor vehicle fuel shall not be entitled to a refund of the motor vehicle fuel excise tax paid in accordance with the provisions of RCW 82.36.280 as it now exists or is hereafter amended. [1971 ex.s. c 29 § 16.]

46.10.170 Proportion of motor vehicle fuel tax and snowmobile fuel tax—Report—Cost offset. From time, to time, but at least once each four years, the department shall determine the amount or proportion of moneys paid to it as motor vehicle fuel tax which is tax on snowmobile fuel. Such determination may be made in any manner which is, in the judgment of the director, reasonable, but the manner used to make such determination shall be reported at the end of each four year period to the legislature. To offset the actual cost of making such determination the treasurer shall retain in, and the department is authorized to expend from, the motor vehicle fund a sum equal to such actual cost. [1979 ex.s. c 182 § 13; 1971 ex.s. c 29 § 17.]

46.10.180 Regulation by political subdivisions, state agencies. Notwithstanding any of the provisions of this chapter, any city, county, or other political subdivision of this state, or any state agency, may regulate the operation of snowmobiles on public lands, waters, and other properties under its jurisdiction, and on streets or

highways within its boundaries by adopting regulations or ordinances of its governing body, provided such regulations are not inconsistent with the provisions of this chapter; and provided further that no such city, county, or other political subdivision of this state, nor any state agency, may adopt a regulation or ordinance which imposes a special fee for the use of public lands or waters by snowmobiles, or for the use of any access thereto which is owned by or under the jurisdiction of either the United States, this state, or any such city, county, or other political subdivision. [1971 ex.s. c 29 § 18.]

46.10.185 Local authorities may provide for safety and convenience. Notwithstanding any other provisions of this chapter, the local governing body may provide for the safety and convenience of snowmobiles and snowmobile operators. Such provisions may include, but shall not necessarily be limited to, the clearing of areas for parking automobiles, the construction and maintenance of rest areas, and the designation and development of given areas for snowmobile use. [1972 ex.s. c 153 § 25.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.10.190 Violations as traffic infractions—Exceptions—Civil liability. (1) Except as provided in RCW 46.10.090(2), 46.10.055, and 46.10.130, any violation of the provisions of this chapter is a traffic infraction: *Provided*, That the penalty for failing to display a valid registration decal under RCW 46.10.090 as now or hereafter amended shall be a fine of forty dollars and such fine shall be remitted to the general fund of the governmental unit, which personnel issued the citation, for expenditure solely for snowmobile law enforcement.

(2) In addition to the penalties provided in RCW 46.10.090 and subsection (1) of this section, the operator and/or the owner of any snowmobile used with the permission of the owner shall be liable for three times the amount of any damage to trees, shrubs, growing crops, or other property injured as the result of travel by such snowmobile over the property involved. [1982 c 17 § 8; 1980 c 148 § 2. Prior: 1979 ex.s. c 182 § 14; 1979 ex.s. c 136 § 44; 1975 1st ex.s. c 181 § 6; 1971 ex.s. c 29 § 19.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Effective date—1980 c 148: See note following RCW 46.10.090.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.10.200 Enforcement. The provisions of this chapter shall be enforced by all persons having the authority to enforce any of the laws of this state, including, without limitation, officers of the state patrol, county sheriffs and their deputies, all municipal law enforcement officers within their respective jurisdictions, wildlife agents, state park rangers, state fisheries patrol officers, and those employees of the department of natural resources designated by the commissioner of public lands under RCW 43.30.310, as having police powers to enforce the laws of this state. [1980 c 78 § 131; 1971 ex.s. c 29 § 20.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

46.10.210 Administration. With the exception of the registration and licensing provisions, this chapter shall be administered by the Washington state parks and recreation commission. The department shall consult with the commission prior to adopting rules to carry out its duties under this chapter. After consultation with the committee, the commission shall adopt such rules as may be necessary to carry out its duties under this chapter. Nothing in this chapter is intended to discourage experimental or pilot programs which could enhance snowmobile safety or recreational snowmobiling. [1979 ex.s. c 182 § 15; 1973 1st ex.s. c 128 § 5.]

46.10.220 Snowmobile advisory committee. (1) There is created in the Washington state parks and recreation commission a snowmobile advisory committee to advise the commission regarding the administration of this chapter.

(2) The purpose of the committee is to assist and advise the commission in the planned development of snowmobile facilities and programs.

(3) The committee shall consist of:

(a) Six interested snowmobilers, appointed by the commission; each such member shall be a resident of one of the six geographical areas throughout this state where snowmobile activity occurs, as defined by the commission;

(b) Three representatives of the nonsnowmobiling public, appointed by the commission; and

(c) One representative of the department of natural resources, one representative of the department of wildlife, and one representative of the Washington state association of counties; each of whom shall be appointed by the director of such department or association.

(4) Terms of the members appointed under (3)(a) and (b) of this section shall commence on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies which shall be for the remainder of the unexpired term: *Provided*, That the first such members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(5) Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Expenditures under this subsection shall be from the snowmobile account created by RCW 46.10.075.

(6) The committee may meet at times and places fixed by the committee. The committee shall meet not less than twice each year and additionally as required by the committee chairman or by majority vote of the committee. One of the meetings shall be coincident with a meeting of the commission at which the committee shall provide a report to the commission. The chairman of the committee shall be chosen under procedures adopted by the committee from those members appointed under (3)(a) and (b) of this section.

(7) The Washington state parks and recreation commission shall serve as recording secretary to the committee. A representative of the department of licensing shall serve as an ex officio member of the committee and shall be notified of all meetings of the committee. The recording secretary and the ex officio member shall be nonvoting members.

(8) The committee shall adopt procedures to govern its proceedings. [1989 c 175 § 110; 1988 c 36 § 26; 1987 c 330 § 1201. Prior: 1986 c 270 § 9; 1986 c 16 § 3; 1983 c 139 § 1; 1979 ex.s. c 182 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Construction—**Application of rules**—**Severability**—1987 c 330: See notes following RCW 28B.12.050.

46.10.900 Severability—1971 ex.s. c 29. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 29 § 21.]

46.10.910 Short title. This chapter may be known and cited as the "Snowmobile act". [1971 ex.s. c 29 § 22.]

Chapter 46.12

CERTIFICATES OF OWNERSHIP AND REGISTRATION

Sections

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- 46.12.380 Disclosure of names and addresses of individual vehicle owners.

Classification of manufactured homes: Chapter 65.20 RCW.

Hulk haulers' or scrap processors' licenses: Chapter 46.79 RCW.

46.12.005 Definitions. As used in this amendatory act, the words "delivery", "notice", "send" and "security interest" shall have the same meaning as these terms are defined in RCW 62A.1–201 as now and hereafter amended; the word, "secured party" shall have the same meaning as this term is defined in RCW 62A.9–105 as now and hereafter amended. [1967 c 140 § 5.]

Reviser's note: This amendatory act [1967 c 140] consists of the enactment of RCW 46.12.005, 46.12.095, 46.12.101, 46.12.151, and 46.12.181 and the amendment of RCW 46.12.010, 46.12.120, 46.12.130, and 46.12.170.

Effective date—1967 c 140: See note following RCW 46.12.010.

46.12.010 Certificates required to operate and sell vehicles—Manufacturers or dealers, security interest, how perfected. It shall be unlawful for any person to operate any vehicle in this state under a certificate of license registration of this state without securing and having in full force and effect a certificate of ownership therefor that contains the name of the registered owner exactly as it appears on the certificate of license registration and it shall further be unlawful for any person to sell or transfer any vehicle without complying with all the provisions of this chapter relating to certificates of ownership and license registration of vehicles: *Provided*, No certificate of title need be obtained for a vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used

for purposes of testing and demonstration, or a vehicle used by a manufacturer solely for testing: *Provided*, That a security interest in a vehicle held as inventory by a manufacturer or dealer shall be perfected in accordance with RCW 62A.9–302(1) and no endorsement on the certificate of title shall be necessary for perfection: *And provided further*, That nothing in this title shall be construed to prevent any person entitled thereto from securing a certificate of ownership upon a vehicle other than a travel trailer or camper without securing a certificate of license registration and vehicle license plates, when, in the judgment of the director of licensing, it is proper to do so. [1979 c 158 § 132; 1975 c 25 § 6; 1967 c 140 § 1; 1967 c 32 § 6; 1961 c 12 § 46.12.010. Prior: 1937 c 188 § 2; RRS § 6312–2.]

Effective date—1967 c 140: "This act shall become effective at midnight on June 30, 1967. It applies to transactions entered into and events occurring after that date." [1967 c 140 § 11.]

Definitions: RCW 46.12.005.

46.12.020 Prerequisite to issuance of vehicle license and plates. No vehicle license number plates or certificate of license registration, whether original issues or duplicates, may be issued or furnished by the department unless the applicant, at the same time, makes satisfactory application for a certificate of ownership or presents satisfactory evidence that such a certificate of ownership covering the vehicle has been previously issued. [1989 c 337 § 22. Prior: 1987 c 388 § 9; 1987 c 244 § 1; 1985 c 424 § 1; 1975 c 25 § 7; 1967 c 32 § 7; 1961 c 12 § 46.12.020; prior: 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312–2, part.]

Effective date—1989 c 337 § 22: "Section 22 of this act shall take effect January 1, 1990." [1989 c 337 § 23.]

Effective date—1987 c 388 § 9: "Section 9 of this act shall take effect January 1, 1990." [1987 c 388 § 14.]

Severability—1987 c 388: See note following RCW 46.16.710.

Effective dates—1987 c 244: "Section 1 of this act shall take effect on January 1, 1990. Sections 9, 10, and 15 through 58 of this act shall take effect on January 1, 1988." [1987 c 244 § 59.]

Effective date—1985 c 424: "This act shall take effect on January 1, 1990." [1986 c 174 § 1; 1985 c 424 § 2.]

Allowing unauthorized person to drive, penalty: RCW 46.16.011.

Notice of liability insurance requirement: RCW 46.16.212.

46.12.030 Certificate of ownership—Application—Contents—Inspection of vehicle. The application for certificate of ownership shall be upon a blank form to be furnished by the department and shall contain:

(1) A full description of the vehicle, which said description shall contain the proper vehicle identification number, the number of miles indicated on the odometer at the time of delivery of the vehicle, and any distinguishing marks of identification;

(2) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party;

(3) Such other information as the department may require: *Provided*, That the department may in any instance, in addition to the information required on said

application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either: *Provided further*, That a physical examination of the vehicle is mandatory if it previously was registered in any other state or country. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the foreign title and registration certificate. If the vehicle is from a jurisdiction that does not issue titles, the inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the registration certificate. The inspection must also confirm that the license plates on the vehicle are those assigned to the vehicle by the jurisdiction in which the vehicle was previously licensed. The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

Such application shall be subscribed by the registered owner and be sworn to by that person before a notary public or other officer authorized by law to take acknowledgments of deeds, or other person authorized by the director to certify to the signature of the applicant upon such application. [1975 c 25 § 8; 1974 ex.s. c 128 § 1; 1972 ex.s. c 99 § 2; 1967 c 32 § 8; 1961 c 12 § 46.12.030. Prior: 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312–2, part.]

Effective date—1974 ex.s. c 128: "This 1974 amendatory act shall take effect July 1, 1974." [1974 ex.s. c 128 § 3.]

Notice of liability insurance requirement: RCW 46.16.212.

46.12.040 Certificate of ownership—Application and inspection fees. The application accompanied by a draft, money order, or certified bank check for one dollar, together with the last preceding certificates or other satisfactory evidence of ownership, shall be forwarded to the director.

The fee shall be in addition to any other fee for the license registration of the vehicle. The certificate of ownership shall not be required to be renewed annually, or at any other time, except as by law provided.

In addition to the application fee and any other fee for the license registration of a vehicle, there shall be collected from the applicant an inspection fee whenever a physical examination of the vehicle is required as a part of the vehicle licensing or titling process.

For vehicles previously registered in any other state or country, the inspection fee shall be fifteen dollars and shall be deposited in the motor vehicle fund. For all other vehicles requiring a physical examination, the inspection fee shall be twenty dollars and shall be deposited in the motor vehicle fund. [1989 c 110 § 1; 1975 1st ex.s. c 138 § 1; 1974 ex.s. c 128 § 2; 1961 c 12 § 46.12.040. Prior: 1951 c 269 § 1; 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312–3, part.]

Effective date—1974 ex.s. c 128: See note following RCW 46.12.030.

46.12.045 Off-road vehicles, certificate of ownership for title purposes only. The department shall issue a certificate of ownership valid for title purposes only to the

owner of an off-road vehicle as defined in RCW 46.09-.020. The owner shall pay the fees established by RCW 46.12.040. Issuance of such certificate does not qualify the vehicle for licensing under chapter 46.16 RCW. [1986 c 186 § 4.]

46.12.050 Issuance of certificates—Contents. The department, if satisfied from the statements upon the application that the applicant is the legal owner of the vehicle or otherwise entitled to have the certificate of ownership thereof in the applicant's name, shall thereupon issue an appropriate certificate of ownership, over the director's signature, authenticated by seal, and a new certificate of license registration if certificate of license registration is required.

Both the certificate of ownership and the certificate of license registration shall contain upon the face thereof, the date of application, the registration number assigned to the registered owner and to the vehicle, the name and address of the registered owner and legal owner, the vehicle identification number, and such other description of the vehicle and facts as the department shall require, and in addition thereto, if the vehicle described in such certificates shall have ever been licensed and operated as an exempt vehicle or a taxicab, or if it is less than four years old and has been rebuilt after having been totaled out by an insurance carrier, such fact shall be clearly shown thereon.

A blank space shall be provided on the face of the certificate of license registration for the signature of the registered owner.

Upon issuance of the certificate of license registration and certificate of ownership and upon any reissue thereof, the department shall deliver the certificate of license registration to the registered owner and the certificate of ownership to the legal owner, or both to the person who is both the registered owner and legal owner. [1975 c 25 § 9; 1967 c 32 § 9; 1961 c 12 § 46.12.050. Prior: 1959 c 166 § 1; 1947 c 164 § 2; 1937 c 188 § 4; Rem. Supp. 1947 § 6312-4.]

46.12.055 Certificate of ownership—Manufactured homes. (Effective March 1, 1990.) The certificate of ownership for a manufactured home may be eliminated or not issued when the manufactured home is registered pursuant to chapter 65.20 RCW. When the certificate of ownership is eliminated or not issued the application for license shall be recorded in the county property records of the county where the real property to which the home is affixed is located. All license fees and taxes applicable to mobile homes under this chapter are due and shall be collected prior to recording the ownership with the county auditor. [1989 c 343 § 19.]

Severability—Effective date—1989 c 343: See RCW 65.20.940 and 65.20.950.

46.12.060 Procedure when identification number altered or obliterated. Before the department shall issue a certificate of ownership, or reissue such a certificate, covering any vehicle, the identification number of which

has been altered, removed, obliterated, defaced, omitted, or is otherwise absent, the registered owner of the vehicle shall file an application with the department, accompanied by a fee of five dollars, upon a form provided, and containing such facts and information as shall be required by the department for the assignment of a special number for such vehicle. Upon receipt of such application, the department, if satisfied the applicant is entitled to the assignment of an identification number, shall designate a special identification number for such vehicle, which shall be noted upon the application therefor, and likewise upon a suitable record of the authorization of the use thereof, to be kept by the department. This assigned identification number shall be placed or stamped in a conspicuous position upon the vehicle in such manner and form as may be prescribed by the department. Upon receipt by the department of a certificate by an officer of the Washington state patrol, or other person authorized by the department, that the vehicle has been inspected and that the identification number or the special number plate, has been stamped or securely attached in a conspicuous position upon the vehicle, accompanied by an application for a certificate of ownership or application for reissue of such certificate and the required fee therefor, the department shall use such number as the numerical or alpha-numerical identification marks for the vehicle in any certificate of license registration or certificate of ownership that may thereafter be issued therefor. [1975 c 25 § 10; 1974 ex.s. c 36 § 1; 1961 c 12 § 46.12.060. Prior: 1959 c 166 § 3; prior: 1951 c 269 § 2; 1947 c 164 § 3(a); 1939 c 182 § 1(a); 1937 c 188 § 5(a); Rem. Supp. 1947 § 6312-5(a).]

Effective date—1974 ex.s. c 36: "This 1974 amendatory act shall take effect on July 1, 1974." [1974 ex.s. c 36 § 2.]

46.12.070 Destruction of vehicle—Surrender of certificates, penalty—Notice of settlement by insurance company. Upon the destruction of any vehicle covered by certificates of license registration and ownership, the registered owner and the legal owner shall forthwith and within five days thereafter forward and surrender such certificate, together with the vehicle license plates therefor if available, to the director, together with a statement of the reason for such surrender and the time and place of destruction. Failure to notify the director or the possession by any person of any such certificate for a vehicle so destroyed, after five days following its destruction, shall be prima facie evidence of violation of the provisions of this chapter and shall constitute a gross misdemeanor.

Any insurance company settling any insurance claim on any such vehicle as a total loss, less salvage, shall notify the director thereof within five days after the settlement of any such claim under any policy of insurance carried by it on a vehicle covered by certificates of license registration and ownership issued by this state. [1961 c 12 § 46.12.070. Prior: 1959 c 166 § 4; prior: 1947 c 164 § 3(b); 1939 c 182 § 1(b); 1937 c 188 § 5(b); Rem. Supp. 1947 § 6312-5(b).]

46.12.080 Procedure on installation of different motor—Penalty. Any person holding the certificate of license registration for a motorcycle or any vehicle registered by its motor number in which there has been installed a new or different motor than that with which it was issued certificates of ownership and license registration shall forthwith and within five days after such installation forward and surrender such certificates to the department, together with an application for issue of corrected certificates of ownership and license registration and a fee of one dollar, and a statement of the disposition of the former motor. The possession by any person of any such certificates for such vehicle in which a new or different motor has been installed, after five days following such installation, shall be prima facie evidence of a violation of the provisions of this chapter and shall constitute a misdemeanor. [1979 ex.s. c 113 § 1; 1961 c 12 § 46.12.080. Prior: 1959 c 166 § 5; prior: 1951 c 269 § 3; 1947 c 164 § 3(c); 1939 c 182 § 1(c); 1937 c 188 § 5(c); Rem. Supp. 1947 § 6312-5(c).]

46.12.095 Requirements for perfecting security interest. A security interest in a vehicle other than one held as inventory by a manufacturer or a dealer and for which a certificate of ownership is required is perfected only by compliance with the requirements of this section:

(1) A security interest is perfected only by the department's receipt of: (a) The existing certificate, if any, and (b) an application for a certificate of ownership containing the name and address of the secured party and (c) tender of the required fee.

(2) It is perfected as of the time of its creation: (a) if the papers and fee referred to in the preceding subsection are received by this department within eight department business days exclusive of the day on which the security agreement was created; or (b) if the secured party's name and address appear on the outstanding certificate of ownership; otherwise, as of the date on which the department has received the papers and fee required in subsection (1).

(3) If a vehicle is subject to a security interest when brought into this state, perfection of the security interest is determined by the law of the jurisdiction where the vehicle was when the security interest was attached, subject to the following:

(a) If the security interest was perfected under the law of the jurisdiction where the vehicle was when the security interest was attached, the following rules apply:

(b) If the name of the secured party is shown on the existing certificate of ownership issued by that jurisdiction, the security interest continues perfected in this state. The name of the secured party shall be shown on the certificate of ownership issued for the vehicle by this state. The security interest continues perfected in this state upon the issuance of such ownership certificate.

(c) If the security interest was not perfected under the law of the jurisdiction where the vehicle was when the security interest was attached, it may be perfected in this state; in that case, perfection dates from the time of perfection in this state. [1969 ex.s. c 170 § 16; 1967 c 140 § 6.]

Effective date—1967 c 140: See note following RCW 46.12.010.
Definitions: RCW 46.12.005.

46.12.101 Transfer of ownership, how perfected—Penalty, exceptions. A transfer of ownership in a motor vehicle is perfected by compliance with the requirements of this section.

(1) If an owner transfers his or her interest in a vehicle, other than by the creation of a security interest, the owner shall, at the time of the delivery of the vehicle, execute an assignment to the transferee and inscribe in ink the number of miles indicated on the odometer in the respective spaces provided therefor on the certificate or as the department prescribes, and cause the certificate and assignment to be transmitted to the transferee. Within five days the owner shall notify the department of the sale or transfer giving the date thereof, the name and address of the owner and of the transferee, and such description of the vehicle as may be required in the appropriate form provided for that purpose by the department.

(2) Except as provided in RCW 46.12.120 the transferee shall within fifteen days after delivery to the transferee of the vehicle, execute the application for a new certificate of ownership in the same space provided therefor on the certificate or as the department prescribes, and cause the certificates and application to be transmitted to the department.

(3) Upon request of the owner or transferee, a secured party in possession of the certificate of ownership shall, unless the transfer was a breach of its security agreement, either deliver the certificate to the transferee for transmission to the department or, when the secured party receives the owner's assignment from the transferee, it shall transmit the transferee's application for a new certificate, the existing certificate, and the required fee to the department. Compliance with this section does not affect the rights of the secured party.

(4) If a security interest is reserved or created at the time of the transfer, the certificate of ownership shall be retained by or delivered to the person who becomes the secured party, and the parties shall comply with the provisions of RCW 46.12.170.

(5) If the purchaser or transferee fails or neglects to make application to transfer the certificate of ownership and license registration within fifteen days after the date of delivery of the vehicle, he or she shall on making application for transfer be assessed a twenty-five dollar penalty on the sixteenth day and two dollars additional for each day thereafter, but not to exceed one hundred dollars. The director may by rule establish conditions under which the penalty will not be assessed when an application for transfer is delayed for reasons beyond the control of the purchaser. Conditions for not assessing the penalty may be established for but not limited to delays caused by:

(a) The department requesting additional supporting documents;

(b) Extended hospitalization or illness of the purchaser;

(c) Failure of a legal owner to release his or her interest;

(d) Failure, negligence, or nonperformance of the department, auditor, or subagent.

Failure or neglect to make application to transfer the certificate of ownership and license registration within forty-five days after the date of delivery of the vehicle is a misdemeanor.

(6) Upon receipt of an application for reissue or replacement of a certificate of ownership and transfer of license registration, accompanied by the endorsed certificate of ownership or other documentary evidence as is deemed necessary, the department shall, if the application is in order and if all provisions relating to the certificate of ownership and license registration have been complied with, issue new certificates of title and license registration as in the case of an original issue and shall transmit the fees together with an itemized detailed report to the state treasurer, to be deposited in the motor vehicle fund.

(7) Once each quarter the department shall report to the department of revenue a list of those vehicles for which a seller's report has been received but no transfer of title has taken place. [1987 c 127 § 1; 1984 c 39 § 1; 1972 ex.s. c 99 § 1; 1969 ex.s. c 281 § 38; 1969 ex.s. c 42 § 1; 1967 c 140 § 7.]

Effective date—1967 c 140: See note following RCW 46.12.010.
Definitions: RCW 46.12.005.

46.12.102 Release of owner from liability, requirements for. An owner who has made a bona fide sale or transfer of a vehicle and has delivered possession of it to a purchaser shall not by reason of any of the provisions of this title be deemed the owner of the vehicle so as to be subject to civil liability or criminal liability for the operation of the vehicle thereafter by another person when the owner has also fulfilled both of the following requirements:

(1) When he has made proper endorsement and delivery of the certificate of ownership and has delivered the certificate of registration as provided in this chapter;

(2) When he has delivered to the department either the notice as provided in RCW 46.12.101(1) or appropriate documents for registration of the vehicle pursuant to the sale or transfer. [1984 c 39 § 2.]

46.12.105 Transfer of ownership of mobile home, county assessor notified—Evidence of taxes paid. When the ownership of a mobile home is transferred and the new owner thereof applies for a new certificate of ownership for such mobile home, the department of licensing or its agents, including county auditors, shall notify the county assessor of the county where such mobile home is located of the change in ownership including the name and address of the new owner and the name of the former owner. A certificate of ownership for a mobile home shall not be transferred or issued until the department has verified that any taxes due on the sale of the mobile home under *chapter 82.45 RCW and any other taxes due under chapter 84.52 RCW have been paid.

A copy of the real estate excise tax affidavit which has been stamped by the county treasurer shall be deemed sufficient evidence that the taxes due upon the sale of a used mobile home have been paid.

A copy of a treasurer certificate, which is prepared by the treasurer of the county in which the used mobile home is located and which states that all property taxes due upon the used mobile home being sold have been satisfied, shall be deemed sufficient evidence that the property taxes due have been paid. [1979 ex.s. c 266 § 5; 1979 c 158 § 133; 1971 ex.s. c 231 § 13.]

***Reviser's note:** This reference has been changed from chapter 28A-.45 RCW to chapter 82.45 RCW in accordance with 1981 c 148 § 13 and 1981 c 93 § 2. See note following RCW 82.45.010.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.12.120 Duty when purchaser or transferee is a dealer. If the purchaser or transferee is a dealer he shall, on selling or otherwise disposing of the vehicle, promptly execute the assignment and warranty of title, in such form as the director shall prescribe, including recording on the application the odometer reading as recorded by the previous owner on the title at the time the dealer obtained the vehicle or, if the previous owner failed to record the mileage on the title, the dealer shall attach a signed statement attesting to the odometer reading as it appeared on the vehicle at the time the vehicle was obtained by the dealer. Such assignment and warranty shall show any secured party holding a security interest created or reserved at the time of resale, to which shall be attached the assigned certificates of ownership and license registration received by the dealer, and mail or deliver them to the department with the transferee's application for the issuance of new certificates of ownership and license registration: *Provided*, That the title certificate issued for a vehicle possessed by a dealer and subject to a security interest shall be delivered to the secured party who upon request of the dealer's transferee shall, unless the transfer was a breach of his security agreement, either deliver the certificate to the transferee for transmission to the department, or upon receipt from the transferee of the owner's bill of sale or sale document, the transferee's application for a new certificate and the required fee, mail or deliver to the department: *And provided further*, That failure of a dealer to deliver the title certificate to the secured party does not affect perfection of the security interest. [1975 c 25 § 11; 1972 ex.s. c 99 § 3; 1967 c 140 § 2; 1961 c 12 § 46.12.120. Prior: 1959 c 166 § 10; prior: 1947 c 164 § 4(c); 1937 c 188 § 6(c); Rem. Supp. 1947 § 6312-6(c).]

Effective date—1967 c 140: See note following RCW 46.12.010.
Definitions: RCW 46.12.005.

46.12.125 Procedure when transferor to a dealer is from out of state or car in inventory. In any case in which the transferor to the dealer is from out of state and has not recorded the mileage at the time of transfer, or a car was in inventory prior to May 23, 1972, the

dealer, when mailing or delivering the assigned certificates of ownership and license registration to the department, shall attach a certificate indicating to the best of his knowledge or belief the mileage on the vehicle at the time it was placed into inventory. [1972 ex.s. c 99 § 4.]

46.12.130 Assigned certificate of ownership to be filed by department—Transfer of interest in vehicle. Certificates of ownership when assigned and returned to the department, together with subsequently assigned reissues thereof, shall be retained by the department and appropriately filed and indexed so that at all times it will be possible to trace ownership to the vehicle designated therein:

(1) If the interest of an owner in a vehicle passes to another, other than by voluntary transfer, the transferee shall, except as provided in subsection (3) of this section, promptly mail or deliver to the department the last certificate of ownership if available, proof of transfer, and his application for a new certificate in the form the department prescribes.

(2) If the interest of the owner is terminated or the vehicle is sold under a security agreement by a secured party named in the certificate of ownership, the transferee shall promptly mail or deliver to the department the last certificate of ownership, his application for a new certificate in the form the department prescribes, and an affidavit made by or on the behalf of the secured party that the vehicle was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement.

(3) If the secured party succeeds to the interest of the owner and holds the vehicle for resale, he need not secure a new certificate of ownership but, upon transfer to another person, shall promptly mail or deliver to the transferee or to the department the certificate, affidavit and other documents (and articles) required to be sent to the department by the transferee. [1967 c 140 § 3; 1961 c 12 § 46.12.130. Prior: 1959 c 166 § 11; prior: 1947 c 164 § 4(d); 1937 c 188 § 6(d); Rem. Supp. 1947 § 6312-6(d).]

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.140 Certificates of ownership for dealers' or manufacturers' used vehicles. In the case of dealers in vehicles, including manufacturers who sell to persons other than dealers, a separate certificate of ownership, either of the dealer's immediate vendor properly assigned or of the dealer himself, shall be required covering each used vehicle kept in his possession. [1961 c 12 § 46.12.140. Prior: 1959 c 166 § 12; prior: 1947 c 164 § 4(e); 1937 c 188 § 6(e); Rem. Supp. 1947 § 6312-6(e).]

46.12.151 Procedure when department unsatisfied as to ownership and security interests. If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department may register the vehicle but shall either:

(1) Withhold issuance of a certificate of ownership until the applicant presents documents reasonably sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or

(2) As a condition of issuing a certificate of ownership, require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, or in lieu thereof a deposit of cash in like amount. The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of ownership of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, or any cash deposit shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this state and the currently valid certificate of ownership is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond. [1967 c 140 § 9.]

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.160 Director may refuse or cancel certificate—Penalty. If the director determines at any time that an applicant for certificate of ownership or for a certificate of license registration for a vehicle is not entitled thereto, he may refuse to issue such certificate or to license the vehicle and he may, for like reason, after notice, and in the exercise of discretion, cancel license registration already acquired or any outstanding certificate of ownership. The notice shall be served personally or sent by certified mail return receipt requested. It shall then be unlawful for any person to remove, drive, or operate the vehicle until a proper certificate of ownership or license registration has been issued and any person removing, driving, or operating such vehicle after the refusal of the director to issue certificates or the revocation thereof shall be guilty of a gross misdemeanor. [1975 c 25 § 12; 1961 c 12 § 46.12.160. Prior: 1959 c 166 § 14; prior: 1947 c 164 § 4(g); 1937 c 188 § 6(g); Rem. Supp. 1947 § 6312-6(g).]

46.12.170 Procedure when security interest is granted on vehicle. If, after a certificate of ownership is issued, a security interest is granted on the vehicle described therein, the registered owner or secured party shall, within ten days thereafter, present an application to the department, to which shall be attached the certificate of ownership last issued covering the vehicle, or

such other documentation as may be required by the department, which application shall be upon a form provided by the department and shall be accompanied by a fee of one dollar. The department, if satisfied that there should be a reissue of the certificate, shall note such change upon the vehicle records and issue to the secured party a new certificate of ownership.

Whenever there is no outstanding secured obligation and no commitment to make advances and incur obligations or otherwise give value, the secured party must assign the certificate of ownership to the debtor or the debtor's assignee and transmit the certificate to the department with an accompanying fee of one dollar. The department shall then issue a new certificate of ownership and transmit it to the owner. If the affected secured party fails to either assign or transmit the certificate of ownership to the department within ten days after proper demand, that secured party shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure. [1979 ex.s. c 113 § 2; 1975 c 25 § 13; 1967 c 140 § 4; 1961 c 12 § 46.12.170. Prior: 1951 c 269 § 4; 1947 c 164 § 5; 1939 c 182 § 2; 1937 c 188 § 7; Rem. Supp. 1947 § 6312-7.]

Effective date—1967 c 140: See note following RCW 46.12.010.
Definitions: RCW 46.12.005.

46.12.181 Duplicate for lost, stolen, mutilated, etc., certificates. If a certificate of ownership or a certificate of license registration is lost, stolen, mutilated or destroyed or becomes illegible, the first priority secured party or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a duplicate upon tender of one dollar and upon furnishing information satisfactory to the department. The duplicate certificate of ownership or license registration shall contain the legend, "This is a duplicate certificate." It shall be mailed to the first priority secured party named in it or, if none, to the owner.

The department shall not issue a new certificate of ownership to a transferee upon application made for a duplicate until fifteen department business days after receipt of the application.

A person recovering an original certificate of ownership or title registration for which a duplicate has been issued shall promptly surrender the original certificate to the department. [1969 ex.s. c 170 § 1; 1967 c 140 § 8.]

Effective date—1967 c 140: See note following RCW 46.12.010.
Definitions: RCW 46.12.005.

46.12.190 Legal owner not liable for acts of registered owner. The person, firm, copartnership, association or corporation to whom a certificate of ownership shall have been issued shall not thereby incur liability or be responsible for damage, or otherwise, resulting from any act or contract made by the registered owner or by any other person acting for, or by or under the authority of such registered owner. [1961 c 12 § 46.12.190. Prior: 1937 c 188 § 10, part; RRS § 6312-10, part.]

46.12.200 State or director not liable for acts in administering chapter. No suit or action shall ever be commenced or prosecuted against the director of licensing or the state of Washington by reason of any act done or omitted to be done in the administration of the duties and responsibilities imposed upon the director under this chapter. [1979 c 158 § 134; 1967 c 32 § 11; 1961 c 12 § 46.12.200. Prior: 1937 c 188 § 10, part; RRS § 6312-10, part.]

46.12.210 Penalty for false statements or illegal transfers. Any person who shall knowingly make any false statement of a material fact, either in his application for the certificate of ownership or in any assignment thereof, or who with intent to procure or pass ownership to a vehicle which he knows or has reason to believe has been stolen, shall receive or transfer possession of the same from or to another or who shall have in his possession any vehicle which he knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, shall be guilty of a felony and upon conviction shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than ten years, or both such fine and imprisonment. This provision shall not exclude any other offenses or penalties prescribed by any existing or future law for the larceny or unauthorized taking of a motor vehicle. [1961 c 12 § 46.12.210. Prior: 1937 c 188 § 12; RRS § 6312-12.]

46.12.220 Alteration or forgery—Penalty. Any person who shall alter or forge or cause to be altered or forged any certificate issued by the director pursuant to the provisions of this chapter, or any assignment thereof, or any release or notice of release of any encumbrance referred to therein, or who shall hold or use any such certificate or assignment, or release or notice of release, knowing the same to have been altered or forged, shall be guilty of a felony. [1967 c 32 § 12; 1961 c 12 § 46.12.220. Prior: 1937 c 188 § 13; RRS § 6312-13.]

46.12.230 Permit to licensed wrecker to junk vehicle—Fee. Any licensed wrecker in possession of a motor vehicle ten years old or older, and ownership of which or whose owner's residence is unknown, may apply to the department for a permit to junk or wreck such motor vehicle, or any part thereof. Upon such application, a permit may be issued by the department, upon receipt of a fee of one dollar, in a form to be prescribed by the department to authorize such wrecker to wreck or junk such vehicle, or any part thereof. [1975 c 25 § 14; 1967 c 32 § 13; 1961 c 12 § 46.12.230. Prior: 1957 c 273 § 12.]

46.12.240 Appeals to superior court from suspension, revocation, cancellation, or refusal of license or certificate. (1) The suspension, revocation, cancellation, or refusal by the director of any license or certificate provided for in chapters 46.12 and 46.16 RCW is conclusive unless the person whose license or certificate is suspended, revoked, canceled, or refused appeals to the

superior court of Thurston county, or at his option to the superior court of the county of his residence, for the purpose of having the suspension, revocation, cancellation, or refusal of the license or certificate set aside. Notice of appeal must be filed within ten days after receipt of the notice of suspension, revocation, cancellation, or refusal. Upon the filing of the notice of appeal the court shall issue an order to the director to show cause why the license should not be granted or reinstated, which order shall be returnable not less than ten days after the date of service thereof upon the director. Service shall be in the manner prescribed for service of summons and complaint in other civil actions. Upon the hearing on the order to show cause, the court shall hear evidence concerning matters with reference to the suspension, revocation, cancellation, or refusal of the license or certificate and shall enter judgment either affirming or setting aside the suspension, revocation, cancellation, or refusal.

(2) This section does not apply to vehicle registration cancellations under RCW 46.16.710 through 46.16.760. [1987 c 388 § 8; 1965 ex.s. c 121 § 42; 1961 c 12 § 46-.20.340. Prior: 1953 c 23 § 2; 1937 c 188 § 74; RRS § 6312-74. Formerly RCW 46.20.340.]

Effective date—Severability—1987 c 388: See notes following RCW 46.16.710.

46.12.250 Ownership of motor vehicle by person under eighteen prohibited—Exceptions. It shall be unlawful for any person under the age of eighteen to be the registered or legal owner of any motor vehicle: *Provided*, That RCW 46.12.250 through 46.12.270 shall not apply to any person who is on active duty in the United States armed forces nor to any minor who is in effect emancipated: *Provided further*, That RCW 46.12.250 through 46.12.270 shall not apply to any person who is the registered owner of a motor vehicle prior to August 11, 1969 or who became the registered or legal owner of a motor vehicle while a nonresident of this state. [1969 ex.s. c 125 § 1.]

46.12.260 Sale or transfer of motor vehicle ownership to person under eighteen prohibited. It shall be unlawful for any person to convey, sell or transfer the ownership of any motor vehicle to any person under the age of eighteen: *Provided*, That this section shall not apply to a vendor if the minor provides the vendor with a certified copy of an original birth registration showing the minor to be over eighteen years of age. Such certified copy shall be transmitted to the department of licensing by the vendor with the application for title to said motor vehicle. [1979 c 158 § 135; 1969 ex.s. c 125 § 2.]

46.12.270 Penalty for violation of RCW 46.12.250 or 46.12.260. Any person violating the provisions of RCW 46.12.250 or 46.12.260 shall be guilty of a misdemeanor and shall be punished by a fine of not more than two hundred fifty dollars or by imprisonment in a county jail for not more than ninety days. [1969 ex.s. c 125 § 3.]

46.12.280 Campers—Application to—Rules and regulations. The provisions of chapter 46.12 RCW concerning the registration and titling of vehicles, and the perfection of security interests therein shall apply to campers, as defined in RCW 46.04.085. In addition, the director of licensing shall have the power to adopt such rules and regulations he deems necessary to implement the registration and titling of campers and the perfection of security interests therein. [1979 c 158 § 136; 1971 ex.s. c 231 § 6.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.12.290 Mobile homes, application of chapter to—Rules (as amended by 1989 c 337). The provisions of chapter 46.12 RCW insofar as they are not inconsistent with the provisions of ~~((this 1971 amendatory act shall))~~ chapter 231, Laws of 1971 ex. sess. apply to mobile homes regulated by ~~((this 1971 amendatory act))~~ chapter 231, Laws of 1971 ex. sess.: *Provided*, That RCW 46.12.080 and 46.12.250 through 46.12.270 shall not apply to mobile homes (~~(-Provided further, That)~~). In order to lawfully transfer ownership ~~((of))~~ or add a secured party to a ~~((community))~~ mobile home, ~~((both spouses))~~ all registered owners of record must sign the title certificate. ~~((In addition,))~~ The director of licensing shall have the power to adopt such rules ~~((and regulations))~~ as ~~((he deems))~~ necessary to implement the provisions of this chapter ~~((46.12 RCW as they relate))~~ relating to mobile homes. [1989 c 337 § 4; 1981 c 304 § 2; 1979 c 158 § 137; 1971 ex.s. c 231 § 14.]

46.12.290 Mobile or manufactured homes, application of chapter to—Rules and regulations (as amended by 1989 c 343). (Effective March 1, 1990.) The provisions of chapter 46.12 RCW insofar as they are not inconsistent with the provisions of *this 1971 amendatory act or chapter 65.20 RCW shall apply to mobile or manufactured homes ~~((regulated by this 1971 amendatory act))~~: *Provided*, That RCW 46.12.080 and 46.12.250 through 46.12.270 shall not apply to mobile homes: *Provided further*, That in order to lawfully transfer ownership of a community mobile home, both spouses must sign the title certificate. In addition, the director of licensing shall have the power to adopt such rules and regulations as he deems necessary to implement the provisions of chapter 46.12 RCW as they relate to mobile homes. [1989 c 343 § 20; 1981 c 304 § 2; 1979 c 158 § 137; 1971 ex.s. c 231 § 14.]

Reviser's note: (1) RCW 46.12.290 was amended twice during the 1989 legislative session, each without reference to the other. The amendment by 1989 c 343 takes effect March 1, 1990. Until that date, the amendment by 1989 c 337 is the only effective version of the section. After that date, see RCW 1.12.025 for rule of construction concerning sections amended more than once during the same legislative session.

* (2) For meaning of "this 1971 amendatory act," see note following RCW 46.01.130.

Severability—Effective date—1989 c 343: See RCW 65.20.940 and 65.20.950.

Severability—1981 c 304: See note following RCW 26.16.030.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.12.300 Serial numbers on vehicles, watercraft, campers, or parts—Buying, selling, etc., with numbers removed, altered, etc.—Penalty. Whoever knowingly buys, sells, receives, disposes of, conceals, or has knowingly in his possession any vehicle, watercraft, camper, or component part thereof, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed for the purpose of concealment or misrepresenting the identity of the said vehicle, watercraft, camper, or component part thereof shall be guilty of a gross misdemeanor. [1975-'76 2nd ex.s. c 91 § 1.]

Severability—1975-'76 2nd ex.s. c 91: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 91 § 10.]

Effective date—1975-'76 2nd ex.s. c 91: "This act shall take effect on July 1, 1976." [1975-'76 2nd ex.s. c 91 § 11.]

46.12.310 Serial numbers—Seizure and impoundment of vehicles, etc.—Notice to interested persons—Release to owner, etc. (1) Any vehicle, watercraft, camper, or any component part thereof, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, obliterated, or destroyed, there being reasonable grounds to believe that such was done for the purpose of concealing or misrepresenting identity, shall be impounded and held by the seizing law enforcement agency for the purpose of conducting an investigation to determine the identity of the article or articles, and to determine whether it had been reported stolen.

(2) Within five days of the impounding of any vehicle, watercraft, camper, or component part thereof, the law enforcement agency seizing the article or articles shall send written notice of such impoundment by certified mail to all persons known to the agency as claiming an interest in the article or articles. The seizing agency shall exercise reasonable diligence in ascertaining the names and addresses of those persons claiming an interest in the article or articles. Such notice shall advise the person of the fact of seizure, the possible disposition of the article or articles, the requirement of filing a written claim requesting notification of potential disposition, and the right of the person to request a hearing to establish a claim of ownership. Within five days of receiving notice of other persons claiming an interest in the article or articles, the seizing agency shall send a like notice to each such person.

(3) If reported as stolen, the seizing law enforcement agency shall promptly release such vehicle, watercraft, camper, or parts thereof as have been stolen, to the person who is the lawful owner or the lawful successor in interest, upon receiving proof that such person presently owns or has a lawful right to the possession of the article or articles. [1975-'76 2nd ex.s. c 91 § 2.]

Severability—**Effective date**—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.320 Serial numbers—Disposition of vehicles, etc., authorized, when. Unless a claim of ownership to the article or articles is established pursuant to RCW 46.12.330, the law enforcement agency seizing the vehicle, watercraft, camper, or component part thereof may dispose of them by destruction, by selling at public auction to the highest bidder, or by holding the article or articles for the official use of the agency, when:

(1) The true identity of the article or articles cannot be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks or by any other means;

(2) After the true identity of the article or articles has been established, the seizing law enforcement agency cannot locate the person who is the lawful owner or if such lawful owner or his successor in interest fails to claim the article or articles within forty-five days after receiving notice from the seizing law enforcement agency that the article or articles is in its possession.

No disposition of the article or articles pursuant to this section shall be undertaken until at least sixty days have elapsed from the date of seizure and written notice of the right to a hearing to establish a claim of ownership pursuant to RCW 46.12.330 and of the potential disposition of the article or articles shall have first been served upon the person who held possession or custody of the article when it was impounded and upon any other person who, prior to the final disposition of the article, has notified the seizing law enforcement agency in writing of a claim to ownership or lawful right to possession thereof. [1975-'76 2nd ex.s. c 91 § 3.]

Severability—**Effective date**—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.330 Serial numbers—Hearing—Appeal—Removal to court—Release. (1) Any person may submit a written request for a hearing to establish a claim of ownership or right to lawful possession of the vehicle, watercraft, camper, or component part thereof seized pursuant to this section.

(2) Upon receipt of a request for hearing, one shall be held before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW.

(3) Such hearing shall be held within a reasonable time after receipt of a request therefor. Reasonable investigative activities, including efforts to establish the identity of the article or articles and the identity of the person entitled to the lawful possession or custody of the article or articles shall be considered in determining the reasonableness of the time within which a hearing must be held.

(4) The hearing and any appeal therefrom shall be conducted in accordance with Title 34 RCW.

(5) The burden of producing evidence shall be upon the person claiming to be the lawful owner or to have the lawful right of possession to the article or articles.

(6) Any person claiming ownership or right to possession of an article or articles subject to disposition under RCW 46.12.310 through 46.12.340 may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is two hundred dollars or more. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to judgment for costs and reasonable attorney's fees. For purposes of this section the seizing law enforcement agency shall not be considered a claimant.

(7) The seizing law enforcement agency shall promptly release the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is

lawfully entitled to possession thereof. [1981 c 67 § 27; 1975-'76 2nd ex.s. c 91 § 4.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.340 Serial numbers—Release of vehicle, etc.

The seizing law enforcement agency may release the article or articles impounded pursuant to this section to the person claiming ownership without a hearing pursuant to RCW 46.12.330 when such law enforcement agency is satisfied after an appropriate investigation as to the claimant's right to lawful possession. If no hearing is contemplated as provided for in RCW 46.12.330 such release shall be within a reasonable time following seizure. Reasonable investigative activity, including efforts to establish the identity of the article or articles and the identity of the person entitled to lawful possession or custody of the article or articles shall be considered in determining the reasonableness of the time in which release must be made. [1975-'76 2nd ex.s. c 91 § 5.]

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.350 Assignment of new serial number. An identification number shall be assigned to any article impounded pursuant to RCW 46.12.310 in accordance with the rules promulgated by the department of licensing prior to:

(1) The release of the article from the custody of the seizing agency; or

(2) The use of the article by the seizing agency. [1979 c 158 § 138; 1975-'76 2nd ex.s. c 91 § 6.]

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.360 Reimbursement to owner of stolen vehicle.

A vehicle owner shall be reimbursed from the motor vehicle fund when: (1) His vehicle identification number was physically inspected and verified pursuant to RCW 46.12.030(3); and (2) the vehicle is determined subsequently to have been reported stolen at the time of the inspection. Such reimbursement shall be for the value of the vehicle as determined by criteria set forth in RCW 82.44.040: *Provided*, That no claim shall be allowed under this section following a satisfactory showing by the department that errors, omissions, or transpositions were made in entering the vehicle's identity in the stolen vehicle file. [1980 c 32 § 7; 1975-'76 2nd ex.s. c 91 § 7.]

Effective date—Transfer of moneys—1980 c 32 § 7: "Section 7 of this act shall take effect on September 1, 1981. Any moneys held on that date in the account disestablished by section 7 of this act shall be transferred to the motor vehicle fund." [1980 c 32 § 8.] Section 7 of this act is the amendment of RCW 46.12.360 by 1980 c 32.

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.370 Lists of registered and legal owners of vehicles—Furnished for certain purposes—Penalty for unauthorized use. In addition to any other authority

which it may have, the department of licensing may furnish lists of registered and legal owners of motor vehicles only for the purposes specified in this section to:

(1) The manufacturers of motor vehicles, or their authorized agents, to be used to enable those manufacturers to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. sec. 1382-1418), including amendments or additions thereto, respecting safety-related defects in motor vehicles;

(2) Any governmental agency of the United States or Canada, or political subdivisions thereof, to be used by it or by its authorized commercial agents or contractors only in connection with the enforcement of motor vehicle or traffic laws by, or programs related to traffic safety of, that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor; or

(3) Any business regularly making loans to other persons to finance the purchase of motor vehicles, to be used to assist the person requesting the list to determine ownership of specific vehicles for the purpose of determining whether or not to provide such financing. In the event a list of registered and legal owners of motor vehicles is used for any purpose other than that authorized in subsections (1), (2) and (3) of this section, the manufacturer, governmental agency, financial institution or their authorized agents or contractors responsible for the unauthorized disclosure or use will be denied further access to such information by the department of licensing. [1982 c 215 § 1.]

46.12.380 Disclosure of names and addresses of individual vehicle owners. Notwithstanding the provisions of chapter 42.17 RCW, the name or address of an individual vehicle owner shall not be released by the department, county auditor, or other public agency except upon written request, signed by the person requesting disclosure, stating their full legal name and address. The request for disclosure is itself a public record, subject to inspection and copying, and shall be retained by the disclosing agency for two years.

Notice that such a disclosure request has been honored shall be sent to the affected vehicle owner by the disclosing agency, indicating the name and address of the person requesting disclosure.

This section shall not apply to persons who routinely request disclosure of vehicle registration information for use in the course of their business or occupation. [1987 c 299 § 1; 1984 c 241 § 2.]

**Chapter 46.16
VEHICLE LICENSES**

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 - 46.16.730 Driving without valid license—Opportunity for hearing on cancellation—Notice and request.
 - 46.16.740 Driving without valid license—Hearing on cancellation—Procedures.
 - 46.16.750 Driving without valid license—Registration cancellation—Court review.
 - 46.16.760 Driving without valid license—Registration cancellation—Administration, enforcement.
 - 46.16.900 Severability—1973 1st ex.s. c 132.
- Auto transportation companies: Chapter 81.68 RCW.*
- Free license plates*
disabled veterans, prisoners of war: RCW 73.04.110.
surviving spouse of prisoner of war: RCW 73.04.115.
- Special license plates—Fee—Hulk haulers or scrap processors: RCW 46.79.060.*

46.16.006 "Registration year" defined—Registration months—"Last day of the month." (1) The term "registration year" for the purposes of chapters 46.16, 82.44, and 82.50 RCW means the effective period of a vehicle license issued by the department. Such year commences at 12:01 a.m. on the date of the calendar year designated by the department and ends at 12:01 a.m. on the same date of the next succeeding calendar year. If a vehicle license previously issued in this state has been expired for more than thirty days and is renewed with a different registered owner, a new registration year is deemed to commence upon the date the expired license is renewed in order that the renewed license be useable for a full twelve-month period.

(2) Each registration year may be divided into twelve registration months. Each registration month commences on the day numerically corresponding to the day of the calendar month on which the registration year begins, and terminates on the numerically corresponding day of the next succeeding calendar month.

(3) Where the term "last day of the month" is used in chapters 46.16, 82.44, and 82.50 RCW in lieu of a specified day of any calendar month it means the last day of such calendar month or months irrespective of the numerical designation of that day.

(4) If the final day of a registration year or month falls on a Saturday, Sunday, or legal holiday, such period extends through the end of the next business day. [1983 c 27 § 1; 1981 c 214 § 1; 1975 1st ex.s. c 118 § 1.]

Effective date—1975 1st ex.s. c 118: "This 1975 amendatory act shall take effect on January 1, 1977: *Provided*, That the director of the department of motor vehicles may, prior to such effective date, undertake and perform duties and conduct activities necessary for the timely implementation of this 1975 amendatory act on such date." [1975 1st ex.s. c 118 § 19.]

Severability—1975 1st ex.s. c 118: "If any provision of this 1975 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this 1975 amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby." [1975 1st ex.s. c 118 § 18.]

46.16.010 Licenses and plates required—Penalties—Exceptions. (1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided. Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof shall be punished by a fine of no less than three hundred thirty dollars, no part of which may be suspended or deferred. Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(2) The licensing of a motor vehicle in another state by a resident of this state, as defined in RCW 46.16.028, with willful intent to evade the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and a fine equal to twice the amount of delinquent

taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and a fine equal to three times the amount of delinquent taxes and fees, no part of which may be suspended or deferred.

(3) These provisions shall not apply to farm vehicle as defined in RCW 46.04.181 if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law: *Provided further*, That these provisions shall not apply to spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing or loading of spray and fertilizer applicator rigs and not used, designed or modified primarily for the purpose of transportation: *Provided further*, That these provisions shall not apply to fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: *Provided further*, That these provisions shall not apply to equipment defined as follows:

"Special highway construction equipment" is any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (1) are in excess of the legal width or (2) which, because of their length, height or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (3) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached. [1989 c 192 § 2; 1986 c 186 § 1; 1977 ex.s. c 148 § 1; 1973 1st ex.s. c 17 § 2; 1972 ex.s. c 5 § 2; 1969 c 27 § 3; 1967 c 202 § 2; 1963 ex.s. c 3 § 51; 1961 ex.s. c 21 § 32; 1961 c 12 § 46.16.010. Prior: 1955 c 265 § 1; 1947 c 33 § 1; 1937 c 188 § 15; Rem. Supp. 1947 § 6312-15; 1929 c 99 § 5; RRS § 6324.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Legislative intent—1989 c 192: "The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to impose a stronger criminal penalty upon those residents who defraud the state, thereby enhancing compliance with the registration laws of this state and further enhancing enforcement and collection efforts.

In order to encourage voluntary compliance with the registration laws of this state, administrative penalties associated with failing to register a motor vehicle are waived until September 1, 1989. It is not the intent of the legislature to waive traffic infraction or criminal traffic violations imposed prior to July 23, 1989." [1989 c 192 § 1.]

Effective date—1989 c 192: "Section 2 of this act shall take effect September 1, 1989." [1989 c 192 § 3.]

46.16.011 Allowing unauthorized person to drive—

Penalty. It is unlawful for any person in whose name a vehicle is registered knowingly to permit another person to drive the vehicle when the other person is not authorized to do so under the laws of this state. A violation of this section is a misdemeanor. [1987 c 388 § 10.]

Severability—1987 c 388: See note following RCW 46.16.710.

Unlawful to allow unauthorized person to drive: RCW 46.20.344.

46.16.012 Immunity from liability for licensing nonroadworthy vehicle. The director, the state of Washington, and its political subdivisions shall be immune from civil liability arising from the issuance of a vehicle license to a nonroadworthy vehicle. [1986 c 186 § 5.]

46.16.015 Emission control inspections required—

Exceptions. (1) Neither the department of licensing nor its agents may issue or renew a motor vehicle license for any vehicle registered in an emission contributing area, as that area is established under chapter 70.120 RCW, for any year in which the vehicle is required to be tested under chapter 70.120 RCW, unless the application for issuance or renewal is: (a) Accompanied by a valid certificate of compliance or a valid certificate of acceptance issued pursuant to chapter 70.120 RCW; or (b) exempted from this requirement pursuant to subsection (2) of this section. The certificates must have a date of validation which is within ninety days of the date of application for the vehicle license or license renewal.

Certificates for fleet vehicles may have a date of validation which is within twelve months of the assigned license renewal date.

(2) Subsection (1) of this section does not apply to the following vehicles:

(a) New motor vehicles whose equitable or legal title has never been transferred to a person who in good faith purchases the vehicle for purposes other than resale;

(b) Motor vehicles with a model year of 1967 or earlier;

(c) Motor vehicles that use propulsion units powered exclusively by electricity;

(d) Motor vehicles fueled exclusively by propane, compressed natural gas, or liquid petroleum gas, unless it is determined that federal sanctions will be imposed as a result of this exemption;

(e) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(f) Motor vehicles powered by diesel engines;

(g) Farm vehicles as defined in RCW 46.04.181;

(h) Used vehicles which are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW; or

(i) Motor vehicles exempted by the director of the department of ecology.

The provisions of subparagraph (a) of this subsection may not be construed as exempting from the provisions of subsection (1) of this section applications for the renewal of licenses for motor vehicles that are or have been leased.

(3) The department of licensing shall mail to each owner of a vehicle registered within an emission contributing area a notice regarding the boundaries of the area and restrictions established under this section that apply to vehicles registered in such areas. The information for the notice shall be supplied to the department of licensing by the department of ecology. Such a notice shall be mailed to the owner ninety days prior to the expiration date of the owner's motor vehicle license. [1989 c 240 § 1; 1985 c 7 § 111. Prior: 1983 c 238 § 1; 1983 c 237 § 3; 1980 c 176 § 1; 1979 ex.s. c 163 § 11.]

Effective date—1989 c 240: See RCW 70.120.902.

Severability—1983 c 238: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 238 § 3.]

Legislative finding—1983 c 237: See note following RCW 46.37.467.

Effective date—1979 ex.s. c 163: "Section 11 of this act [RCW 46.16.015] shall take effect on January 1, 1982. The director of the department of licensing and the director of the department of ecology are authorized to take immediately such steps as are necessary to ensure that section 11 of this act is implemented on its effective date." [1979 ex.s. c 163 § 16.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

46.16.016 Emission control inspections—Rules for licensing requirements. The director of the department of licensing shall adopt rules implementing and enforcing RCW 46.16.015, except for RCW 46.16.015(2)(g) in accordance with chapter 34.05 RCW. [1979 ex.s. c 163 § 15.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

46.16.020 Exemptions—State and publicly owned vehicles—Registration. Any vehicle owned, rented, or leased by the state of Washington, or by any county, city, town, school district, or other political subdivision of the state of Washington and used exclusively by them, and all vehicles owned or leased with an option to purchase by the United States government, or by the government of foreign countries, or by international bodies to which the United States government is a signatory by treaty, or owned or leased by the governing body of an Indian tribe located within this state and recognized as a governmental entity by the United States department of the interior, and used exclusively in its or their service shall be exempt from the payment of license fees for the licensing thereof as in this chapter provided: *Provided, however,* That such vehicles, except those owned and used exclusively by the United States government and which are identified by clearly exhibited registration numbers or license plates assigned by an instrumentality of that government, shall be registered as prescribed for the license registration of other vehicles and shall display the vehicle license number plates assigned to it. The department shall assign a plate or plates to each vehicle or may assign a block of plates to an agency or political subdivision for further assignment by the agency or political subdivision to individual vehicles registered to it pursuant to this section. The agency, political subdivision, or Indian tribe, except a foreign government or international body, shall pay a fee of two dollars for the plate or plates for each vehicle. An Indian tribe is not entitled to license and register any tribal government service vehicle under this section if that tribe itself licenses or registers any tribal government service vehicles under tribal law. No vehicle license or license number plates shall be issued to any such vehicle under the provisions of this section for the transportation of school children unless and until such vehicle shall have been first personally inspected by the director or the director's duly authorized representative. [1986 c 30 § 1; 1975 1st ex.s. c 169 § 5; 1973 1st ex.s. c 132 § 22; 1967 c 32 § 14; 1965 ex.s. c 106 § 1; 1961 c 12 § 46.16.020. Prior: 1939 c 182 § 4; 1937 c 188 § 21; RRS § 6312-21; 1925 ex.s. c 47 § 1; 1921 c 96 § 17; 1919 c 46 § 2; 1917 c 155 § 12; 1915 c 142 § 17; RRS § 6329.]

Severability—1973 1st ex.s. c 132: See RCW 46.16.900, 46.70.920.

Special license plates issued without fee

*Congressional Medal of Honor recipients: RCW 46.16.620.
disabled veterans, prisoners of war: RCW 73.04.110.
surviving spouse of prisoner of war: RCW 73.04.115.*

46.16.022 Exemptions—Vehicles owned by Indian tribes—Conditions. (1) The provisions of this chapter relating to licensing of vehicles by this state, including the display of vehicle license number plates and license registration certificates, do not apply to vehicles owned or leased by the governing body of an Indian tribe located within this state and recognized as a governmental

entity by the United States department of the interior, only when:

(a) The vehicle is used exclusively in tribal government service; and

(b) The vehicle has been licensed and registered under a law adopted by such tribal government; and

(c) Vehicle license number plates issued by the tribe showing the initial or abbreviation of the name of the tribe are displayed on the vehicle substantially as provided therefor in this state; and

(d) The tribe has not elected to receive any Washington state license plates for tribal government service vehicles pursuant to RCW 46.16.020; and

(e) If required by the department, the tribe provides the department with vehicle description and ownership information similar to that required for vehicles registered in this state, which may include the model year, make, model series, body type, type of power (gasoline, diesel, or other), VIN, and the license plate number assigned to each government service vehicle licensed by that tribe.

(2) The provisions of this section are operative as to a vehicle owned or leased by an Indian tribe located within this state and used exclusively in tribal government service only to the extent that under the laws of the tribe like exemptions and privileges are granted to all vehicles duly licensed under the laws of this state for operation of such vehicles on all tribal roads within the tribe's reservation. If under the laws of the tribe, persons operating vehicles licensed by this state are required to pay a license or registration fee or to carry or display vehicle license number plates or a registration certificate issued by the tribe, the tribal government shall comply with the provisions of this state's laws relating to the licensing and registration of vehicles operating on the highways of this state. [1986 c 30 § 2.]

46.16.023 Ride-sharing vehicles—Special plates.

(1) Every owner or lessee of a vehicle seeking to apply for an excise tax exemption under RCW 82.08.0287, 82.12.0282, or 82.44.015 shall apply to the director for, and upon satisfactory showing of eligibility, receive in lieu of the regular motor vehicle license plates for that vehicle, special plates of a distinguishing separate numerical series or design, as the director shall prescribe. In addition to paying all other initial fees required by law, each applicant for the special license plates shall pay an additional license fee of twenty-five dollars upon the issuance of such plates. The special fee shall be deposited in the motor vehicle fund. Application for renewal of the license plates shall be as prescribed for the renewal of other vehicle licenses. No renewal is required for vehicles exempted under RCW 46.16.020.

(2) Whenever the ownership of a vehicle receiving special plates under subsection (1) of this section is transferred or assigned, the plates shall be removed from the motor vehicle, and if another vehicle qualifying for special plates is acquired, the plates shall be transferred to that vehicle for a fee of five dollars, and the director shall be immediately notified of the transfer of the

plates. Otherwise the removed plates shall be immediately forwarded to the director to be canceled. Whenever the owner or lessee of a vehicle receiving special plates under subsection (1) of this section is for any reason relieved of the tax-exempt status, the special plates shall immediately be forwarded to the director along with an application for replacement plates and the required fee. Upon receipt the director shall issue the license plates that are otherwise provided by law. [1987 c 175 § 2.]

Effective date—1987 c 175 § 2: "Section 2 of this act shall take effect on January 1, 1988." [1987 c 175 § 4.]

46.16.025 Identification device for exempt farm vehicles—Application for—Contents—Fee. Before any "farm vehicle", as defined in RCW 46.04.181, shall operate on or move along a public highway, there shall be displayed upon it in a conspicuous manner a decal or other device, as may be prescribed by the director of licensing and issued by the department of licensing, which shall describe in some manner the vehicle and identify it as a vehicle exempt from the licensing requirements of this chapter. Application for such identifying devices shall be made to the department on a form furnished for that purpose by the director. Such application shall be made by the owner or lessee of the vehicle, or his duly authorized agent over the signature of such owner or agent, and he shall certify that the statements therein are true to the best of his knowledge. The application must show:

- (1) The name and address of the owner of the vehicle;
- (2) The trade name of the vehicle, model, year, type of body, the motor number or the identification number thereof if such vehicle be a motor vehicle, or the serial number thereof if such vehicle be a trailer;
- (3) The purpose for which said vehicle is to be principally used;
- (4) Such other information as shall be required upon such application by the director; and
- (5) Place where farm vehicle is principally used or garaged.

A fee of five dollars shall be charged for and submitted with such application for an identification decal as in this section provided as to each farm vehicle which fee shall be deposited in the motor vehicle fund and distributed proportionately as otherwise provided for vehicle license fees under RCW 46.68.030. Only one application need be made as to each such vehicle, and the status as an exempt vehicle shall continue until suspended or revoked for misuse, or when such vehicle no longer is used as a farm vehicle. [1979 c 158 § 139; 1967 c 202 § 3.]

46.16.028 "Resident" defined—Vehicle registration required. (1) For the purposes of vehicle license registration, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

- (a) Becoming a registered voter in this state; or
- (b) Receiving benefits under one of the Washington public assistance programs; or

(c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

(2) The term "Washington public assistance programs" referred to in subsection (1)(b) of this section includes only public assistance programs for which more than fifty percent of the combined costs of benefits and administration are paid from state funds. Programs which are not included within the term "Washington public assistance programs" pursuant to the above criteria include, but are not limited to the food stamp program under the federal food stamp act of 1964; programs under the child nutrition act of 1966, 42 U.S.C. Secs. 1771 through 1788; and aid to families with dependent children, 42 U.S.C. Secs. 601 through 606.

(3) A resident of the state shall register under chapters 46.12 and 46.16 RCW a vehicle to be operated on the highways of the state. New Washington residents shall be allowed thirty days from the date they become residents as defined in this section to procure Washington registration for their vehicles. This thirty-day period shall not be combined with any other period of reciprocity provided for in this chapter or chapter 46.85 RCW. [1987 c 142 § 1; 1986 c 186 § 2; 1985 c 353 § 1.]

Effective date—1985 c 353: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except for section 1 of this act, which shall take effect September 1, 1985." [1985 c 353 § 6.]

46.16.029 Purchasing vehicle with foreign plates. It is unlawful to purchase a vehicle bearing foreign license plates without removing and destroying the plates unless (1) the out-of-state vehicle is sold to a Washington resident by a resident of a jurisdiction where the license plates follow the owner or (2) the out-of-state plates may be returned to the jurisdiction of issuance by the owner for refund purposes or (3) for such other reasons as the department may deem appropriate by rule. [1987 c 142 § 2.]

46.16.030 Nonresident exemption—Reciprocity. Except as is herein provided for foreign corporations, the provisions relative to the licensing of vehicles and display of vehicle license number plates and license registration certificates shall not apply to any vehicles owned by nonresidents of this state if the owner thereof has complied with the law requiring the licensing of vehicles in the names of the owners thereof in force in the state, foreign country, territory or federal district of his residence; and the vehicle license number plate showing the initial or abbreviation of the name of such state, foreign country, territory or federal district, is displayed on such vehicle substantially as is provided therefor in this state: *Provided*, That the provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, foreign country, territory or federal district of his residence, like exemptions and privileges are granted to vehicles duly licensed under the laws of and owned by

residents of this state. If under the laws of such state, foreign country, territory or federal district, vehicles owned by residents of this state, operating upon the highways of such state, foreign country, territory or federal district, are required to pay the license fee and carry the vehicle license number plates of such state, foreign country, territory or federal district, the vehicles owned by residents of such state, foreign country, territory or federal district, and operating upon the highways of this state, shall comply with the provisions of this state relating to the licensing of vehicles. Foreign corporations owning, maintaining, or operating places of business in this state and using vehicles in connection with such places of business, shall comply with the provisions relating to the licensing of vehicles insofar as vehicles used in connection with such places of business are concerned: *Provided, further,* That the director is empowered to make and enforce rules and regulations for the licensing of nonresident vehicles upon a reciprocal basis and with respect to any character or class of operation. [1967 c 32 § 15; 1961 c 12 § 46.16.030. Prior: 1937 c 188 § 23; RRS § 6312-23; 1931 c 120 § 1; 1929 c 99 § 4; 1921 c 96 § 11; 1919 c 59 § 6; 1917 c 155 § 7; 1915 c 142 § 11; RRS § 6322.]

46.16.035 Exemptions—Private school buses. Any bus or vehicle owned and operated by a private school or schools meeting the requirements of RCW 28A.02.201 and used by that school or schools primarily to transport children to and from school or to transport children in connection with school activities shall be exempt from the payment of license fees for the licensing thereof as in this chapter provided. A license issued by the department for such bus or vehicle shall be considered an exempt license under RCW 82.44.010. [1980 c 88 § 1.]

46.16.040 Form of application—Contents. Application for original vehicle license shall be made on [a] form furnished for the purpose by the department. Such application shall be made by the owner of the vehicle or duly authorized agent over the signature of such owner or agent, and the applicant shall certify that the statements therein are true to the best of the applicant's knowledge. The application must show:

(1) Name and address of the owner of the vehicle and, if the vehicle is subject to a security agreement, the name and address of the secured party;

(2) Trade name of the vehicle, model, year, type of body, the identification number thereof;

(3) The power to be used—whether electric, steam, gas or other power;

(4) The purpose for which said vehicle is to be used and the nature of the license required;

(5) The licensed gross weight for such vehicle which in the case of for hire vehicles and auto stages with seating capacity of more than six shall be the adult seating capacity thereof, including the operator, as provided for in RCW 46.16.111. In the case of motor trucks, tractors, and truck tractors, the licensed gross weight shall be the gross weight declared by the applicant pursuant to the provisions of RCW 46.16.111;

(6) The unladen weight of such vehicle, if it be a motor truck or trailer, which shall be the shipping weight thereof as given by the manufacturer thereof unless another weight is shown by weight slip verified by a certified weighmaster, which slip shall be attached to the original application;

(7) Such other information as shall be required upon such application by the department. [1987 c 244 § 2; 1975 c 25 § 15; 1969 ex.s. c 170 § 2. Prior: 1967 ex.s. c 83 § 59; 1967 c 32 § 16; 1961 c 12 § 46.16.040; prior: 1947 c 164 § 8; 1937 c 188 § 29; Rem. Supp. 1947 § 6312-29; 1921 c 96 § 5; 1919 c 178 § 1; 1919 c 59 § 4; 1915 c 142 § 5; RRS § 6316.]

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

46.16.045 Temporary permits—Authorized. (1) The department in its discretion may grant a temporary permit to operate a vehicle for which application for registration has been made, where such application is accompanied by the proper fee pending action upon said application by the department.

(2) The department may authorize vehicle dealers properly licensed pursuant to chapter 46.70 RCW to issue temporary permits to operate vehicles under such rules and regulations as the department deems appropriate.

(3) The fee for each temporary permit application distributed to an authorized vehicle dealer shall be five dollars which shall be credited to the payment of registration fees at the time application for registration is made. [1973 1st ex.s. c 132 § 23; 1961 c 12 § 46.16.045. Prior: 1959 c 66 § 1.]

Severability—1973 1st ex.s. c 132: See RCW 46.16.900, 46.70.920.

46.16.047 Temporary permits—Form and contents—Duration—Fees. Forms for such temporary permits shall be prescribed and furnished by the department. Temporary permits shall bear consecutive numbers, shall show the name and address of the applicant, trade name of the vehicle, model, year, type of body, identification number and date of application, and shall be such as may be affixed to the vehicle at the time of issuance, and remain on such vehicle only during the period of such registration and until the receipt of permanent license plates. The application shall be registered in the office of the person issuing the permit and shall be forwarded by him to the department each day together with the fee accompanying it.

A fee of fifty cents shall be charged by the person authorized to issue such permit which shall be accounted for in the same manner as the other fees collected by such officers, provided that such fees collected by county auditors or their agents shall be paid to the county treasurer in the same manner as other fees collected by the county auditor and credited to the county current expense fund. [1961 c 12 § 46.16.047. Prior: 1959 c 66 § 2.]

46.16.048 Temporary letter of authority for movement of unlicensed vehicle for special community event. The department in its discretion may issue a temporary letter of authority authorizing the movement of an unlicensed vehicle or the temporary usage of a special plate for the purpose of promoting or participating in an event such as a parade, pageant, fair, convention, or other special community activity. The letter of authority may not be issued to or used by anyone for personal gain, but public identification of the sponsor or owner of the donated vehicle shall not be considered to be personal gain. [1977 c 25 § 2.]

46.16.060 License fee, general—Distribution of proceeds—House-moving dollies. (1) Except for vehicles already so taxed in RCW 46.16.070 and 46.16.085 or as otherwise specifically provided by law for the licensing of vehicles, there shall be paid and collected annually for each registration year or fractional part thereof and upon each vehicle a license fee of twenty-three dollars, but effective with initial motor vehicle registrations that expire in January, 1989, and thereafter, the license fee shall be twenty-seven dollars and seventy-five cents; however, if the vehicle was previously licensed in this state and has not been registered in another jurisdiction in the intervening period, the renewal license fee shall be nineteen dollars, but effective with vehicle license renewals that expire in January, 1989, and thereafter, the renewal license fee shall be twenty-three dollars and seventy-five cents. The proceeds of such fees shall be distributed in accordance with RCW 46.68.030. The fee for licensing each house-moving dolly which is used exclusively for moving buildings or homes on the highway under special permit as provided for in chapter 46.44 RCW shall be twenty-five dollars, but effective with licenses that expire in January, 1989, and thereafter, the fee shall be twenty-nine dollars and seventy-five cents, and no other fee shall be charged for the load carried thereon.

(2) The department of licensing, county auditors, and other authorized agents shall collect for any registration year any increase in the fees authorized by this section for the months of that registration year in which any such increase is effective in the same manner and at the same time as such fees for that registration year would otherwise be collected as provided by law. [1987 1st ex.s. c 9 § 3; 1985 c 380 § 13; 1981 c 342 § 8; 1975 1st ex.s. c 118 § 3; 1969 ex.s. c 170 § 3; 1969 c 99 § 5; 1965 c 25 § 1; 1961 ex.s. c 7 § 9; 1961 c 12 § 46.16.060. Prior: 1957 c 105 § 1; 1955 c 384 § 11; 1951 c 150 § 17; 1949 c 220 § 8; 1937 c 188 § 16; 1931 c 140 § 1; part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; Rem. Supp. 1949 § 6312-16; RRS § 6326, part.]

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

Effective date—1965 c 25: "This act shall take effect January 1, 1966." [1965 c 25 § 6.]

Free license plates

disabled veterans, prisoners of war: RCW 73.04.110.

surviving spouse of prisoner of war: RCW 73.04.115.

46.16.061 Additional fees to help defray costs of studies. In addition to all other fees prescribed by law, a fee of \$.10 shall be paid for each motor vehicle not otherwise taxed in RCW 46.16.070 or 46.16.085.

The fee shall be deposited in the motor vehicle fund, and shall be used by the legislative transportation committee and the state department of transportation to help defray the costs of special highway studies and other studies as provided for by law and for other necessary expenses of the committee. [1985 c 380 § 14; 1984 c 7 § 49; 1963 ex.s. c 3 § 40.]

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Severability—1984 c 7: See note following RCW 47.01.141.

46.16.063 Additional fee for recreational vehicles. In addition to other fees for the licensing of vehicles there shall be paid and collected annually for each camper, travel trailer and motor home as the same are defined in RCW 82.50.010 a fee of one dollar to be deposited in the RV account of the motor vehicle fund. [1980 c 60 § 2.]

Effective date—1980 c 60: See note following RCW 47.38.050.

46.16.065 Small trailer license fee—Conditions. In lieu of the fees provided in RCW 46.16.060, private passenger car one or two-wheel trailers of two thousand pounds gross weight or less, may be licensed upon the payment of a license fee in the sum of four dollars and fifty cents or, if the vehicle was previously licensed in this state and has not been registered in another jurisdiction in the intervening period, a renewal license fee in the sum of three dollars and twenty-five cents, but only if such trailers are to be operated upon the public highway by the owners thereof. It is the intention of the legislature that this reduced license shall be issued only as to trailers operated for personal use of the owners and not trailers held for rental to the public. [1975 1st ex.s. c 118 § 4; 1961 ex.s. c 7 § 10; 1961 c 12 § 46.16.065. Prior: 1951 c 269 § 7.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

46.16.070 License fees on trucks, buses, and for hire vehicles based on gross weight. In lieu of all other vehicle licensing fees, unless specifically exempt, and in addition to the excise tax prescribed in chapter 82.44 RCW and the mileage fees prescribed for buses and stages in RCW 46.16.125, there shall be paid and collected annually for each motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, based upon the declared combined gross weight or declared gross weight thereof pursuant to the provisions of chapter 46.44 RCW, the following licensing fees by such gross weight:

4,000 lbs.	\$ 28.75
6,000 lbs.	\$ 33.72
8,000 lbs.	\$ 41.30
10,000 lbs.	\$ 46.37
12,000 lbs.	\$ 53.62
14,000 lbs.	\$ 60.86
16,000 lbs.	\$ 68.31
18,000 lbs.	\$ 100.02
20,000 lbs.	\$ 110.94
22,000 lbs.	\$ 119.76
24,000 lbs.	\$ 128.95
26,000 lbs.	\$ 136.08
28,000 lbs.	\$ 159.66
30,000 lbs.	\$ 183.18
32,000 lbs.	\$ 219.78
34,000 lbs.	\$ 233.06
36,000 lbs.	\$ 252.39
38,000 lbs.	\$ 276.51
40,000 lbs.	\$ 315.99
42,000 lbs.	\$ 328.16
44,000 lbs.	\$ 335.02
46,000 lbs.	\$ 359.91
48,000 lbs.	\$ 375.19
50,000 lbs.	\$ 406.36
52,000 lbs.	\$ 427.45
54,000 lbs.	\$ 461.02
56,000 lbs.	\$ 486.21
58,000 lbs.	\$ 505.53
60,000 lbs.	\$ 538.29
62,000 lbs.	\$ 576.50
64,000 lbs.	\$ 589.75
66,000 lbs.	\$ 656.14
68,000 lbs.	\$ 683.99
70,000 lbs.	\$ 736.14
72,000 lbs.	\$ 786.36
74,000 lbs.	\$ 854.15
76,000 lbs.	\$ 923.05
78,000 lbs.	\$ 1,007.10
80,000 lbs.	\$ 1,086.95

The proceeds from such fees shall be distributed in accordance with RCW 46.68.035.

Effective with motor vehicle licenses that expire in January, 1989, and thereafter, a surcharge of four dollars and seventy-five cents is added to such fees. The proceeds of this surcharge shall be forwarded to the state treasurer to be deposited into the state patrol highway account of the motor vehicle fund.

Every motor truck, truck tractor, and tractor exceeding 6,000 pounds empty scale weight registered under chapter 46.16, 46.87, or 46.88 RCW shall be licensed for not less than one hundred fifty percent of its empty weight unless the amount would be in excess of the legal limits prescribed for such a vehicle in RCW 46.44.041 or 46.44.042, in which event the vehicle shall be licensed for the maximum weight authorized for such a vehicle.

The following provisions apply when increasing gross or combined gross weight for a vehicle licensed under this section:

(1) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the

number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(2) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged. [1989 c 156 § 1. Prior: 1987 1st ex.s. c 9 § 4; 1987 c 244 § 3; 1986 c 18 § 4; 1985 c 380 § 15; 1975-'76 2nd ex.s. c 64 § 1; 1969 ex.s. c 281 § 54; 1967 ex.s. c 118 § 1; 1967 ex.s. c 83 § 56; 1961 ex.s. c 7 § 11; 1961 c 12 § 46.16.070; prior: 1957 c 273 § 1; 1955 c 363 § 2; prior: 1951 c 269 § 9; 1950 ex.s. c 15 § 1, part; 1939 c 182 § 3, part; 1937 c 188 § 17, part; 1931 c 140 § 1, part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; Rem. Supp. 1949 § 6312-17, part; RRS § 6326, part.]

Application—1989 c 156: "This act first applies to the renewal of vehicle registrations that have a December 1990 or later expiration date and all initial vehicle registrations that are effective on or after January 1, 1990." [1989 c 156 § 5.]

Severability—**Effective date**—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Effective dates—1975-'76 2nd ex.s. c 64: "Sections 1, 2, and 5 through 24 of this 1976 amendatory act shall take effect on July 1, 1976, and sections 3 and 4 of this 1976 amendatory act shall take effect on January 1, 1977. All current and outstanding valid licenses and permits held by licensees on July 1, 1976, shall remain valid until their expiration dates, but renewals and original applications made after July 1, 1976, shall be governed by the law in effect at the time such renewal or application is made." [1975-'76 2nd ex.s. c 64 § 25.]

Severability—1975-'76 2nd ex.s. c 64: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 64 § 26.]

Effective date—1969 ex.s. c 281: See note following RCW 46.88.010.

Severability—**Effective dates**—1967 ex.s. c 83: See RCW 47-26.900 and 47.26.910.

46.16.073 Federal heavy vehicle use tax. The department may refuse registration of a vehicle if the applicant has failed to furnish proof, acceptable to the department, that the federal heavy vehicle use tax imposed by section 4481 of the internal revenue code of 1954 has been paid.

The department may adopt rules as deemed necessary to administer this section. [1985 c 79 § 1.]

46.16.079 Fixed load motor vehicle equipped for lifting or towing—**Capacity fee in addition to and in lieu.** The licensee of any fixed load motor vehicle equipped for lifting or towing any disabled, impounded, or abandoned vehicle or part thereof, may pay a capacity fee of twenty-five dollars in addition to all other fees required for the annual licensing of motor vehicles in lieu of the licensing fees provided in RCW 46.16.070. [1986 c 18 § 5; 1975 c 25 § 16; 1963 c 18 § 1.]

Effective date—1986 c 18: See RCW 46.87.901.

46.16.080 Fixed load machines—Capacity fee in addition to and in lieu—Exception. In lieu of the licensing fee provided for motor vehicles in RCW 46.16.070 there shall be collected, in addition to all other fees required for annual licensing of vehicles:

(1) A capacity fee of five dollars on any motor truck, truck tractor, tractor, trailer, or semitrailer used only for the purpose of transporting any well drilling machine, air compressor, rock crusher, conveyor, hoist, wrecker, donkey engine, cook house, tool house, bunk house, or similar machine or structure attached to or made a part of such motor truck, truck tractor, tractor, trailer, or semitrailer;

(2) No fee may be collected under this section or under RCW 46.16.085 on any travel trailer that will be charged fees and taxes under RCW 46.01.140, 46.16.060, 46.16.063 and chapter 82.50 RCW;

(3) For each vehicle used exclusively in the transportation of circus, carnival, and show equipment and in the transportation of supplies used in conjunction therewith, a capacity fee of ten dollars shall be charged in addition to all other fees required for the annual licensing of these vehicles. [1986 c 18 § 6; 1975 c 25 § 17; 1961 c 12 § 46.16.080. Prior: 1957 c 269 § 17; 1955 c 363 § 5; prior: 1955 c 139 § 22; 1950 ex.s. c 15 § 1, part; 1949 c 220 § 10, part; 1947 c 200 § 15, part; 1941 c 224 § 1, part; 1939 c 182 § 3, part; 1937 c 188 § 17, part; Rem. Supp. 1949 § 6312-17, part; 1931 c 140 § 1, part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; RRS § 6326, part.]

Effective date—1986 c 18: See RCW 46.87.901.

46.16.083 Converter gear—Optional methods of licensing. A converter gear used to convert a semitrailer into a trailer or a two-axle tractor into a three-axle tractor or used in any other manner to increase the number of axles of a vehicle may, at the option of the owner, be licensed as a separate vehicle or the converter gear and the vehicle with which it is used may be licensed as a combination, in which event the combination of the two will be considered as a single vehicle for the purposes of this chapter.

Where converter gears are licensed separately the maximum gross weight including the load must be included in the licensed gross weight of the power unit. [1986 c 18 § 7; 1969 ex.s. c 170 § 4; 1961 c 12 § 46.16.083. Prior: 1959 c 319 § 22; 1955 c 384 § 9.]

Effective date—1986 c 18: See RCW 46.87.901.

46.16.085 Commercial trailers, converter gear—Fee in lieu. In lieu of all other licensing fees, an annual license fee of thirty-six dollars shall be collected in addition to the excise tax prescribed in chapter 82.44 RCW for: (1) Each trailer and semitrailer not subject to the license fee under RCW 46.16.065 or the capacity fees under RCW 46.16.080; (2) every pole trailer; (3) every converter gear or auxiliary axle not licensed as a combination under the provisions of RCW 46.16.083. The proceeds from this fee shall be distributed in accordance with RCW 46.68.035. This section does not

pertain to travel trailers or personal use trailers that are not used for commercial purposes or owned by commercial enterprises. [1989 c 156 § 2; 1987 c 244 § 4; 1986 c 18 § 8; 1985 c 380 § 16.]

Application—1989 c 156: See note following RCW 46.16.070.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

46.16.088 Transfer of license plates—Penalty. Except as provided in RCW 46.16.290, the transfer of license plates issued pursuant to this chapter between two or more vehicles is a traffic infraction subject to a fine not to exceed five hundred dollars. Any law enforcement agency that determines that a license plate has been transferred between two or more vehicles shall confiscate the license plates and return them to the department for nullification along with full details of the reasons for confiscation. Each vehicle identified in the transfer will be issued a new license plate upon application by the owner or owners thereof and payment of the full fees and taxes. [1986 c 18 § 9; 1985 c 380 § 17.]

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

46.16.090 Gross weight fees on farm vehicles—Penalty. Motor trucks, truck tractors, and tractors may be specially licensed based on the declared gross weight thereof for the various amounts set forth in the schedule provided in RCW 46.16.070 less twenty-three dollars; divide the difference by two and add twenty-three dollars, when such vehicles are owned and operated by farmers, but only if the following condition or conditions exist:

(1) When such vehicles are to be used for the transportation of the farmer's own farm, orchard, or dairy products, or the farmer's own private sector cultured aquatic products as defined in RCW 15.85.020, from point of production to market or warehouse, and of supplies to be used on the farmer's farm. Fish other than those that are such private sector cultured aquatic products and forestry products are not considered as farm products; and/or

(2) When such vehicles are to be used for the infrequent or seasonal transportation by one farmer for another farmer in the farmer's neighborhood of products of the farm, orchard, dairy, or aquatic farm owned by the other farmer from point of production to market or warehouse, or supplies to be used on the other farm, but only if transportation for another farmer is for compensation other than money. Farmers shall be permitted an allowance of an additional eight thousand pounds, within the legal limits, on such vehicles, when used in the transportation of the farmer's own farm machinery between the farmer's own farm or farms and for a distance of not more than thirty-five miles from the farmer's farm or farms.

The department shall prepare a special form of application to be used by farmers applying for licenses under this section, which form shall contain a statement to the effect that the vehicle concerned will be used subject to

the limitations of this section. The department shall prepare special insignia which shall be placed upon all such vehicles to indicate that the vehicle is specially licensed, or may, in its discretion, substitute a special license plate for such vehicle for such designation.

Operation of such a specially licensed vehicle in transportation upon public highways in violation of the limitations of this section is a traffic infraction. [1989 c 156 § 3; 1986 c 18 § 10. Prior: 1985 c 457 § 16; 1985 c 380 § 18; 1979 ex.s. c 136 § 45; 1977 c 25 § 1; 1969 ex.s. c 169 § 1; 1961 c 12 § 46.16.090; prior: 1957 c 273 § 13; 1955 c 363 § 6; prior: 1953 c 227 § 1; 1951 c 269 § 12; 1950 ex.s. c 15 § 1, part; 1949 c 220 § 10, part; 1947 c 200 § 15, part; 1941 c 224 § 1, part; 1939 c 182 § 3, part; 1937 c 188 § 17, part; Rem. Supp. 1949 § 6312-17, part; 1931 c 140 § 1, part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; RRS § 6326, part.]

Application—1989 c 156: See note following RCW 46.16.070.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Effective date—**Severability**—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.16.111 Gross weight, how computed. The gross weight in the case of any motor truck, tractor, or truck tractor shall be the scale weight of the motor truck, tractor, or truck tractor, plus the scale weight of any trailer, semitrailer, converter gear, or pole trailer to be towed thereby, to which shall be added the weight of the maximum load to be carried thereon or towed thereby as set by the licensee in the application if it does not exceed the weight limitations prescribed by chapter 46.44 RCW. If the sum of the scale weight and maximum load of the trailer is not greater than four thousand pounds, that sum shall not be computed as part of the gross weight of any motor truck, tractor, or truck tractor. Where the trailer is a utility trailer, travel trailer, horse trailer, or boat trailer, for the personal use of the owner of the truck, tractor, or truck tractor, and not for sale or commercial purposes, the gross weight of such trailer and its load shall not be computed as part of the gross weight of any motor truck, tractor, or truck tractor. The weight of any camper is exempt from the determination of gross weight in the computation of any licensing fees required under RCW 46.16.070.

The gross weight in the case of any bus, auto stage, or for hire vehicle, except taxicabs, with a seating capacity over six, shall be the scale weight of each bus, auto stage, and for hire vehicle plus the seating capacity, including the operator's seat, computed at one hundred and fifty pounds per seat.

If the resultant gross weight, according to this section, is not listed in RCW 46.16.070, it shall be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW. [1987 c 244 § 5; 1986 c 18 § 11; 1971 ex.s. c 231 § 1; 1969 ex.s. c 170 § 6; 1967 ex.s. c 83 § 57.]

Effective date—1986 c 18: See RCW 46.87.901.

Effective date—1971 c 231: See note following RCW 46.01.130.

Severability—**Effective dates**—1967 ex.s. c 83: See RCW 47-26.900 and 47.26.910.

46.16.121 Seating capacity fees on stages, for hire vehicles. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually, for each auto stage and for hire vehicle, except taxicabs, with a seating capacity of six or less the sum of fifteen dollars. [1967 ex.s. c 83 § 58.]

Severability—**Effective dates**—1967 ex.s. c 83: See RCW 47-26.900 and 47.26.910.

46.16.125 Mileage fees on stages—Penalty. In addition to the fees required by RCW 46.16.070, operators of auto stages with seating capacity over six shall pay quarterly, at the time they file gross earning returns with the utilities and transportation commission, the sum of fifteen cents for each one hundred vehicle miles operated by each auto stage over the public highways of this state: *Provided*, That in the case of each auto stage propelled by steam, electricity, natural gas, diesel oil, butane or propane, the payment required hereunder shall be twenty cents per one hundred miles of such operation. The commission shall transmit all such sums so collected to the state treasurer, who shall deposit the same in the motor vehicle fund. Any person failing to make any payment required by this section shall be subject to a penalty of one hundred percent of the payment due hereunder, in addition to any penalty provided for failure to submit a quarterly report. Any penalties so collected shall be credited to the public service revolving fund. [1967 ex.s. c 83 § 60; 1961 c 12 § 46.16.125. Prior: 1951 c 269 § 14.]

Severability—**Effective dates**—1967 ex.s. c 83: See RCW 47-26.900 and 47.26.910.

46.16.135 Monthly license fee—Penalty. The annual vehicle licensing fees as provided in RCW 46.16.070 for any motor vehicle or combination of vehicles having a declared gross weight in excess of twelve thousand pounds may be paid for any full registration month or months at one-twelfth of the usual annual fee plus two dollars, this sum to be multiplied by the number of full months for which the fees are paid if for less than a full year. An additional fee of two dollars shall be collected each time a license fee is paid.

Operation of a vehicle licensed under the provisions of this section by any person upon the public highways after the expiration of the monthly license is a traffic infraction, and in addition the person shall be required to pay a license fee for the vehicle involved covering an entire registration year's operation, less the fees for any registration month or months of the registration year already paid. If, within five days, no license fee for a full registration year has been paid as required aforesaid, the Washington state patrol, county sheriff, or city police shall impound such vehicle in such manner as may be directed for such cases by the chief of the Washington state patrol, until such requirement is met. [1986 c 18 § 12; 1985 c 380 § 19; 1979 ex.s. c 136 § 46; 1979 c 134 § 1; 1975-'76 2nd ex.s. c 64 § 3; 1975 1st ex.s. c 118 § 6;

1969 ex.s. c 170 § 7; 1961 c 12 § 46.16.135. Prior: 1951 c 269 § 16.]

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Effective date—**Severability**—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—**Severability**—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Effective date—**Severability**—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

46.16.140 Overloading licensed capacity—Additional license—Penalties—Exceptions. It is a traffic infraction for any person to operate, or cause, permit, or suffer to be operated upon a public highway of this state any bus, auto stage, motor truck, truck tractor, or tractor, with passengers, or with a maximum gross weight, in excess of that for which the motor vehicle or combination is licensed.

Any person who operates or causes to be operated upon a public highway of this state any motor truck, truck tractor, or tractor with a maximum gross weight in excess of the maximum gross weight for which the vehicle is licensed shall be deemed to have set a new maximum gross weight and shall, in addition to any penalties otherwise provided, be required to purchase a new license covering the new maximum gross weight, and any failure to secure such new license is a traffic infraction. No such person may be permitted or required to purchase the new license for a gross weight or combined gross weight which would exceed the maximum gross weight or combined gross weight allowed by law. This section does not apply to for hire vehicles, buses, or auto stages operating principally within cities and towns. [1986 c 18 § 13; 1979 ex.s. c 136 § 47; 1961 c 12 § 46.16.140. Prior: 1955 c 384 § 16; 1951 c 269 § 18; 1937 c 188 § 25, part; RRS § 6312-25, part.]

Effective date—1986 c 18: See RCW 46.87.901.

Effective date—**Severability**—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.16.145 Overloading licensed capacity—Penalties. Any person violating any of the provisions of RCW 46.16.140 shall, upon a first offense, pay a penalty of not less than twenty-five dollars nor more than fifty dollars; upon a second offense pay a penalty of not less than fifty dollars nor more than one hundred dollars, and in addition the court may suspend the certificate of license registration of the vehicle for not more than thirty days; upon a third and subsequent offense pay a penalty of not less than one hundred dollars nor more than two hundred dollars, and in addition the court shall suspend the certificate of license registration of the vehicle for not less than thirty days nor more than ninety days.

Upon ordering the suspension of any certificate of license registration, the court or judge shall forthwith secure such certificate and mail it to the director. [1979 ex.s. c 136 § 48; 1975-'76 2nd ex.s. c 64 § 5; 1961 c 12 § 46.16.145. Prior: 1951 c 269 § 19; 1937 c 188 § 25, part; RRS § 6312-25, part.]

Rules of court: *Monetary penalty schedule*—JTIR 6.2.

Effective date—**Severability**—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—**Severability**—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.16.150 School buses exempt from load and seat capacity fees. No provision of the law of this state shall be construed to require for hire vehicle license or adult seating capacity fees, either directly or indirectly for the transportation of school children or teachers, or both, to and from school and other school activities, or either, whether the same be done in motor vehicles owned, leased, rented or used by the school authority or upon contract to furnish such transportation: *Provided*, That this section shall apply to vehicles used exclusively for the purpose set forth and in the event that any vehicle so used is also used for any other purpose, such vehicle shall be appropriately licensed for such other purpose, as required by this chapter. [1961 c 12 § 46.16.150. Prior: 1937 c 188 § 22; RRS § 6312-22.]

46.16.160 Vehicle trip permits—Restrictions and requirements—Fees and taxes—Penalty—Rules.

(1) The owner of a vehicle which under reciprocal relations with another jurisdiction would be required to obtain a license registration in this state or an unlicensed vehicle which would be required to obtain a license registration for operation on public highways of this state may, as an alternative to such license registration, secure and operate such vehicle under authority of a trip permit issued by this state in lieu of a Washington certificate of license registration, and licensed gross weight if applicable. Trip permits may also be issued for movement of mobile homes pursuant to RCW 46.44.170. For the purpose of this section, a vehicle is considered unlicensed if the licensed gross weight currently in effect for the vehicle or combination of vehicles is not adequate for the load being carried. Vehicles registered under RCW 46.16.135 shall not be operated under authority of trip permits in lieu of further registration within the same registration year.

(2) Each trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for such vehicle for a period of three consecutive days commencing with the day of first use. No more than three such permits may be used for any one vehicle in any period of thirty consecutive days. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The trip permit shall be displayed on the vehicle to which it is issued as prescribed by the department.

(3) Vehicles operating under authority of trip permits are subject to all laws, rules, and regulations affecting the operation of like vehicles in this state.

(4) Prorate operators operating commercial vehicles on trip permits in Washington shall retain the customer copy of such permit for four years.

(5) Blank trip permits may be obtained from field offices of the department of transportation, Washington state patrol, department of licensing, or other agents appointed by the department. For each permit issued, there shall be collected a filing fee as provided by RCW 46.01.140, an administrative fee of eight dollars, and an excise tax of one dollar. If the filing fee amount of one dollar prescribed by RCW 46.01.140 is increased or decreased after January 1, 1981, the administrative fee shall be adjusted to compensate for such change to insure that the total amount collected for the filing fee, administrative fee, and excise tax remain at ten dollars. These fees and taxes are in lieu of all other vehicle license fees and taxes. No exchange, credits, or refunds may be given for trip permits after they have been purchased.

(6) The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(7) A violation of or a failure to comply with any provision of this section is a gross misdemeanor.

(8) The department of licensing may adopt rules as it deems necessary to administer this section.

(9) All administrative fees and excise taxes collected under the provisions of this chapter shall be forwarded by the department with proper identifying detailed report to the state treasurer who shall deposit the administrative fees to the credit of the motor vehicle fund and the excise taxes to the credit of the general fund. Filing fees will be forwarded and reported to the state treasurer by the department as prescribed in RCW 46.01.140. [1987 c 244 § 6; 1981 c 318 § 1; 1977 ex.s. c 22 § 5; 1975-'76 2nd ex.s. c 64 § 6; 1969 ex.s. c 170 § 8; 1961 c 306 § 1; 1961 c 12 § 46.16.160. Prior: 1957 c 273 § 3; 1955 c 384 § 17; 1949 c 174 § 1; 1947 c 176 § 1; 1937 c 188 § 24; Rem. Supp. 1949 § 6312-24.]

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

Effective dates—**Severability**—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.16.170 Marking gross weight on vehicle. Every motor truck, truck tractor, and tractor with a licensed gross weight in excess of ten thousand pounds, shall have painted or stenciled upon the outside thereof, in a conspicuous place, in letters not less than two inches high, the maximum gross weight or combined gross weight for which the same is licensed, as provided in this chapter. It is unlawful for the owner or operator of any vehicle to display a maximum gross weight or combined gross weight other than that shown on the current certificate of license registration of the vehicle. [1988 c 56 § 2; 1986 c 18 § 14; 1961 c 12 § 46.16.170. Prior: 1937 c 188 § 19; RRS § 6312-19.]

Effective date—1986 c 18: See RCW 46.87.901.

46.16.180 Unlawful to carry passengers for hire without license. It shall be unlawful for the owner or operator of any vehicle not licensed annually for hire or as

an auto stage and for which additional seating capacity fee as required by this chapter has not been paid, to carry passengers therein for hire. [1961 c 12 § 46.16.180. Prior: 1937 c 188 § 20; RRS § 6312-20.]

46.16.200 Applications to agents—Transmittal to director. Upon receipt by agents of the director, including county auditors, of original applications for vehicle license accompanied by the proper fees, such agents shall, if the applications are in proper form and accompanied by such information as may be required by the director, immediately forward them, together with the fees to the director. [1961 c 12 § 46.16.200. Prior: 1955 c 259 § 1; 1955 c 89 § 4; 1947 c 164 § 10; 1937 c 188 § 33; Rem. Supp. 1947 § 6312-33; 1921 c 96 § 6, part; 1917 c 155 § 4, part; 1915 c 142 § 6, part; RRS § 6317, part.]

46.16.210 Original applications—Renewals—Fees—Preissuance, when. (1) Upon receipt of the application and proper fee for original vehicle license, the director shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county auditor or other agent to effectively secure the correction of such error, who shall return the same corrected to the director.

(2) Application for the renewal of a vehicle license shall be made to the director or his agents, including county auditors, by the registered owner on a form prescribed by the director. The application must be accompanied by the certificate of registration for the last registration period in which the vehicle was registered in Washington unless the applicant submits a preprinted application mailed from Olympia, and the payment of such license fees and excise tax as may be required by law. Such application shall be handled in the same manner and the fees transmitted to the state treasurer in the same manner as in the case of an original application. Any such application which upon validation becomes a renewal certificate need not have entered upon it the name of the lien holder, if any, of the vehicle concerned.

(3) Persons expecting to be out of the state during the normal forty-five day renewal period of a vehicle license may secure renewal of such vehicle license for a period of thirty days prior thereto and have license plates or tabs preissued by making application to the director or his agents upon forms prescribed by the director. The application must be accompanied by the certificate of registration for the last registration period in which the vehicle was registered in Washington and be accompanied by such license fees, including a special handling fee of two dollars; one dollar to be retained by the issuing agency, and one dollar to be deposited in the highway safety fund, and excise tax as may be required by law.

(4) Application for the annual renewal of a vehicle license number plate to the director or his agents shall not be required for those vehicles owned, rented, or leased by the state of Washington, or by any county, city, town, school district, or other political subdivision of the state of Washington. [1977 c 8 § 1. Prior: 1975 1st ex.s. c 169

§ 6; 1975 1st ex.s. c 118 § 8; 1969 ex.s. c 75 § 1; 1961 c 12 § 46.16.210; prior: 1957 c 273 § 5; 1955 c 89 § 2; 1953 c 252 § 3; 1947 c 164 § 11; 1937 c 188 § 34; Rem. Supp. 1947 § 6312-34.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

46.16.212 Notice of liability insurance requirement.

The department of licensing shall notify the public of the requirements of RCW 46.30.020 through 46.30.040 at the time of new vehicle registration and when the department sends a registration renewal notice. [1989 c 353 § 10.]

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

46.16.216 Payment of parking fines required for renewal. (1) To renew a vehicle license, an applicant shall satisfy all listed standing, stopping, and parking violations for the vehicle incurred while the vehicle was registered in the applicant's name and forwarded to the department pursuant to RCW 46.20.270(3). For the purposes of this section, "listed" standing, stopping, and parking violations include only those violations for which notice has been received from local agencies by the department one hundred fifty days or more before the date the vehicle license expires and that are placed on the records of the department. Notice of such violations received by the department later than one hundred fifty days before that date that are not satisfied shall be considered by the department in connection with any applications for license renewal in any subsequent license year. The renewal application may be processed by the department or its agents only if the applicant:

(a) Presents a preprinted renewal application showing no listed standing, stopping, and parking violations, or in the absence of such presentation, the agent verifies the information that would be contained on the preprinted renewal application; or

(b) If listed standing, stopping, and parking violations exist, presents proof of payment and pays a ten dollar surcharge.

(2) The ten dollar surcharge shall be allocated as follows:

(a) Five dollars shall be deposited in the motor vehicle fund to be used exclusively for the administrative costs of the department of licensing; and

(b) Five dollars shall be retained by the agent handling the renewal application to be used by the agent for the administration of this section.

(3) If there is a change in the registered owner of the vehicle, the department shall forward the information regarding the change to the local charging jurisdiction and release any hold on the renewal of the vehicle license resulting from parking violations incurred while the certificate of license registration was in a previous registered owner's name.

(4) The department shall send to all registered owners of vehicles who have been reported to have outstanding listed parking violations, at the time of renewal, a statement setting out the dates and jurisdictions in which the

violations occurred as well as the amounts of unpaid fines and penalties relating to them and the surcharge to be collected. [1984 c 224 § 1.]

Severability—1984 c 224: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 224 § 5.]

Effective date—1984 c 224: "This act shall take effect on July 1, 1984." [1984 c 224 § 6.]

46.16.220 Time of renewal of licenses—Duration.

Vehicle licenses and vehicle license number plates may be renewed for the subsequent registration year on and after the forty-fifth day prior to the end of the current registration year and must be used and displayed from the date of issue or from the day of the expiration of the preceding registration year, whichever date is later: *Provided*, That in no case shall a citation be issued for non-registration prior to the first day of the month following the calendar month in which vehicle licenses and vehicle license number plates are to be renewed. [1975 1st ex.s. c 118 § 9; 1969 ex.s. c 170 § 9; 1961 c 12 § 46.16.220. Prior: 1957 c 261 § 8; 1955 c 89 § 1; 1953 c 252 § 4; 1947 c 164 § 12; 1937 c 188 § 35; Rem. Supp. 1947 § 6312-35; 1921 c 96 § 7, part; RRS § 6318, part; 1921 c 6 § 1, part; 1916 c 142 § 7, part.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

46.16.225 Adjustment of vehicle registration periods to stagger renewal periods. Notwithstanding any provision of law to the contrary, the department may extend or diminish vehicle license registration periods for the purpose of staggering renewal periods. Such extension or diminishment of a vehicle license registration period shall be by rule of the department adopted in accordance with the provisions of chapter 34.05 RCW. The rules may provide for the omission of any classes or classifications of vehicle from the staggered renewal system and may provide for the gradual introduction of classes or classifications of vehicles into the system. The rules shall provide for the collection of proportionately increased or decreased vehicle license registration fees and of excise or property taxes required to be paid at the time of registration.

It is the intent of the legislature that there shall be neither a significant net gain nor loss of revenue to the state general fund or the motor vehicle fund as the result of implementing and maintaining a staggered vehicle registration system. [1986 c 18 § 15; 1979 c 158 § 140; 1975 1st ex.s. c 118 § 2.]

Effective date—1986 c 18: See RCW 46.87.901.

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

46.16.230 License plates to be furnished. The director shall furnish to all persons making satisfactory application for vehicle license as provided by law, two identical vehicle license number plates each containing the vehicle license number to be displayed on such vehicle as by law required: *Provided*, That if the vehicle to be licensed is a trailer, semitrailer or motorcycle only

one vehicle license number plate shall be issued for each thereof. The number and plate shall be of such size and color and shall contain such symbols indicative of the registration period for which the same is issued and of the state of Washington, as shall be determined and prescribed by the director. Any vehicle license number plate or plates issued to a dealer shall contain thereon a sufficient and satisfactory indication that such plates have been issued to a dealer in vehicles. All vehicle license number plates may be obtained by the director from the metal working plant of the state penitentiary at Walla Walla or from any source in accordance with existing state of Washington purchasing procedures.

Notwithstanding the foregoing provisions of this section, the director may, in his discretion and under such rules and regulations as he may prescribe, adopt a type of vehicle license number plates whereby the same shall be used as long as legible on the vehicle for which issued, with provision for tabs or emblems to be attached thereto or elsewhere on the vehicle to signify renewals, in which event the term "vehicle license number plate" as used in any enactment shall be deemed to include in addition to such plate the tab or emblem signifying renewal except when such plate contains the designation of the current year without reference to any tab or emblem. Renewals shall be effected by the issuance and display of such tab or emblem. [1975 c 25 § 19; 1961 c 12 § 46.16.230. Prior: 1957 c 261 § 9; 1949 c 90 § 1; 1939 c 182 § 5; 1937 c 188 § 28; Rem. Supp. 1949 § 6312-28; 1921 c 96 § 12; 1921 c 6 § 2; 1919 c 59 § 7; 1917 c 155 § 8; 1915 c 142 § 12; RRS § 6323.]

46.16.235 License plates to designate name of state of Washington without abbreviation. Vehicle license number plates issued by the state of Washington commencing with the next general issuance of such plates shall be so designed as to designate the name of the state of Washington in full without abbreviation. [1965 ex.s. c 78 § 2.]

46.16.237 License plates to be treated with reflectorized materials—Fee. All vehicle license number plates issued after January 1, 1968, or such earlier date as the director may prescribe with respect to plates issued in any county, shall be treated with fully reflectorized materials designed to increase the visibility and legibility of such plates at night. In addition to all other fees prescribed by law, there shall be paid and collected for each vehicle license number plate treated with such materials, the sum of fifty cents and for each set of two plates, the sum of one dollar: *Provided, however,* One plate is available only to those vehicles that by law require only one plate. Such fees shall be deposited in the motor vehicle fund. [1987 c 52 § 1; 1967 ex.s. c 145 § 60.]

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.16.240 Attachment of plates to vehicles—Violations enumerated. The vehicle license number plates shall be attached conspicuously at the front and rear of each vehicle for which the same are issued and in such a

manner that they can be plainly seen and read at all times: *Provided,* That if only one license number plate is legally issued for any vehicle such plate shall be conspicuously attached to the rear of such vehicle. Each vehicle license number plate shall be placed or hung in a horizontal position at a distance of not less than one foot nor more than four feet from the ground and shall be kept clean so as to be plainly seen and read at all times: *Provided, however,* That in cases where the body construction of the vehicle is such that compliance with this section is impossible, permission to deviate therefrom may be granted by the state patrol. It shall be unlawful to display upon the front or rear of any vehicle, vehicle license number plate or plates other than those furnished by the director for such vehicle or to display upon any vehicle any vehicle license number plate or plates which have been in any manner changed, altered, disfigured or have become illegible. License plate frames may be used on vehicle license number plates only if the frames do not obscure license tabs or identifying letters or numbers on the plates and the plates can be plainly seen and read at all times. It is unlawful to use any holders, frames, or any materials that in any manner change, alter, or make the vehicle license number plates illegible. It shall be unlawful for any person to operate any vehicle unless there shall be displayed thereon valid vehicle license number plates attached as herein provided. [1987 c 330 § 704; 1987 c 142 § 3; 1969 ex.s. c 170 § 10; 1967 c 32 § 18; 1961 c 12 § 46.16.240. Prior: 1947 c 89 § 1; 1937 c 188 § 36; Rem. Supp. 1947 § 6312-36.]

Reviser's note: This section was amended by 1987 c 142 § 3 and by 1987 c 330 § 704, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Rules of court: *Monetary penalty schedule—JTIR 6.2.*

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.16.260 License registration certificate—Signature required—Carried in vehicle—Penalty—Inspection—Exception. A certificate of license registration to be valid must have endorsed thereon the signature of the registered owner (if a firm or corporation, the signature of one of its officers or other duly authorized agent) and must be carried in the vehicle for which it is issued, at all times in the manner prescribed by the department. It shall be unlawful for any person to operate or have in his possession a vehicle without carrying thereon such certificate of license registration. Any person in charge of such vehicle shall, upon demand of any of the local authorities or of any police officer or of any representative of the department, permit an inspection of such certificate of license registration. This section does not apply to a vehicle for which annual renewal of its license plates is not required and which is marked in accordance with the provisions of RCW 46.08.065. [1986 c 18 § 16; 1979 ex.s. c 113 § 3; 1969 ex.s. c 170 § 11; 1967 c 32 § 19; 1961 c 12 § 46.16.260. Prior: 1955 c 384 § 18; 1937 c 188 § 8; RRS § 6312-8.]

Effective date—1986 c 18: See RCW 46.87.901.

46.16.270 Replacement of plates—Fee. Replacement plates issued after January 1, 1987, will be centennial plates as described in RCW 46.16.650. Revenues generated from the centennial plate shall go in part to support local and state centennial activities as provided in RCW 27.60.080. One dollar per plate of the replacement plate fee(s) will be distributed as follows: From January 1, 1987, through June 30, 1989, one-half of the fee shall be deposited in the centennial commission account, and the remainder shall be deposited in the motor vehicle fund. Commencing July 1, 1989, the total replacement plate fee including the one dollar per plate centennial plate fee shall be deposited in the motor vehicle fund.

Upon the loss, defacement, or destruction of one or both of the vehicle license number plates issued for any vehicle where more than one plate was originally issued or where one or both have become so illegible or in such a condition as to be difficult to distinguish, or upon the owner's option, the owner of the vehicle shall make application for new vehicle license number plates upon a form furnished by the director, upon which form it shall be required that the owner, if appropriate and in addition to other requirements, make a complete statement as to the cause of the loss, defacement, or destruction of the original plate or plates, which statement shall be subscribed and sworn to before a notary public or other person authorized to certify to statements upon vehicle license applications. Such application shall be filed with the director or the director's authorized agent, accompanied by the certificate of license registration of the vehicle and a fee in the amount of three dollars per plate, whereupon the director, or the director's authorized agent, shall issue new vehicle license number plates to the applicant. It shall be accompanied by a fee of two dollars for a new motorcycle license number plate. In the event the director has issued license period tabs or a windshield emblem instead of vehicle license number plates, and upon the loss, defacement, or destruction of the tabs or windshield emblem, application shall be made on a form provided by the director and in the same manner as above described, and shall be accompanied by a fee of one dollar for each pair of tabs or for each windshield emblem, whereupon the director shall issue to the applicant a duplicate pair of tabs or a windshield emblem to replace those lost, defaced, or destroyed. For those vehicles owned, rented, or leased by the state of Washington or by any county, city, town, school district, or other political subdivision of the state of Washington or United States government, or owned or leased by the governing body of an Indian tribe as defined in RCW 46.16.020, a fee shall be charged for replacement of a vehicle license number plate only to the extent required by the provisions of RCW 46.16.020, 46.16.061, 46.16.237, and 46.01.140. For those vehicles owned, rented, or leased by foreign countries or international bodies to which the United States government is a signatory by treaty, the payment of any fee for the replacement of a vehicle license number plate shall not be required. [1987 c 178 § 2. Prior: 1986 c 280 § 4; 1986 c 30 § 3; 1975 1st ex.s. c 169 § 7; 1965 ex.s. c 78 § 1;

1961 c 12 § 46.16.270; prior: 1951 c 269 § 6; 1947 c 164 § 13; 1937 c 188 § 37; Rem. Supp. 1947 § 6312-37; 1929 c 99 § 6; 1921 c 96 § 14; 1919 c 59 § 8; 1915 c 142 § 14; RRS § 6325.]

46.16.276 Implementing rules. The director may make and enforce rules to implement this chapter. [1986 c 30 § 4.]

46.16.280 Sale, loss, or destruction of commercial vehicle—Credit for unused fee—Change in license classification. In case of loss, destruction, sale, or transfer of any motor vehicle with a registered gross weight in excess of twelve thousand pounds and subject to the license fees under RCW 46.16.070, the registered owner thereof may, under the following conditions, obtain credit for the unused portion of the licensing fee paid for the vehicle or may transfer such credit to the new owner if desired:

(1) The licensing fee paid for the motor vehicle will be reduced by one-twelfth for each calendar month and fraction thereof elapsing between the first month of the current registration year in which the motor vehicle was registered and the month the registrant surrenders the vehicle's registration certificate for the registration year to the department or an authorized agent of the department.

(2) If any such credit is less than fifteen dollars, no credit may be given.

(3) The credit may only be applied against the licensing fee liability due under RCW 46.16.070 for the replacement motor vehicle or if such credit was transferred to the new owner, it shall remain with the vehicle. The credit may only be used during the registration year from which it was obtained.

(4) In no event is such credit subject to refund.

Whenever any vehicle has been so altered as to change its license classification in such a manner that the vehicle license number plates are rendered improper, the current license plates shall be surrendered to the department. New license plates shall be issued upon application accompanied by a one dollar fee in addition to any other or different charge by reason of licensing under a new classification. Such application shall be on forms prescribed by the department and forwarded with the proper fee to the department or the office of a duly authorized agent of the department. [1987 c 244 § 7; 1986 c 18 § 17; 1967 c 32 § 20; 1961 c 12 § 46.16.280. Prior: 1947 c 164 § 14; 1937 c 188 § 38; Rem. Supp. 1947 § 6312-38.]

Effective date—1986 c 18: See RCW 46.87.901.

46.16.290 License certificate and plates follow vehicle on transfer—Exceptions. In any case of a valid sale or transfer of the ownership of any vehicle, the right to the certificates properly transferable therewith, except as provided in RCW 46.16.280, and to the vehicle license plates passes to the purchaser or transferee. It is unlawful for the holder of such certificates, except as provided in RCW 46.16.280, or vehicle license plates to

fail, neglect, or refuse to endorse the certificates and deliver the vehicle license plates to the purchaser or transferee. If the sale or transfer is of a vehicle licensed by the state or any county, city, town, school district, or other political subdivision entitled to exemption as provided by law, or, if the vehicle is licensed with personalized plates, amateur radio operator plates, medal of honor plates, disabled person plates, disabled veteran plates, or prisoner of war plates, the vehicle license plates therefor shall be retained and may be displayed upon a vehicle obtained in replacement of the vehicle so sold or transferred. [1986 c 18 § 18; 1983 c 27 § 2; 1961 c 12 § 46.16.290. Prior: 1937 c 188 § 39; RRS § 6312-39; 1931 c 138 § 2; 1929 c 99 § 3; 1921 c 96 § 8; 1919 c 59 § 5; 1917 c 155 § 5; 1915 c 142 § 8; RRS § 6319.]

Effective date—1986 c 18: See RCW 46.87.901.

46.16.310 Vehicles over forty years old—"Horseless carriage" licenses. Notwithstanding any other provisions of this chapter, any motor vehicle which is not less than forty years old and is owned and operated primarily as a collector's item shall, upon application and acceptance in the manner and at the time prescribed by the department, be issued a special commemorative license plate in lieu of the regular license plates. Any vehicles to be so licensed must be in good running order. In addition to paying all other initial fees required by law, each applicant shall pay a fee of twenty-five dollars, which fee shall entitle him to one permanent license plate valid for the life of the vehicle. The single plate shall be displayed on the rear of the vehicle.

The registration numbers and special license plates assigned to such motor vehicles shall run in a separate numerical series, commencing with "Horseless Carriage No. 1." The plates shall be of a distinguishing color.

In the event of defacement, loss, or destruction of such special plate, the owner shall apply for a replacement plate in the same manner as prescribed by law for the replacement of regular plates.

All fees collected under this section shall be deposited in the state treasury and credited to the motor vehicle fund. [1988 c 15 § 1; 1982 c 143 § 1; 1971 ex.s. c 114 § 1; 1961 c 12 § 46.16.310. Prior: 1955 c 100 § 1.]

Severability—1971 ex.s. c 114: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 114 § 6.]

46.16.311 "Horseless Carriage" plates on vehicles manufactured after 1931. The provisions of RCW 46.16.310 shall not, invalidate or make unlawful the use of "Horseless Carriage" license plates presently used on motor vehicles manufactured and built after 1931, except that in the event of the defacement, loss, or destruction of any commemorative plate issued to a vehicle manufactured after 1931, no replacement commemorative plate shall be issued to such vehicle. [1971 ex.s. c 114 § 2.]

Severability—1971 ex.s. c 114: See note following RCW 46.16.310.

46.16.315 Collector's vehicle older than thirty years—Special plates—Fees, disposition. Notwithstanding any other provisions of law, any motor vehicle, more than thirty years old, and owned and operated primarily as a collector's item, shall, upon application and acceptance in the manner and at the time prescribed by the department, be authorized in lieu of the regular license plates to carry as the correct license for that vehicle a Washington state license plate or pair of duplicate plates designated for use in the year of the manufacturing of said vehicle, and bearing the date thereof. Any vehicles to be so licensed must be in good running order. In addition to paying all other fees required by law, each applicant shall pay a fee of twenty-five dollars, which fee shall entitle him to have said plate or plates certified as the permanent plate or plates of that vehicle, valid for the life of that vehicle.

All fees collected under this section shall be deposited in the state treasury, and credited to the motor vehicle fund. [1971 ex.s. c 114 § 3.]

Severability—1971 ex.s. c 114: See note following RCW 46.16.310.

46.16.320 Amateur radio operator plates—Fees—Deposit. Every person having a valid official amateur radio operator's license issued for a term of five years by the federal communications commission, is entitled to apply to the director for, and upon satisfactory showing, to receive, in lieu of the regular motor vehicle license plates similar plates bearing the official amateur radio call letters of the applicant assigned by the federal communications commission instead of numbers.

In addition to the annual license fee collected under chapter 46.16 RCW and chapter 82.44 RCW, there shall be collected from each applicant for such special license plates an additional license fee of five dollars upon the issue of a state plate but shall not apply on those years that a yearly tab is issued. Such special fee shall be deposited in the motor vehicle fund. Application for renewal of the amateur radio operator's call license plate must be made no later than twenty days prior to the end of each registration year, and all such applications shall be accompanied by a notarized statement of facts included on the amateur's valid FCC license. [1975 1st ex.s. c 118 § 10; 1969 ex.s. c 206 § 1; 1967 ex.s. c 145 § 80; 1967 c 32 § 21; 1961 c 12 § 46.16.320. Prior: 1957 c 145 § 1.]

Effective date—**Severability**—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.16.330 Amateur radio operator plates—Disposition of plates upon transfer of interest in vehicle. Whenever the owner of a registered vehicle transfers or assigns his title or interest thereto, the license plates issued under RCW 46.16.320 through 46.16.350 shall be removed from the motor vehicle and, if another vehicle is acquired, attached thereto and the director shall be

immediately notified of such transfer of plates; otherwise the removed plates shall be immediately forwarded to the director to be reissued later upon payment of the regular license fee. [1967 c 32 § 22; 1961 c 12 § 46.16.330. Prior: 1957 c 145 § 2.]

46.16.340 Amateur radio operator plates—Information furnished to community development, state patrol, county sheriffs. The director, from time to time, shall furnish the state department of community development, the Washington state patrol, and all county sheriffs a list of the names, addresses, and license plate or radio station call letters of each person possessing the special amateur radio station license plates so that the facilities of such radio stations may be utilized to the fullest extent in the work of these governmental agencies. [1986 c 266 § 49; 1985 c 7 § 112; 1974 ex.s. c 171 § 43; 1967 c 32 § 23; 1961 c 12 § 46.16.340. Prior: 1957 c 145 § 3.]

Severability—1986 c 266: See note following RCW 38.52.005.

46.16.350 Amateur radio operator plates—Duties of holder when radio license expires or is revoked—Penalty. Any radio amateur operator who holds a special call letter license plate as issued under the provisions of RCW 46.16.320 through 46.16.350, and who has allowed his federal communications commission license to expire, or has had it revoked, must notify the director in writing within thirty days and surrender his call letter license plate. Failure to do so is a traffic infraction. [1979 ex.s. c 136 § 49; 1967 c 32 § 24; 1961 c 12 § 46.16.350. Prior: 1957 c 145 § 4.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.16.371 Special plates for honorary consul, foreign government representative. (1) Every honorary consul or official representative of any foreign government who is a citizen or resident of the United States of America, duly licensed and holding an exequatur issued by the department of state of the United States of America is entitled to apply to the director for, and upon satisfactory showing, and upon payment of regular license fees and excise tax, to receive, in lieu of the regular motor vehicle license plates, such special plates of a distinguishing color and running in a separate numerical series, as the director shall prescribe. Application for renewal of the license plates shall be as prescribed for the license renewal of other vehicles.

(2) Whenever the owner or lessee as provided in subsection (1) of this section transfers or assigns his interest or title in the motor vehicle to which the special plates were attached, the plates shall be removed from the motor vehicle, and if another vehicle is acquired, attached thereto, and the director shall be immediately notified of the transfer of the plates; otherwise the removed plates shall be immediately forwarded to the director to be destroyed. Whenever the owner or lessee as provided in subsection (1) of this section is for any reason relieved of his duties as an honorary consul or official representative of a foreign government, he shall immediately forward

the special plates to the director, who shall upon receipt thereof provide such plates as are otherwise provided by law. [1987 c 237 § 1.]

46.16.381 Special parking privileges for disabled persons—Penalties for unauthorized use or parking. (1) The director shall grant special parking privileges to any person who meets one of the following criteria:

- (a) Loss of both lower limbs;
- (b) Loss of normal or full use of the lower limbs to sufficiently constitute a severe disability;
- (c) Is so severely disabled, that the person cannot move without the aid of crutches or a wheelchair;
- (d) Loss of both hands;
- (e) Suffers from lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry is less than one liter per second; or
- (f) Impairment by cardiovascular disease to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American Heart Association.

(2) Persons with special parking privileges are entitled to receive from the department of licensing both a special card to be left in a vehicle in a conspicuous place and, for one motor vehicle only, a decal to be attached to the vehicle in a conspicuous place designated by the director. Instead of the decal and regular motor vehicle license plates, the disabled persons are entitled to receive a special license plate. The card, decal, and special license plate shall be designed to show distinguishing marks, letters, or numerals indicating that the vehicle is being used to transport a disabled person. Persons using vehicles displaying the special license plate, card, or decal shall be permitted to park in places otherwise reserved for physically disabled persons. The director shall also adopt rules providing for the issuance of special cards to public transportation authorities, nursing homes licensed under chapter 18.51 RCW, senior citizen centers, and private nonprofit agencies as defined in chapter 24.03 RCW that regularly transport disabled persons who have been determined eligible for special parking privileges provided under this section. The special card shall be displayed in a vehicle operated when actually transporting the disabled persons. Public transportation authorities, nursing homes, senior citizen centers, and private nonprofit agencies are responsible for insuring that the special cards are not used improperly and are responsible for all fines and penalties for improper use.

(3) Whenever the disabled person transfers or assigns his or her interest in the vehicle, the special decals or license plate shall be removed from the motor vehicle. The person shall immediately surrender the decal to the director together with a notice of the transfer of interest in the vehicle. If another vehicle is acquired by, or for the primary use of, the disabled person, a new decal shall be issued by the director. If another vehicle is acquired by the disabled person and a special plate is used, the plate shall be attached to the vehicle, and the director shall be immediately notified of the transfer of the plate. If another vehicle is not acquired by the disabled

person, the removed plate shall be immediately forwarded to the director to be reissued later upon payment of the regular registration fee.

(4) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who is permanently disabled under this section shall be issued a permanent card. A person who is temporarily disabled under this section shall be issued a temporary card which shall be renewed, when required by the director, by satisfactory proof of the right to continued use of the card.

(5) Additional fees shall not be charged for the issuance of the special card and decal, and, at the time the vehicle is originally licensed in this state, no additional fee may be charged for the issuance of the special license plate except the regular motor vehicle registration fee and any other fees and taxes required to be paid upon initial registration of a motor vehicle.

(6) Any unauthorized use of the special card, the decal, or the special license plate is a traffic infraction.

(7) It is a traffic infraction, with a monetary penalty of not less than fifteen and not more than fifty dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for physically disabled persons without a special license plate, card, or decal. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the special license plate, card, or decal required under this section or demonstrates that the person was entitled to the special license plate, card, or decal.

(8) It is a misdemeanor for any person to wilfully obtain a special decal, license plate, or card in a manner other than that established under this section. [1986 c 96 § 1; 1984 c 154 § 2.]

Intent—1984 c 154: "The legislature intends to extend special parking privileges to persons with disabilities that substantially impair mobility." [1984 c 154 § 1.]

Application—1984 c 154: "This act applies to special license plates, cards, or decals issued after June 7, 1984. Nothing in this act invalidates special license plates, cards, or decals issued before June 7, 1984." [1984 c 154 § 9.]

Severability—1984 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 154 § 10.]

46.16.390 Special plate, card, or decal issued by another jurisdiction. A special license plate, card, or decal issued by another state or country that indicates an occupant of the vehicle is disabled, entitles the vehicle on or in which it is displayed and being used to transport the disabled person to lawfully park in a parking place reserved for physically disabled persons pursuant to chapter 70.92 RCW or authority implemental thereof. [1984 c 51 § 1.]

46.16.450 Appeals to superior court from suspension, revocation, cancellation, or refusal of license or certificate. See RCW 46.12.240.

46.16.460 Nonresident members of armed forces—
Issuance of temporary license. Upon the payment of a fee of ten dollars therefor, the department of licensing shall issue a temporary motor vehicle license for a motor vehicle in this state for a period of forty-five days when such motor vehicle has been or is being purchased by a nonresident member of the armed forces of the United States and an application, accompanied with prepayment of required fees, for out of state registration has been made by the purchaser. [1979 c 158 § 141; 1967 c 202 § 4.]

46.16.470 Temporary license—Display. The temporary license provided for in RCW 46.16.460 shall be carried on the interior of the motor vehicle in such a way as to be clearly visible from outside the vehicle. [1967 c 202 § 5.]

46.16.480 Nonresident members of armed forces—
Exemption from sales, use, or motor vehicle excise taxes—Extent of exemption. The original purchaser of a motor vehicle, for which a temporary license as provided in RCW 46.16.460 has been issued, shall not be subject to the sales tax, use tax, or motor vehicle excise tax during the effective period of such license or thereafter unless the motor vehicle, after the effective period of such license, is still in this state or within a period of one year after the effective period of such license is returned to this state. [1967 c 202 § 6.]

Motor vehicle excise tax: Chapter 82.44 RCW.

46.16.490 Nonresident members of armed forces—
Rules and regulations—Proof. The department of licensing shall prescribe rules and regulations governing the administration of RCW 46.16.460 through 46.16.490. The department may require that adequate proof of the facts asserted in the application for a temporary license shall be made before the temporary license shall be granted. [1979 c 158 § 142; 1967 c 202 § 7.]

46.16.500 Liability of operator, owner, lessee for violations. Whenever an act or omission is declared to be unlawful in chapter 46.16 RCW, if the operator of the vehicle is not the owner or lessee of such vehicle, but is so operating or moving the vehicle with the express or implied permission of the owner or lessee, then the operator and/or owner or lessee are both subject to the provisions of this chapter with the primary responsibility to be that of the owner or lessee.

If the person operating the vehicle at the time of the unlawful act or omission is not the owner or lessee of the vehicle, such person is fully authorized to accept the citation and execute the promise to appear on behalf of the owner or lessee. [1980 c 104 § 3; 1969 ex.s. c 69 § 2.]

46.16.505 Campers—License and plates—Application—Fee. It shall be unlawful for a person to operate any vehicle equipped with a camper over and along a public highway of this state without first having obtained and having in full force and effect a current

and proper camper license and displaying a camper license number plate therefor as required by law: *Provided, however,* That if a camper is part of the inventory of a manufacturer or dealer and is unoccupied at all times, and a dated demonstration permit, valid for no more than seventy-two hours is carried in the motor vehicle at all times it is operated by any such individual, such camper may be demonstrated if carried upon an appropriately licensed vehicle.

Application for an original camper license shall be made on a form furnished for the purpose by the director. Such application shall be made by the owner of the camper or his duly authorized agent over the signature of such owner or agent, and he shall certify that the statements therein are true and to the best of his knowledge. The application must show:

- (1) Name and address of the owner of the camper;
- (2) Trade name of the camper, model, year, and the serial number thereof;
- (3) Such other information as the director requires.

There shall be paid and collected annually for each registration year or fractional part thereof and upon each camper a license fee or, if the camper was previously licensed in this state and has not been registered in another jurisdiction in the intervening period, a renewal license fee. Such license fee shall be in the sum of four dollars and ninety cents, and such renewal license fee shall be in the sum of three dollars and fifty cents.

Except as otherwise provided for in this section, the provisions of chapter 46.16 RCW shall apply to campers in the same manner as they apply to vehicles. [1975 1st ex.s. c 118 § 11; 1975 c 41 § 1; 1971 ex.s. c 231 § 7.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.16.560 Personalized license plates—Defined. Personalized license plates, as used in this chapter, means license plates that have displayed upon them the registration number assigned to the vehicle or camper for which such registration number was issued in a combination of letters or numbers, or both, requested by the owner of the vehicle or camper in accordance with this chapter. [1975 c 59 § 1; 1973 1st ex.s. c 200 § 2.]

Personalized license plates—Legislative declaration: "It is declared to be the public policy of the state of Washington to direct financial resources of this state toward the support and aid of the wildlife resources existing within the state of Washington in order that the general welfare of these inhabitants of the state be served. For the purposes of *this chapter, wildlife resources are understood to be those species of wildlife other than that managed by the department of fisheries under their existing jurisdiction as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries. The legislature further finds that the preservation, protection, perpetuation, and enhancement of such wildlife resources of the state is of major concern to it, and that aid for a satisfactory environment and ecological balance in this state for such wildlife resources serves a public interest, purpose, and desire.

It is further declared that such preservation, protection, perpetuation, and enhancement can be fostered through financial support derived on a voluntary basis from those citizens of the state of Washington who wish to assist in such objectives; that a desirable manner of accomplishing this is through offering personalized license

plates for certain vehicles and campers the fees for which are to be directed to the state treasury to the credit of the state **game fund for the furtherance of the programs, policies, and activities of the state **game department in preservation, protection, perpetuation, and enhancement of the wildlife resources that abound within the geographical limits of the state of Washington.

In particular, the legislature recognizes the benefit of this program to be specifically directed toward those species of wildlife including but not limited to song birds, protected wildlife, rare and endangered wildlife, aquatic life, and specialized-habitat types, both terrestrial and aquatic, as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries that exist within the limits of the state of Washington." [1975 c 59 § 7; 1973 1st ex.s. c 200 § 1. Formerly RCW 77.12.175.]

Reviser's note: *(1) The term "this chapter" refers to chapter 77.12 RCW, where this section was originally codified, pursuant to legislative directive, as RCW 77.12.175. It was subsequently decodified by 1980 c 78 § 32.

** (2) References to the "game fund" and "department of game" mean the "wildlife fund" and "department of wildlife." See note following RCW 77.04.020.

46.16.565 Personalized license plates—Application. Any person who is the registered owner of a passenger motor vehicle, a motor truck, a trailer, a camper, a private bus, or a motorcycle registered with the department, excluding proportionally registered vehicles, or who makes application for an original registration or renewal registration of such vehicle or camper may, upon payment of the fee prescribed in RCW 46.16.585, apply to the department for personalized license plates, in the manner described in RCW 46.16.580, which plates shall be affixed to the vehicle or camper for which registration is sought in lieu of the regular license plates. [1985 c 173 § 1; 1983 c 27 § 4; 1975 c 59 § 2; 1973 1st ex.s. c 200 § 3.]

46.16.570 Personalized license plates—Design. The personalized license plates shall be the same design as regular license plates, and shall consist of numbers or letters, or any combination thereof not exceeding seven positions unless proposed by the department and approved by the Washington state patrol and not less than one position, to the extent that there are no conflicts with existing passenger, commercial, trailer, motorcycle, or special license plates series or with the provisions of RCW 46.16.230 or 46.16.235: *Provided,* That the maximum number of positions on personalized license plates for motorcycles shall be designated by the department. [1986 c 108 § 1; 1983 1st ex.s. c 24 § 1; 1975 c 59 § 3; 1973 1st ex.s. c 200 § 4.]

Effective dates—1983 1st ex.s. c 24: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on July 1, 1983. Section 1 of this act takes effect on July 1, 1984." [1983 1st ex.s. c 24 § 4.] "Section 2 of this act" consisted of the amendment to RCW 46.16.605 by 1983 1st ex.s. c 24. "Section 1 of this act" consisted of the amendment to RCW 46.16.570 by 1983 1st ex.s. c 24.

46.16.575 Personalized license plates—Issuance to registered owner only. Personalized license plates shall be issued only to the registered owner of a vehicle on which they are to be displayed. [1973 1st ex.s. c 200 § 5.]

46.16.580 Personalized license plates—Application requirements. An applicant for issuance of personalized license plates or renewal of such plates in the subsequent year pursuant to this chapter shall file an application therefor in such form and by such date as the department may require, indicating thereon the combination of letters or numbers, or both, requested as a vehicle license plate number. There shall be no duplication or conflict with existing or projected vehicle license plate series or other numbering systems for records kept by the department, and the department may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which would be misleading or a duplication of license plates provided for in chapter 46.16 RCW. [1973 1st ex.s. c 200 § 6.]

46.16.585 Personalized license plates—Fees—Renewal—Penalty. In addition to the regular registration fee, and any other fees and taxes required to be paid upon registration, the applicant shall be charged a fee of thirty dollars. In addition to the regular renewal fee, and in addition to any other fees and taxes required to be paid, the applicant for a renewal of such plates shall be charged an additional fee of twenty dollars: *Provided*, That any person who purchased personalized license plates containing three letters and three digits on or between the dates of August 9, 1971, and November 6, 1973, shall not be required to pay the additional annual renewal fee of twenty dollars commencing with the year 1976. All personalized license plates must be renewed on an annual basis, regardless of whether a vehicle on which they are displayed will not be driven on public highways or may also be eligible to display permanent license plates valid for the life of such vehicle without annual renewal. Personalized license plates that are not renewed must be surrendered to the department, and failure to do so is a traffic infraction. [1979 ex.s. c 136 § 51; 1975 c 59 § 4; 1973 1st ex.s. c 200 § 7.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.16.590 Personalized license plates—Transfer fees. Whenever any person who has been issued personalized license plates applies to the department for transfer of such plates to a subsequently acquired vehicle or camper eligible for personalized license plates, a transfer fee of five dollars shall be charged in addition to all other appropriate fees. Such transfer fees shall be deposited in the motor vehicle fund. [1975 c 59 § 5; 1973 1st ex.s. c 200 § 8.]

46.16.595 Personalized license plates—Transfer or surrender upon sale or release of vehicle—Penalty. When any person who has been issued personalized license plates sells, trades, or otherwise releases ownership of the vehicle upon which the personalized license plates have been displayed, he shall immediately report the transfer of such plates to an acquired vehicle or camper eligible for personalized license plates, pursuant to RCW

46.16.590, or he shall surrender such plates to the department forthwith and release his priority to the letters or numbers, or combination thereof, displayed on the personalized license plates. Failure to surrender such plates is a traffic infraction. [1979 ex.s. c 136 § 52; 1975 c 59 § 6; 1973 1st ex.s. c 200 § 9.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.16.600 Personalized license plates—Rules and regulations. The director of licensing may establish such rules and regulations as may be necessary to carry out the purposes of RCW 46.16.560 through 46.16.595. [1979 c 158 § 143; 1973 1st ex.s. c 200 § 10.]

46.16.605 Personalized license plates—Disposition of fees—Costs. All revenue derived from the fees provided for in RCW 46.16.585 shall be forwarded to the state treasurer and be deposited to the credit of the state wildlife fund to be used for the preservation, protection, perpetuation, and enhancement of nongame species of wildlife including but not limited to song birds, raptors, protected wildlife, rare and endangered wildlife, aquatic life, and specialized-habitat types, both terrestrial and aquatic, as well as all unclassified marine fish, shellfish, and marine invertebrates.

Administrative costs incurred by the department of licensing as a direct result of RCW 46.16.560 through 46.16.605 and 77.12.170 shall be appropriated by the legislature from the state wildlife fund from those funds deposited therein resulting from the sale of personalized license plates. If the actual costs incurred by the department of licensing are less than that which has been appropriated by the legislature the remainder shall revert to the state wildlife fund. [1988 c 36 § 27; 1983 1st ex.s. c 24 § 2; 1983 c 3 § 118; 1979 c 158 § 144; 1973 1st ex.s. c 200 § 11.]

Effective dates—1983 1st ex.s. c 24: See note following RCW 46.16.570.

State wildlife fund: RCW 77.12.170.

46.16.610 Referral to electorate. This 1973 amendatory act shall be submitted to the people for their adoption and ratification, or rejection, at the next general election to be held in this state in accordance with the provisions of section 1, Article II of the Constitution of the state of Washington, as amended, and the laws adopted to facilitate the operation thereof. [1973 1st ex.s. c 200 § 14.]

Reviser's note: This section applies to the amendment of RCW 77.12.170, to the repeal of RCW 46.16.355, and to the enactment of RCW 46.16.560 through 46.16.605, and 77.12.175, all by 1973 1st ex.s. c 200. The act was adopted and ratified by the people at the November 6, 1973, general election.

46.16.620 Congressional Medal of Honor recipients—Special license plates. (1) The department shall issue to each resident of this state who has been awarded the Congressional Medal of Honor one set of special license plates for use on a personal passenger vehicle registered to such person. The plates shall be issued without the payment of any fees, and shall be replaced by the

department free of charge if they become damaged. The plates shall remain with the recipient of the medal upon transfer or other disposition of the vehicle, and may be used on another vehicle registered to the recipient in accordance with the provisions of RCW 46.16.595 for such transfers.

(2) The special plates shall be of a distinctive, suitable design approved by the director of licensing. [1979 ex.s. c 77 § 1.]

Free license plates

*disabled veterans, prisoners of war: RCW 73.04.110.
surviving spouses of prisoners of war: RCW 73.04.115.*

46.16.625 Pearl Harbor survivors—Special license plates. (1) A resident of this state may, in addition to the application required by RCW 46.16.040, apply to the department for a set of license plates designed by the department to indicate that the recipient of the plates is a survivor of the Japanese attack on Pearl Harbor if he or she:

(a) Was a member of the United States Armed Forces on December 7, 1941;

(b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(c) Received an honorable discharge from the United States Armed Forces; and

(d) Is certified by a Washington state chapter of the Pearl Harbor survivors association as satisfying the qualifications in (b) of this subsection.

(2) The plates shall be issued upon payment of the regular license fee and furnishing of proof satisfactory to the department that the recipient fulfills the requirements provided by subsection (1) of this section. Only one motor vehicle owned by the applicant may be so licensed at any one time.

(3) If the license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement plates upon request and without charge.

(4) The plate shall remain with the recipient upon transfer or other disposition of the vehicle, and may be used on another motor vehicle registered to the recipient in accordance with the provisions of RCW 46.16.595 for such transfers. [1987 c 44 § 1.]

46.16.630 Moped registration. Application for registration of a moped shall be made to the department of licensing in such manner and upon such forms as the department shall prescribe, and shall state the name and address of each owner of the moped to be registered, the vehicle identification number, and such other information as the department may require, and shall be accompanied by a registration fee of three dollars. Upon receipt of the application and the application fee, the moped shall be registered and a registration number assigned, which shall be affixed to the moped in the manner as provided by rules adopted by the department. The registration provided in this section shall be valid for a period of twelve months.

Every owner of a moped in this state shall renew the registration, in such manner as the department shall prescribe, for an additional period of twelve months, upon payment of a renewal fee of three dollars.

Any person acquiring a moped already validly registered must, within fifteen days of the acquisition or purchase of the moped, make application to the department for transfer of the registration, and the application shall be accompanied by a transfer fee of one dollar.

The registration fees provided in this section shall be in lieu of any personal property tax or the vehicle excise tax imposed by chapter 82.44 RCW.

The department shall, at the time the registration number is assigned, make available a decal or other identifying device to be displayed on the moped. A fee of one dollar and fifty cents shall be charged for the decal or other identifying device.

The provisions of RCW 46.01.130 and 46.01.140 shall apply to applications for the issuance of registration numbers or renewals or transfers thereof for mopeds as they do to the issuance of vehicle licenses, the appointment of agents, and the collection of application fees. Except for the fee collected pursuant to RCW 46.01.140, all fees collected under this section shall be deposited in the motor vehicle fund. [1979 ex.s. c 213 § 5.]

Drivers' license, motorcycle endorsement, moped exemption: RCW 46.20.500.

Operation and safety standards for mopeds: RCW 46.61.710, 46.61.720.

46.16.640 Wheelchair conveyances. Wheelchair conveyances that are incapable of complying with RCW 46.37.340 shall be licensed in the manner provided for mopeds in RCW 46.16.630. [1983 c 200 § 2.]

Severability—1983 c 200: See note following RCW 46.04.710.

Wheelchair conveyances

definition: RCW 46.04.710.

operator's license: RCW 46.20.550.

public roadways, operating on: RCW 46.61.730.

safety standards: RCW 46.37.610.

46.16.650 State centennial license plates—Design, issuance, revenues. In order to help publicize and commemorate the state's 1989 anniversary celebration of its admission to the Union, a new centennial design shall be developed by the department for vehicle license plates that uses reflectorized materials necessary to provide adequate visibility and legibility at night.

The centennial plates shall be developed in cooperation with the design selection committee appointed by the director. The committee shall include representation from the Washington centennial commission.

Registration numbers and letters for the centennial plate shall be assigned by the department in accordance with established procedures. Distribution of the centennial license plates shall commence January 1, 1987, to all new vehicle registrations and license plate replacements. In addition, the centennial plate shall be available for purchase by all other vehicle owners at the owner's option.

Revenues generated from the centennial plate shall go in part to support local and state centennial activities as

provided in RCW 27.60.080. In addition to the basic fees for new vehicle registrations provided in RCW 46.16.060, 46.16.065, 46.16.505, and 46.16.630 and the license fees for new vehicle registrations provided in RCW 46.16.070 and 46.16.085, persons purchasing centennial plates shall pay an additional fee of one dollar per plate to be distributed as follows: From January 1, 1987, through June 30, 1989, one-half of the fee shall be deposited in the centennial commission account, and the remainder shall be deposited in the motor vehicle fund. Commencing July 1, 1989, the total one dollar per plate fee shall be deposited in the motor vehicle fund. [1987 c 178 § 1. Prior: 1986 c 280 § 1.]

46.16.660 State centennial license plates—Fleet issuance. A fleet shall qualify for centennial plates to be issued in consecutive order if available. [1986 c 280 § 2.]

46.16.710 Driving without valid license—Confiscation and marking of registration and license plates. (Effective until July 1, 1993.) (1) At the time of arrest for a violation of RCW 46.20.021, 46.20.342(1), 46.20.420, or 46.65.090, the arresting officer shall confiscate the Washington state vehicle registration of the vehicle being driven by the arrested person. The officer shall mark the vehicle's Washington state license plates in accordance with procedures prescribed by the Washington state patrol. Marked license plates shall be clearly distinguishable from any other authorized plates. Upon confiscation of the vehicle registration, the arresting officer shall, on behalf of the department, serve notice in accordance with RCW 46.16.730 of the department's intention to cancel the vehicle registration in accordance with RCW 46.16.720. The officer shall immediately replace any confiscated vehicle registration with a temporary registration that expires sixty days after the arrest, or at the time the department's cancellation is sustained at a hearing conducted under RCW 46.16.740, whichever occurs first. The provisions of this subsection may be used only when the arresting officer has determined that the arrested driver is a registered owner of the vehicle.

(2) After confiscation under subsection (1) of this section, the arresting officer shall promptly transmit to the department, together with the confiscated vehicle registration, a sworn report indicating that the officer had reasonable grounds to believe that the arrested driver was driving in violation of RCW 46.20.342(1).

(3) Any officer who sees a vehicle being operated with marked license plates may stop the vehicle for the sole purpose of ascertaining whether the driver of the vehicle is operating it in violation of RCW 46.20.021, 46.20.342, 46.20.420, or 46.65.090. Nothing in this section prohibits the arrest of a person for an offense if an officer has probable cause to believe the person has committed the offense. [1987 c 388 § 2.]

Effective, expiration dates—1987 c 388 (part): "Sections 1 through 8 of this act shall take effect on July 1, 1988. The director of licensing shall take such steps as are necessary to insure that this act is implemented on its effective date. Sections 2 through 7 of this act shall expire on July 1, 1993." [1987 c 388 § 13.]

Report to legislature—1987 c 388: "The department of licensing shall report to the legislature no later than January 1, 1991, on the implementation of this 1987 act. The department shall indicate the revenue and expenditure effects of the act and shall estimate its effect on the incidence of unlicensed driving in the state." [1987 c 388 § 15.]

Reviser's note: This act [1987 c 388] consisted of the amendment of RCW 46.12.020, 46.12.240, 46.20.342, and 46.63.020 and the enactment of RCW 46.16.011 and 46.16.710 through 46.16.760.

Severability—1987 c 388: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 388 § 16.]

46.16.720 Driving without valid license—Cancellation of registration and license plates. (Effective until July 1, 1993.) (1) Upon receipt of the sworn report of an arresting officer transmitted pursuant to RCW 46.16.710(2), the department shall review its records, and if it ascertains that the arrested driver's privilege to drive was suspended or revoked, or in a suspended or revoked status, at the time of his arrest and the arrested driver is the registered owner of the vehicle he was driving at the time of his arrest, or that in violation of RCW 46.12.101 no transfer of title for the vehicle has been made, then the department shall cancel the registration and license plates of the vehicle. The cancellation remains in effect until the arrested driver has been issued a valid driver's license or until another qualified person registers the vehicle. After the cancellation period, upon application and payment of fees and taxes due including fees prescribed in RCW 46.16.270, the department may issue a new vehicle registration and replacement license plates to the arrested driver.

(2) For purposes of this section, cancellation means that the existing registration and license plates shall be canceled and no new registration and license plates may be issued for the vehicle for the prescribed period, if the arrested driver is the owner of the vehicle. Cancellation takes effect beginning sixty days after arrest, or at the time the cancellation is sustained by a hearing held under RCW 46.16.740, whichever occurs first. If the department does not cancel registration and license plates under subsection (1) of this section, the department shall notify the registered owner that if he is qualified under RCW 46.12.020 he may, upon application and payment of any fees and taxes due other than fees prescribed in RCW 46.16.270, be issued a new vehicle registration and replacement license plates.

(3) No cancellation under this section affects the right of any person to transfer or acquire title in the vehicle, or the right of any person other than the arrested driver to become the registered owner of the vehicle. [1987 c 388 § 3.]

Effective, expiration dates—Severability—1987 c 388: See notes following RCW 46.16.710.

46.16.730 Driving without valid license—Opportunity for hearing on cancellation—Notice and request. (Effective until July 1, 1993.) No cancellation under RCW 46.16.720 is effective until the department or a law enforcement officer acting on its behalf notifies the arrested driver in writing by personal service, by certified mail, or by first class mail addressed to that driver's

last known vehicle registration address of record with the department, of the department's intention to cancel registration and the license plates together with the grounds therefor and allows the driver a fifteen-day period to request in writing that the department provide a hearing as provided in RCW 46.16.740. The notice shall specify the steps the driver must take to obtain a hearing. If no written request for a hearing is received by the department within fifteen days from the date of notification, the order of the department becomes effective as provided in RCW 46.16.720. If a request for a hearing is filed in time, the department shall give the driver an opportunity for a hearing as provided in RCW 46.16.740, and the cancellation will not be effective until a final determination has been made by the department. [1987 c 388 § 4.]

Effective, expiration dates—Severability—1987 c 388: See notes following RCW 46.16.710.

46.16.740 Driving without valid license—Hearing on cancellation—Procedures. (Effective until July 1, 1993.) (1) Administrative hearings held to determine the propriety of any registration cancellation imposed under RCW 46.16.720 shall be in accordance with rules adopted by the director.

(2) The department shall fix a time, no more than sixty days after arrest, and place for a hearing to be held in the county in which the arrest was made. The hearing may be set for some other county by agreement between the department and the driver.

(3) The department shall give the driver at least twenty days advance notice of the time and place of hearing, but the period of notice may be waived by the driver. Every party has the right of cross-examination of any witness who testifies and has the right to submit rebuttal evidence. [1987 c 388 § 5.]

Effective, expiration dates—Severability—1987 c 388: See notes following RCW 46.16.710.

46.16.750 Driving without valid license—Registration cancellation—Court review. (Effective until July 1, 1993.) [(1)] If the cancellation under RCW 46.16.720 is sustained at the hearing held under RCW 46.16.740, the driver whose vehicle registration is canceled has the right to file a petition in the superior court of the county of arrest for review of the final order of cancellation by the department. The petition shall be filed within ten days following receipt by the person of the department's final order, or the right to appeal is deemed to have been waived. The review shall be conducted by the court without a jury, and shall be de novo.

(2) The filing of the appeal does not stay the effective date of the cancellation.

(3) The court may affirm the department's decision or reverse the department's order of cancellation.

(4) The actual costs of preparing and transmitting the record to superior court shall be borne by the petitioner and awarded by the court to the department if the department's decision is affirmed. The costs shall be borne by the department if the department's decision is reversed. [1987 c 388 § 6.]

Effective, expiration dates—Severability—1987 c 388: See notes following RCW 46.16.710.

46.16.760 Driving without valid license—Registration cancellation—Administration, enforcement. (Effective until July 1, 1993.) (1) The director or the director's designee shall administer and enforce RCW 46.16.720 through 46.16.750.

(2) The director may adopt such rules and prescribe and provide such forms as may be necessary to carry out RCW 46.16.720 through 46.16.750. [1987 c 388 § 7.]

Effective, expiration dates—Severability—1987 c 388: See notes following RCW 46.16.710.

46.16.900 Severability—1973 1st ex.s. c 132. If any provision of this 1973 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby. [1973 1st ex.s. c 132 § 24.]

Chapter 46.20

DRIVERS' LICENSES—IDENTICARDS

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Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Traffic infractions—Monetary penalty schedule—JTIR 6.2.

Allowing unauthorized person to drive—Penalty: RCW 46.16.011.

46.20.021 Driver's license required—Penalty—Surrender of other license—Local license not required.

(1) No person, except as expressly exempted by this chapter, may drive any motor vehicle upon a highway in this state unless the person has a valid driver's license issued under the provisions of this chapter. A violation of this subsection is a misdemeanor and is a lesser included offense within the offenses described in RCW 46.20.342(1), 46.20.416, 46.20.420, and 46.65.090.

(2) No person shall receive a driver's license unless and until he or she surrenders to the department all valid driver's licenses in his or her possession issued to him or her by any other jurisdiction. The department shall establish a procedure to invalidate the surrendered photograph license and return it to the person. The invalidated license, along with the valid temporary Washington driver's license provided for in RCW 46.20.055(3), shall be accepted as proper identification. The department shall notify the issuing department that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid driver's license at any time.

(3) Any person licensed as a driver under this chapter may exercise the privilege thereby granted upon all

streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipal or local board, or body having authority to adopt local police regulations. [1988 c 88 § 1; 1985 c 302 § 2; 1979 ex.s. c 136 § 53; 1965 ex.s. c 121 § 2.]

Reviser's note: Throughout chapter 46.20 RCW the phrases "this 1965 amendatory act" and "this act" have been changed to "this chapter." The 1965 amendatory act [1965 ex.s. c 121] consisted of RCW 46.20.021 through 46.20.055, 46.20.091, 46.20.161 through 46.20.181, 46.20.205, 46.20.207, 46.20.215, 46.20.285, 46.20.291, 46.20.305 through 46.20.315, 46.20.322 through 46.20.336, 46.20.342 through 46.20.344, 46.20.900, 46.20.910, and 46.64.025, the 1965 amendments to RCW 46.20.102 through 46.20.106, 46.20.120 through 46.20.140, 46.20.190, 46.20.200, 46.20.270, and 46.20.340 and 1965 ex.s. c 121 § 1, footnoted after RCW 46.20.021.

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Purpose—Construction—1965 ex.s. c 121: "With the advent of greatly increased interstate vehicular travel and the migration of motorists between the states, the legislature recognizes the necessity of enacting driver licensing laws which are reasonably uniform with the laws of other states and are at the same time based upon sound, realistic principles, stated in clear explicit language. To achieve these ends the legislature does hereby adopt this 1965 amendatory act relating to driver licensing modeled after the Uniform Vehicle Code subject to such variances as are deemed better suited to the people of this state. It is intended that this 1965 amendatory act be liberally construed to effectuate the purpose of improving the safety of our highways through driver licensing procedures within the framework of the traditional freedoms to which every motorist is entitled." [1965 ex.s. c 121 § 1.] For application of this section see reviser's note above.

Impoundment of vehicle for driver's license violations—Release, when—Court hearing: RCW 46.20.435.

License plates and registration, confiscation and marking: RCW 46.16.710.

46.20.022 Unlicensed drivers—Subject to all provisions of Title 46 RCW. Any person who operates a motor vehicle on the public highways of this state without a driver's license or nonresident privilege to drive shall be subject to all of the provisions of Title 46 RCW to the same extent as a person who is licensed. [1975-'76 2nd ex.s. c 29 § 1.]

Allowing unauthorized person to drive: RCW 46.16.011, 46.20.344.

46.20.025 Persons exempt from licensing requirement. The following persons are exempt from license hereunder:

(1) Any person in the service of the army, navy, air force, marine corps, or coast guard of the United States, or in the service of the national guard of this state or any other state, when furnished with a driver's license by such service when operating an official motor vehicle in such service;

(2) A nonresident who is at least sixteen years of age and who has in his immediate possession a valid driver's license issued to him in his home state;

(3) A nonresident who is at least sixteen years of age and who has in his immediate possession a valid driver's license issued to him in his home country may operate a motor vehicle in this state for a period not to exceed one year;

(4) Any person operating special highway construction equipment as defined in RCW 46.16.010;

(5) Any person while driving or operating any farm tractor or implement of husbandry which is only incidentally operated or moved over a highway;

(6) Any person while operating a locomotive upon rails, including operation on a railroad crossing over a public highway; and such person is not required to display a driver's license to any law enforcement officer in connection with the operation of a locomotive or train within this state. [1979 c 75 § 1; 1965 ex.s. c 121 § 3.]

46.20.027 Licenses of persons serving in armed forces to remain in force—Duration. A Washington state motor vehicle driver's license issued to any person serving in the armed forces of the United States, if valid and in force and effect while such person is serving in the armed forces, shall remain in full force and effect so long as such service continues unless the same is sooner suspended, canceled, or revoked for cause as provided by law and for not to exceed ninety days following the date on which the holder of such driver's license is honorably separated from service in the armed forces of the United States. [1967 c 129 § 1.]

46.20.031 Persons ineligible to be licensed. The department shall not issue a driver's license hereunder:

(1) To any person who is under the age of sixteen years;

(2) To any person whose license has been suspended during such suspension, nor to any person whose license has been revoked, except as provided in RCW 46.20.311;

(3) To any person when the department has been notified by a court that such person has violated his written promise to appear in court, unless the department has received a certificate from the court in which such person promised to appear, showing that the case has been adjudicated. The deposit of bail by a person charged with a violation of any law regulating the operation of motor vehicles on highways shall be deemed an appearance in court for the purpose of this section;

(4) To any person who has been evaluated by a program approved by the department of social and health services as being an alcoholic, drug addict, alcohol abuser and/or drug abuser: *Provided*, That a license may be issued if the department determines that such person has been granted a deferred prosecution, pursuant to chapter 10.05 RCW, or is satisfactorily participating in or has successfully completed an alcohol or drug abuse treatment program approved by the department of social and health services and has established control of his or her alcohol and/or drug abuse problem;

(5) To any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease, and who has not at the time of application been restored to competency by the methods provided by law: *Provided, however*, That no person so adjudged shall be denied a license for such cause if the superior court should find him able to operate a motor vehicle with safety upon the highways during such incompetency;

(6) To any person who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

(7) To any person who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

(8) To any person when the department has good and substantial evidence to reasonably conclude that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; subject to review by a court of competent jurisdiction. [1985 c 101 § 1; 1977 ex.s. c 162 § 1; 1965 ex.s. c 121 § 4.]

Allowing unauthorized person to drive: RCW 46.16.011, 46.20.344.

46.20.041 Physically or mentally disabled persons—Procedure—Restrictions—Violations—

Penalty. (1) The department shall permit any person suffering from any physical or mental disability or disease which may affect that person's ability to drive a motor vehicle, to demonstrate personally that notwithstanding such disability or disease he or she is a proper person to drive a motor vehicle. The department may in addition require such person to obtain a certificate showing his or her condition signed by a licensed physician or other proper authority designated by the department. The certificate shall be for the confidential use of the director and the chief of the Washington state patrol and for such other cognizant public officials as may be designated by law. It shall be exempt from public inspection and copying notwithstanding the provisions of chapter 42.17 RCW. The certificate may not be offered as evidence in any court except when appeal is taken from the order of the director suspending, revoking, canceling, or refusing a vehicle driver's license. However, the certificate may be made available to the director of the department of retirement systems for use in determining eligibility for or continuance of disability benefits and it may be offered and admitted as evidence in any administrative proceeding or court action concerning such disability benefits.

(2) The department may issue a driver's license to such a person imposing restrictions suitable to the licensee's driving ability with respect to the special mechanical control devices required on a motor vehicle or the type of motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(3) The department may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(4) The department may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee shall be entitled to a driver improvement interview and a hearing as upon a suspension or revocation under this chapter.

(5) It is a traffic infraction for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him or

her. [1986 c 176 § 1; 1979 ex.s. c 136 § 54; 1979 c 61 § 2; 1965 ex.s. c 121 § 5.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.20.045 Age limit for school bus drivers and drivers of for-hire vehicles. No person who is under the age of eighteen years shall drive any school bus transporting school children or shall drive any motor vehicle when in use for the transportation of persons for compensation. [1971 ex.s. c 292 § 43; 1965 ex.s. c 121 § 6.]

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

46.20.055 Instruction permits and temporary licenses. (1) Any person who is at least fifteen and a half years of age may apply to the department for an instruction permit for the operation of any motor vehicle except a motorcycle. Any person who is at least sixteen years of age may apply for an instruction permit for the operation of a motorcycle. The department may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant a driver's or motorcyclist's instruction permit.

(a) A driver's instruction permit entitles the permittee while having the permit in immediate possession to drive a motor vehicle upon the public highways for a period of one year when accompanied by a licensed driver who has had at least five years of driving experience and is occupying a seat beside the driver. Except as provided in subsection (c) of this subsection, only one additional permit, valid for one year, may be issued.

(b) A motorcyclist's instruction permit entitles the permittee while having the permit in immediate possession to drive a motorcycle upon the public highways for a period of ninety days as provided in *RCW 46.20.510(3). Except as provided in subsection (c) of this subsection, only one additional permit, valid for ninety days, may be issued.

(c) The department after investigation may issue a third driver's or motorcyclist's instruction permit when it finds that the permittee is diligently seeking to improve driving proficiency.

(2) The department may waive the examination, except as to eyesight and other potential physical restrictions, for any applicant who is enrolled in either a traffic safety education course as defined by **RCW 46.81.010(2) or a course of instruction offered by a licensed driver training school as defined by RCW 46.82.280(1) at the time the application is being considered by the department. The department may require proof of registration in such a course as it deems necessary.

(3) The department upon receiving proper application may in its discretion issue a driver's instruction permit effective for a school semester or other restricted period to an applicant who is at least fifteen years of age and is enrolled in a traffic safety education program which includes practice driving and which is approved and accredited by the superintendent of public instruction.

Such instruction permit shall entitle the permittee having the permit in immediate possession to drive a motor vehicle only when an approved instructor or other licensed driver with at least five years of driving experience, is occupying a seat beside the permittee.

(4) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to drive a motor vehicle for a period not to exceed sixty days while the department is completing its investigation and determination of all facts relative to such applicant's right to receive a driver's license. Such permit must be in the permittee's immediate possession while driving a motor vehicle, and it shall be invalid when the permittee's license has been issued or for good cause has been refused. [1986 c 17 § 1; 1985 c 234 § 1; 1981 c 260 § 10. Prior: 1979 c 63 § 1; 1979 c 61 § 3; 1969 ex.s. c 218 § 8; 1965 ex.s. c 121 § 7.]

Reviser's note: *(1) RCW 46.20.510 was amended by 1989 c 337 § 9, and the previous subsection (3) was renumbered as subsection (2).

***(2) RCW 46.81.010(2) was recodified as RCW 28A.08.010(2) in September 1985 pursuant to RCW 1.08.015.

46.20.070 Juvenile agricultural driving permits. Upon receiving a written application on a form provided by the director for permission for a person under the age of eighteen years to operate a motor vehicle over and upon the public highways of this state in connection with farm work, the director may issue a limited driving permit containing a photograph to be known as a juvenile agricultural driving permit, such issuance to be governed by the following procedure:

(1) The application must be signed by the applicant and by the applicant's father, mother, or legal guardian.

(2) Upon receipt of the application, the director shall cause an examination of the applicant to be made as by law provided for the issuance of a motor vehicle driver's license.

(3) The director shall cause an investigation to be made of the need for the issuance of such operation by the applicant.

Such permit authorizes the holder to operate a motor vehicle over and upon the public highways of this state within a restricted farming locality which shall be described upon the face thereof.

A permit issued under this section shall expire one year from date of issue, except that upon reaching the age of eighteen years such person holding a juvenile agricultural driving permit shall be required to make application for a motor vehicle driver's license.

The director shall charge a fee of three dollars for each such permit and renewal thereof to be paid as by law provided for the payment of motor vehicle driver's licenses and deposited to the credit of the highway safety fund.

The director may transfer this permit from one farming locality to another, but this does not constitute a renewal of the permit.

The director may deny the issuance of a juvenile agricultural driving permit to any person whom the director

determines to be incapable of operating a motor vehicle with safety to himself or herself and to persons and property.

The director may suspend, revoke, or cancel the juvenile agricultural driving permit of any person when in the director's sound discretion the director has cause to believe such person has committed any offense for which mandatory suspension or revocation of a motor vehicle driver's license is provided by law.

The director may suspend, cancel, or revoke a juvenile agricultural driving permit when in the director's sound discretion the director is satisfied the restricted character of the permit has been violated. [1985 ex.s. c 1 § 1; 1979 c 61 § 4; 1969 ex.s. c 218 § 9; 1969 ex.s. c 170 § 12; 1967 c 32 § 27; 1963 c 39 § 9; 1961 c 12 § 46.20-.070. Prior: 1947 c 158 § 1, part; 1937 c 188 § 45, part; Rem. Supp. 1947 § 6312-45, part.]

Effective date—1985 ex.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 ex.s. c 1 § 14.]

46.20.091 Application for license or instruction permit—Fees—Driving records from other jurisdictions.

(1) Every application for an instruction permit or for an original driver's license shall be made upon a form prescribed and furnished by the department which shall be sworn to and signed by the applicant before a person authorized to administer oaths. Every application for an instruction permit containing a photograph shall be accompanied by a fee of five dollars. The department shall forthwith transmit the fees collected for instruction permits and temporary drivers' permits to the state treasurer.

(2) Every such application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as a driver or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal, and shall state such additional information as the department shall require.

(3) Whenever application is received from a person previously licensed in another jurisdiction, the department shall request a copy of such driver's record from such other jurisdiction. When received, the driving record shall become a part of the driver's record in this state.

(4) Whenever the department receives request for a driving record from another licensing jurisdiction, the record shall be forwarded without charge if the other licensing jurisdiction extends the same privilege to the state of Washington. Otherwise there shall be a reasonable charge for transmittal of the record, the amount to be fixed by the director of the department. [1985 ex.s. c 1 § 2; 1979 c 63 § 2; 1965 ex.s. c 121 § 8.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

46.20.095 Information on proper use of left-hand lane. The department shall include information on the proper use of the left-hand lane on multilane highways in its instructional publications for drivers. [1986 c 93 § 3.]

Keep right except when passing, etc.: RCW 46.61.100.

46.20.100 Application of minor under eighteen—Cosignature, traffic safety education course required—Exception. The department of licensing shall not consider an application of any minor under the age of eighteen years for a driver's license or the issuance of a motorcycle endorsement for a particular category unless:

(1) The application is also signed by the father or mother of the applicant, otherwise by the parent or guardian having the custody of such minor, or in the event a minor under the age of eighteen has no father, mother, or guardian, then a driver's license shall not be issued to the minor unless his or her application is also signed by the minor's employer; and

(2) The applicant has satisfactorily completed a traffic safety education course as defined in *RCW 46.81-.010, conducted by a recognized secondary school, that meets the standards established by the office of the state superintendent of public instruction or the applicant has satisfactorily completed a traffic safety education course, conducted by a commercial driving instruction enterprise, that meets the standards established by the office of the superintendent of public instruction and is officially approved by that office on an annual basis: *Provided, however,* That the director may upon a showing that an applicant was unable to take or complete a driver education course waive that requirement if the applicant shows to the satisfaction of the department that a need exists for the applicant to operate a motor vehicle and he or she has the ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property, under rules to be promulgated by the department in concert with the supervisor of the traffic safety education section, office of the superintendent of public instruction. For a person under the age of eighteen years to obtain a motorcycle endorsement, he or she must successfully complete a motorcycle safety education course that meets the standards established by the department of licensing.

The department may waive any education requirement under this subsection for an applicant previously licensed to drive a motor vehicle or motorcycle outside this state if the applicant provides proof satisfactory to the department that he or she has had education equivalent to that required under this subsection. [1985 c 234 § 2; 1979 c 158 § 146; 1973 1st ex.s. c 154 § 87; 1972 ex.s. c 71 § 1; 1969 ex.s. c 218 § 10; 1967 c 167 § 1; 1965 ex.s. c 170 § 43; 1961 c 12 § 46.20.100. Prior: 1937 c 188 § 51; RRS § 6312-51; 1921 c 108 § 6, part; RRS § 6368, part.]

*Reviser's note: RCW 46.81.010 was recodified as RCW 28A.08-.010 in September 1985 pursuant to RCW 1.08.015.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

46.20.105 Persons under twenty-one. The department may provide a method to distinguish the driver's license of a person who is under the age of twenty-one from the driver's license of a person who is twenty-one years of age or older. [1987 c 463 § 3.]

46.20.106 Evidence of applicant's age. Any agent authorized to issue a driver's license in this state is authorized to require satisfactory evidence of the age of the applicant as a condition precedent to the issuance of a driver's license. [1965 ex.s. c 121 § 14; 1961 c 12 § 46.20.106. Prior: 1957 c 242 § 4.]

46.20.113 Anatomical gift statement. The department of licensing shall provide a statement whereby the licensee may certify in the presence of two witnesses his willingness to make an anatomical gift under RCW 68-.50.370, as now or hereafter amended. The department shall provide the statement in at least one of the following ways:

- (1) On each driver's license; or
- (2) With each driver's license; or
- (3) With each in-person driver's license application. [1987 c 331 § 81; 1979 c 158 § 147; 1975 c 54 § 1.]

Effective date—1987 c 331: See RCW 68.05.900.

46.20.114 Preparation process to prevent alteration or reproduction. On and after January 1, 1978, the department shall implement and use such process or processes in the preparation and issuance of drivers' licenses and identicards that prohibit as nearly as possible the alteration or reproduction of such cards, or the superimposing of other photographs on such cards, without ready detection. [1977 ex.s. c 27 § 2.]

Purpose—1977 ex.s. c 27: "The legislature finds that the falsification of cards and licenses is a serious social problem creating economic hardship and problems which impede the efficient conduct of commerce and government. The legislature is particularly concerned that the increasing use of false drivers' licenses and identicards to purchase liquor, to cash bad checks, and to obtain food stamps and other benefits is causing the loss of liquor licenses, the loss of jobs, the loss of income, and the loss of human life in addition to significant monetary losses in business and government. It is the purpose of RCW 46.20.114 to require an effective means of rendering drivers' licenses and identicards as immune as possible from alteration and counterfeiting in order to promote the public health and safety of the people of this state." [1977 ex.s. c 27 § 1.]

46.20.116 Labeling license "not valid for identification purposes." The department shall plainly label each license "not valid for identification purposes" where the applicant is unable to prove his or her identity commensurate to the regulations adopted by the director. [1969 ex.s. c 155 § 3.]

Effective date—Purpose—1969 ex.s. c 155: See notes following RCW 46.20.118.

46.20.117 Identicards. (1) The department shall issue "identicards," containing a picture, to individuals for a fee of four dollars. However, the fee shall be the actual cost of production to recipients of continuing public assistance grants under Title 74 RCW who are referred in writing to the department by the secretary of social and

health services. The fee shall be deposited in the highway safety fund. To be eligible, each applicant shall produce evidence as required by the rules adopted by the director that positively proves identity. The "identocard" shall be distinctly designed so that it will not be confused with the official driver's license. The identocard shall expire on the fifth anniversary of the applicant's birthdate after issuance.

(2) The department may cancel an "identocard" upon a showing by its records or other evidence that the holder of such "identocard" has committed a violation relating to "identicards" defined in RCW 46.20.336. [1986 c 15 § 1; 1985 ex.s. c 1 § 3; 1985 c 212 § 1; 1981 c 92 § 2; 1971 ex.s. c 65 § 1; 1969 ex.s. c 155 § 4.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Purpose—1971 ex.s. c 65: "The efficient and effective operation and administration of state government affects the health, safety, and welfare of the people of this state and it is the intent and purpose of this act to promote the health, safety, and welfare of the people by improving the operation and administration of state government." [1971 ex.s. c 65 § 2.]

Effective date—**Purpose**—1969 ex.s. c 155: See notes following RCW 46.20.118.

46.20.118 Negative file. The department shall maintain a negative file. It shall contain negatives of all pictures taken by the department of licensing as authorized by RCW *46.20.115 through 46.20.119. The negative file shall become a part of the driver record file maintained by the department. Negatives in the file shall not be available for public inspection and copying under chapter 42.17 RCW. The department may make the file available to official governmental enforcement agencies to assist in the investigation by the agencies of suspected criminal activity. The department may also provide a print to the driver's next of kin in the event the driver is deceased. [1981 c 22 § 1; 1979 c 158 § 149; 1969 ex.s. c 155 § 5.]

***Reviser's note:** RCW 46.20.115 was repealed by 1985 ex.s. c 1 § 13, effective July 1, 1985.

Purpose—1969 ex.s. c 155: "The identification of the injured or the seriously ill is often difficult. The need for an identification file to facilitate use by proper law enforcement officers has hampered law enforcement. Personal identification for criminal, personal and commercial reasons is becoming most important at a time when it is increasingly difficult to accomplish. The legislature finds that the public health and welfare requires a standard and readily recognizable means of identification of each person living within the state. The legislature further finds that the need for an identification file by law enforcement agencies must be met. The use of photographic drivers' licenses will greatly aid the problem, but some means of identification must be provided for persons who do not possess a driver's license. The purpose of this 1969 amendatory act is to provide for the positive identification of persons, both through an expanded use of drivers' licenses and also through issue of personal identification cards for nondrivers." [1969 ex.s. c 155 § 1.]

Effective date—1969 ex.s. c 155: "This 1969 amendatory act shall take effect September 1, 1969." [1969 ex.s. c 155 § 7.]

46.20.119 Rules and regulations to be reasonable. The rules and regulations adopted pursuant to RCW *46.20.115 through 46.20.119 shall be reasonable in view of the purposes to be served by RCW *46.20.115 through 46.20.119. [1969 ex.s. c 155 § 6.]

***Reviser's note:** RCW 46.20.115 was repealed by 1985 ex.s. c 1 § 13, effective July 1, 1985.

Effective date—**Purpose**—1969 ex.s. c 155: See notes following RCW 46.20.118.

46.20.120 Examination of license applicants—Late renewal penalty—Exceptions. No new driver's license may be issued and no previously issued license may be renewed until the applicant therefor has successfully passed a driver licensing examination: *Provided*, That the department may waive all or any part of the examination of any person applying for the renewal of a driver's license except when the department determines that an applicant for a driver's license is not qualified to hold a driver's license under this title. For a new license examination a fee of seven dollars shall be paid by each applicant, in addition to the fee charged for issuance of the license. A new license is one issued to a driver who has not been previously licensed in this state or to a driver whose last previous Washington license has been expired for more than four years.

Any person renewing his or her driver's license more than sixty days after the license has expired shall pay a penalty fee of ten dollars in addition to the renewal fee under RCW 46.20.181. The penalty fee shall be deposited in the highway safety fund.

Any person who is outside the state at the time his or her driver's license expires or who is unable to renew the license due to any incapacity may renew the license within sixty days after returning to this state or within sixty days after the termination of any such incapacity without the payment of the penalty fee.

The department shall provide for giving examinations at places and times reasonably available to the people of this state. [1988 c 88 § 2; 1985 ex.s. c 1 § 4; 1979 c 61 § 6; 1975 1st ex.s. c 191 § 2; 1967 c 167 § 4; 1965 ex.s. c 121 § 9; 1961 c 12 § 46.20.120. Prior: 1959 c 284 § 1; 1953 c 221 § 2; 1937 c 188 § 55, part; RRS § 6312-55, part.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

46.20.130 Content and conduct of examinations. The director shall prescribe the content of the driver licensing examination and the manner of conducting the examination, which shall include but is not limited to:

(1) A test of the applicant's eyesight and his ability to see, understand, and follow highway signs regulating, warning, and directing traffic;

(2) A test of the applicant's knowledge of traffic laws and his ability to understand and follow the directives of lawful authority, given in the English language, orally or graphically, that regulate, warn, and direct traffic in accordance with the traffic laws of this state;

(3) An actual demonstration of his ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property; and

(4) Such further examination as the director deems necessary (a) to determine whether any facts exist which would bar the issuance of a vehicle operator's license under chapters 46.20, 46.21 and 46.29 RCW, and (b) to

determine the applicant's fitness to operate a motor vehicle safely on the highways; and

(5) In addition to the foregoing, when the applicant desires to drive a motorcycle, as defined in RCW 46.04-.330, or a motor-driven cycle, as defined in RCW 46.04.332, the applicant shall also demonstrate his ability to operate such motorcycle or motor-driven cycle in such a manner as not to jeopardize the safety of persons or property. [1981 c 245 § 4; 1967 c 232 § 2; 1965 ex.s. c 121 § 10; 1961 c 12 § 46.20.130. Prior: 1959 c 284 § 2; 1943 c 151 § 1; 1937 c 188 § 57; Rem. Supp. 1943 § 6312-57.]

Effective date—1981 c 245: See note following RCW 46.20.161.

46.20.161 Issuance of license—License contents—Fee. The department, upon receipt of a fee of fourteen dollars, which includes the fee for the required photograph, shall issue to every applicant qualifying therefor a driver's license, which license shall bear thereon a distinguishing number assigned to the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his usual signature with pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee. [1981 c 245 § 1; 1975 1st ex.s. c 191 § 3; 1969 c 99 § 6; 1965 ex.s. c 121 § 11.]

Effective date—1981 c 245: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 245 § 5.]

Effective date—1969 c 99: See note following RCW 43.51.060.

46.20.171 Records of applications, suspensions, or revocations, drivers' records. (1) The department shall file every application for a license received by it and shall maintain suitable indexes containing the following:

(a) All applications denied and on each thereof note the reasons for such denial;

(b) All applications granted; and

(c) The name of every licensee whose license has been suspended or revoked by the department and after each such name shall note the reasons for such action.

(2) The department shall also maintain a record for every licensed driver which shall include all accident reports and abstracts of court records of convictions and findings that a traffic infraction has been committed received by it under the laws of this state and in connection therewith maintain convenient records in order that an individual record of each licensee showing the licensee's convictions, the findings that he has committed a traffic infraction, the traffic accidents in which he has been involved and any prior actions taken by the department in connection with his driving record shall be readily ascertainable for the consideration of the department. [1979 ex.s. c 136 § 55; 1965 ex.s. c 121 § 19.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.20.181 Expiration date—Renewal—Fee. Every driver's license shall expire on the fourth anniversary of the licensee's birthdate following the issuance of such license: *Provided*, That during the period July 1, 1981, through and including June 30, 1983, the department shall implement a system of staggering the renewal periods of currently licensed drivers so as to make approximately one-half of such renewals for a two-year period and the other one-half for a four-year period. Every such license shall be renewable on or before its expiration upon application prescribed by the department and the payment of a fee of fourteen dollars, or of seven dollars in the case of those being renewed for only two years. These fees include the fee for the required photograph. [1981 c 245 § 2; 1975 1st ex.s. c 191 § 4; 1969 c 99 § 7; 1965 ex.s. c 170 § 46; 1965 ex.s. c 121 § 17.]

Effective date—1981 c 245: See note following RCW 46.20.161.

Effective date—1969 c 99: See note following RCW 43.51.060.

46.20.185 Renewal procedure—Applicant not deprived of identification with photograph. The department of licensing shall establish a procedure for renewal of drivers' licenses under this chapter which does not deprive the applicant during the renewal process of an identification bearing the applicant's photograph.

This identification shall be designed to and shall be accepted as proper identification under RCW 66.16.040. [1979 ex.s. c 87 § 1.]

46.20.190 License in immediate possession and displayed on demand. Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. The offense described in this section is a nonmoving offense. [1979 ex.s. c 136 § 56; 1965 ex.s. c 121 § 15; 1961 c 12 § 46.20.190. Prior: 1937 c 188 § 59; RRS § 6312-59; 1921 c 108 § 7, part; RRS § 6369, part.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Driver's license, duty to display under other circumstances: RCW 46-.52.020, 46.61.020, 46.61.021.

46.20.200 Lost or destroyed licenses or permits—Duplicates—Corrected replacements—Fee. (1) If an instruction permit, identicard, or a driver's license is lost or destroyed, the person to whom it was issued may obtain a duplicate of it upon furnishing proof of such fact satisfactory to the department and payment of a fee of five dollars to the department.

(2) A replacement permit, identicard, or driver's license may be obtained to change or correct material information upon payment of a fee of two dollars and surrender of the permit, identicard, or driver's license being replaced. [1985 ex.s. c 1 § 5; 1975 1st ex.s. c 191 § 5; 1965 ex.s. c 121 § 16; 1961 c 12 § 46.20.200. Prior: 1947 c 164 § 18; 1937 c 188 § 60; Rem. Supp. 1947 § 6312-60; 1921 c 108 § 11; RRS § 6373.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

46.20.205 Change of address or name—Notification of department. Whenever any person after applying for or receiving a driver's license or identicator moves from the address named in the application or in the license or identicator issued to him or her or when the name of a licensee or holder of an identicator is changed by marriage or otherwise, the person shall within ten days thereafter notify the department in writing on a form provided by the department of his or her old and new addresses or of such former and new names and of the number of any license then held by him or her. The written notification is the exclusive means by which the address of record maintained by the department concerning the licensee or identicator holder may be changed. Any notice regarding the cancellation, suspension, revocation, probation, or nonrenewal of the driver's license, driving privilege, or identicator mailed to the address of record of the licensee or identicator holder is effective notwithstanding the licensee's or identicator holder's failure to receive the notice. [1989 c 337 § 6; 1969 ex.s. c 170 § 13; 1965 ex.s. c 121 § 18.]

46.20.207 Cancellation where licensee not entitled to issuance or information inadequate or incorrect. (1) The department is hereby authorized to cancel any driver's license upon determining that the licensee was not entitled to the issuance thereof hereunder or that said licensee failed to give the required or correct information in his application.

(2) Upon such cancellation, the licensee must surrender the license so canceled to the department. [1965 ex.s. c 121 § 20.]

46.20.215 Nonresidents—Suspension or revocation—Reporting convictions and traffic infractions. (1) The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder shall be subject to suspension or revocation by the department in like manner and for like cause as a driver's license issued hereunder may be suspended or revoked.

(2) The department shall, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, forward a report of such conviction to the motor vehicle administrator in the state wherein the person so convicted is a resident. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; and indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security.

(3) The department shall, upon receiving a record of the commission of a traffic infraction in this state by a nonresident driver of a motor vehicle, forward a report of the traffic infraction to the motor vehicle administrator in the state where the person who committed the infraction resides. The report shall clearly identify the person found to have committed the infraction; describe the infraction, specifying the section of the statute, code

or ordinance violated; identify the court in which action was taken; and indicate whether the determination that an infraction was committed was contested or whether the individual failed to respond to the notice of infraction. [1979 ex.s. c 136 § 57; 1965 ex.s. c 121 § 21.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.20.220 Unlawful renting of vehicle to unlicensed person—Rental record. (1) It shall be unlawful for any person to rent a motor vehicle of any kind including a motorcycle to any other person unless the latter person is then duly licensed as a vehicle driver for the kind of motor vehicle being rented in this state or, in case of a nonresident, then that he is duly licensed as a driver under the laws of the state or country of his residence except a nonresident whose home state or country does not require that a motor vehicle driver be licensed;

(2) It shall be unlawful for any person to rent a motor vehicle to another person until he has inspected the vehicle driver's license of such other person and compared and verified the signature thereon with the signature of such other person written in his presence;

(3) Every person renting a motor vehicle to another person shall keep a record of the vehicle license number of the motor vehicle so rented, the name and address of the person to whom the motor vehicle is rented, the number of the vehicle driver's license of the person renting the vehicle and the date and place when and where such vehicle driver's license was issued. Such record shall be open to inspection by any police officer or anyone acting for the director. [1969 c 27 § 1. Prior: 1967 c 232 § 9; 1967 c 32 § 28; 1961 c 12 § 46.20.220; prior: 1937 c 188 § 63; RRS § 6312-63.]

*Allowing unauthorized person to drive: RCW 46.16.011, 46.20.344.
Helmet requirements when motorcycle rented: RCW 46.37.535.*

46.20.265 Revocation of juvenile driving privileges—Alcohol or drug violations. (1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 13.40.265, 66.44-.365, 69.41.065, 69.50.420, or 69.52.070 or from a diversion unit pursuant to RCW 13.40.265. The revocation shall be imposed without hearing.

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for two years or until the juvenile reaches eighteen years of age, whichever is longer.

(3) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section.

(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for which the juvenile's driving privileges were revoked, the department shall reinstate any driving privileges revoked under this section as provided in (b) of this subsection.

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement. [1989 c 271 § 117; 1988 c 148 § 7.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—**Severability**—1988 c 148: See notes following RCW 13.40.265.

46.20.270 Conviction of offense requiring license suspension or revocation—Procedure—Forwarding of records—Municipalities to report parking violations—Terms defined. (1) Whenever any person is convicted of any offense for which this title makes mandatory the suspension or revocation of the driver's license of such person by the department, the privilege of the person to operate a vehicle is suspended until the department takes the action required by this chapter, and the court in which such conviction is had shall forthwith secure the immediate forfeiture of the driver's license of such convicted person and immediately forward such driver's license to the department, and on failure of such convicted person to deliver such driver's license the judge shall cause such person to be confined for the period of such suspension or revocation or until such driver's license is delivered to such judge: *Provided*, That if the convicted person testifies that he or she does not and at the time of the offense did not have a current and valid vehicle driver's license, the judge shall cause such person to be charged with the operation of a motor vehicle without a current and valid driver's license and on conviction punished as by law provided, and the department may not issue a driver's license to such persons during the period of suspension or revocation: *Provided, also*, That if the driver's license of such convicted person has been lost or destroyed and such convicted person makes an affidavit to that effect, sworn to before the judge, the convicted person may not be so confined, but the department may not issue or reissue a driver's license for such convicted person during the period of such suspension or revocation: *Provided*, That perfection of notice of appeal shall stay the execution of sentence including the suspension and/or revocation of the driver's license.

(2) Every court having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority

regulating the operation of motor vehicles on highways, or any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations within this state, shall forward to the department within ten days of a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, a payment of a fine or penalty, a plea of guilty or a finding of guilt, or a finding that any person has committed a traffic infraction an abstract of the court record in the form prescribed by rule of the supreme court, showing the conviction of any person or the finding that any person has committed a traffic infraction in said court for a violation of any said laws other than regulations governing standing, stopping, parking, and pedestrian offenses.

(3) Every municipality having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, may forward to the department within ten days of failure to respond, failure to pay a penalty, failure to appear at a hearing to contest the determination that a violation of any statute, ordinance, or regulation relating to standing, stopping, or parking, or failure to appear at a hearing to explain mitigating circumstances, an abstract of the citation record in the form prescribed by rule of the department, showing the finding by such municipality that three or more violations of laws governing standing, stopping, and parking have been committed and indicating the nature of the defendant's failure to act. Such violations may not have occurred while the vehicle is stolen from the registered owner or is leased or rented under a bona fide commercial vehicle lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner. The department may enter into agreements of reciprocity with the duly authorized representatives of the states for reporting to each other violations of laws governing standing, stopping, and parking.

(4) For the purposes of Title 46 RCW the term "conviction" means a final conviction in a state or municipal court or by any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations in this state, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a traffic law violation charge, regardless of whether the imposition of sentence is deferred or the penalty is suspended.

(5) For the purposes of Title 46 RCW the term "finding that a traffic infraction has been committed" means a failure to respond to a notice of infraction or a determination made by a court pursuant to this chapter. Payment of a monetary penalty made pursuant to RCW 46.63.070(2) is deemed equivalent to such a finding. [1982 1st ex.s. c 14 § 5; 1979 ex.s. c 136 § 58; 1979 c 61 § 7; 1977 ex.s. c 3 § 1; 1967 ex.s. c 145 § 55; 1965 ex.s. c 121 § 22; 1961 c 12 § 46.20.270. Prior: 1937 c 188 §

68; RRS § 6312–68; prior: 1923 c 122 § 2, part; 1921 c 108 § 9, part; RRS § 6371, part.]

Effective date—Severability—1982 1st ex.s. c 14: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.20.275 Nonappearance after written promise—
Notice to department. See RCW 46.64.025.

46.20.285 Offenses requiring revocation of license.
The department shall forthwith revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

(1) For vehicular homicide the period of revocation shall be two years;

(2) Vehicular assault;

(3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, upon a showing by the department's records that the conviction is the second such conviction for the driver within a period of five years. Upon a showing that the conviction is the third such conviction for the driver within a period of five years, the period of revocation shall be two years;

(4) Any felony in the commission of which a motor vehicle is used;

(5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

(7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years. [1985 c 407 § 2; 1984 c 258 § 324; 1983 c 165 § 16; 1983 c 165 § 15; 1965 ex.s. c 121 § 24.]

Effective dates—1985 c 407: See note following RCW 46.04.480.

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

Intent—1984 c 258: See note following RCW 3.46.120.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Revocation of license for attempting to elude pursuing police vehicle: RCW 46.61.024.

Suspension or revocation of license for driving under the influence of intoxicating liquor or drugs: RCW 46.61.515.

Vehicular assault, penalty: RCW 46.61.522.

Vehicular homicide, penalty: RCW 46.61.520.

46.20.291 Authority to suspend licenses—Grounds.

(1) The department is hereby authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

(a) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

(b) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

(c) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

(d) Is incompetent to drive a motor vehicle for any of the reasons enumerated in subsections (4), (5) and (8) of RCW 46.20.031;

(e) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.336. [1980 c 128 § 12; 1965 ex.s. c 121 § 25.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Reckless driving, suspension of license: RCW 46.61.500.

Vehicular assault, penalty: RCW 46.61.522.

Vehicular homicide, penalty: RCW 46.61.520.

46.20.292 Suspension, revocation, or restriction of license—Finding of juvenile court officer. The department may suspend, revoke, restrict, or condition any driver's license upon a showing of its records that the licensee has been found by a juvenile court, chief probation officer, or any other duly authorized officer of a juvenile court to have committed any offense or offenses which under Title 46 RCW constitutes grounds for said action. [1979 c 61 § 8; 1967 c 167 § 9.]

46.20.293 Record of traffic charges of minors furnished to juvenile court—Authority to furnish other requested services to court, parents, or guardians. The department is authorized to provide juvenile courts with the department's record of traffic charges compiled under RCW 46.52.100 and *13.04.278, against any minor upon the request of any state juvenile court or duly authorized officer of any juvenile court of this state. Further, the department is authorized to provide any juvenile court with any requested service which the department can reasonably perform which is not inconsistent with its legal authority which substantially aids juvenile courts in handling traffic cases and which promotes highway safety.

The department is authorized to furnish to the parent, parents, or guardian of any person under eighteen years of age who is not emancipated from such parent, parents, or guardian, the department records of traffic charges compiled against said person and shall collect for said copy a fee of one dollar and fifty cents to be deposited in the highway safety fund. [1979 c 61 § 9; 1977 ex.s. c 3 § 2; 1971 ex.s. c 292 § 45; 1969 ex.s. c 170 § 14; 1967 c 167 § 10.]

*Reviser's note: RCW 13.04.278 has been recodified as RCW 13.50.200 pursuant to 1979 c 155 § 12.

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

46.20.300 Suspension, etc., for extraterritorial convictions. The director of licensing shall suspend, revoke, or cancel the vehicle driver's license of any resident of this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be ground for the suspension or revocation of the vehicle driver's license. The director may further, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, forward a certified copy of such record to the motor vehicle administrator in the state of which the person so convicted is a resident; such record to consist of a copy of the judgment and sentence in the case. [1989 c 337 § 7; 1979 c 158 § 150; 1967 c 32 § 29; 1961 c 12 § 46.20.300. Prior: 1957 c 273 § 8; prior: 1937 c 188 § 66, part; RRS § 6312-66, part; 1923 c 122 § 1, part; 1921 c 108 § 9, part; RRS § 6371, part.]

46.20.305 Reexamination may be required—Certificate of licensee's condition—Action by department. The department, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed may upon notice require him to submit to an examination. The department may in addition require such person to obtain a certificate showing his condition signed by a licensed physician or other proper authority designated by the department. Upon the conclusion of such examination the department shall take driver improvement action as may be appropriate and may suspend or revoke the license of such person or permit him to retain such license, or may issue a license subject to restrictions as permitted under RCW 46.20.041. The department may suspend or revoke the license of such person who refuses or neglects to submit to such examination. [1965 ex.s. c 121 § 26.]

46.20.308 Implied consent—Revocation, etc., for refusal to submit to breath or blood alcohol test. (1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcoholic content of his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. However, in those instances where: (a) The person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample; or (b) as a result of a traffic accident the person is being treated for a medical condition in a hospital, clinic, doctor's office, or other similar facility in which a breath testing instrument is not present, a blood test shall be administered by a qualified person as provided

in RCW 46.61.506(4). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that (a) his or her privilege to drive will be revoked or denied if he or she refuses to submit to the test, and (b) that his or her refusal to take the test may be used in a criminal trial.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which another person has been injured and there is a reasonable likelihood that such other person may die as a result of injuries sustained in the accident, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) The department of licensing, upon the receipt of a sworn report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor and that the person had refused to submit to the test or tests upon the request of the law enforcement officer after being informed that refusal would result in the revocation of the person's privilege to drive, shall revoke the person's license or permit to drive or any nonresident operating privilege.

(7) Upon revoking the license or permit to drive or the nonresident operating privilege of any person, the department shall immediately notify the person involved in writing by personal service or by certified mail of its decision and the grounds therefor, and of the person's right to a hearing, specifying the steps he or she must take to obtain a hearing. Within fifteen days after the notice has been given, the person may, in writing, request a formal hearing. Upon receipt of such request, the department shall afford the person an opportunity for a hearing as provided in RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the scope of such hearing shall cover the issues of whether a law enforcement officer

had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's privilege to drive. The department shall order that the revocation either be rescinded or sustained. Any decision by the department revoking a person's driving privilege shall be stayed and shall not take effect while a formal hearing is pending as provided in this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during pendency of the hearing and appeal.

(8) If the revocation is sustained after such a hearing, the person whose license, privilege, or permit is revoked has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the manner provided in RCW 46.20.334.

(9) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been revoked, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license. [1989 c 337 § 8; 1987 c 22 § 1. Prior: 1986 c 153 § 5; 1986 c 64 § 1; 1985 c 407 § 3; 1983 c 165 § 2; 1983 c 165 § 1; 1981 c 260 § 11; prior: 1979 ex.s. c 176 § 3; 1979 ex.s. c 136 § 59; 1979 c 158 § 151; 1975 1st ex.s. c 287 § 4; 1969 c 1 § 1 (Initiative Measure No. 242, approved November 5, 1968).]

Effective dates—1985 c 407: See note following RCW 46.04.480.

Legislative finding, intent—1983 c 165: "The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers have reached unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to insure swift and certain punishment for those who drink and drive. The legislature does not intend to discourage or deter courts and other agencies from directing or providing treatment for problem drinkers. However, it is the intent that such treatment, where appropriate, be in addition to and not in lieu of the sanctions to be applied to all those convicted of driving while intoxicated." [1983 c 165 § 44.]

Effective dates—1983 c 165: "Sections 2, 3 through 12, 14, 16, 18, 22, 24, and 26 of chapter 165, Laws of 1983 shall take effect on January 1, 1986. The remainder of chapter 165, Laws of 1983 is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983. The director of licensing may immediately take such steps as are necessary to insure that all sections of chapter 165, Laws of 1983 are implemented on their respective effective dates." [1984 c 219 § 1; 1983 c 165 § 47.]

Severability—1983 c 165: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 165 § 48.]

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.
Liability of medical personnel withdrawing blood: RCW 46.61.508.
Refusal of alcohol test—Admissibility as evidence: RCW 46.61.517.

46.20.311 Duration of suspension or revocation—Conditions for reissuance or renewal. (1) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as permitted under RCW 46.20.342 or 46.61.515. Whenever the license of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291, the suspension shall remain in effect and the department shall not issue to the person any new, duplicate, or renewal license until the person pays a reinstatement fee of twenty dollars and gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the reinstatement fee shall be fifty dollars.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (a) After the expiration of one year from the date on which the revoked license was surrendered to and received by the department; (b) after the expiration of the applicable revocation period provided by RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for persons convicted of vehicular homicide; (d) after the expiration of one year in cases of revocation for the first refusal within five years to submit to a chemical test under RCW 46.20.308; (e) after the expiration of two years in cases of revocation for the second refusal within five years to submit to a chemical test under RCW 46.20.308; or (f) after the expiration of the applicable revocation period provided by RCW 46.20.265. After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reinstatement fee in the amount of twenty dollars, but if the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reinstatement fee shall be fifty dollars. Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways. A resident without a license or permit whose license or permit was revoked under RCW 46.20.308(6) shall give and thereafter maintain proof of financial responsibility for the future as provided in chapter 46.29 RCW.

(3) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020, the suspension shall remain in effect and the department shall not issue to the person any new or renewal license until the person pays a reinstatement fee of twenty dollars. If the suspension is the result of a violation of the laws of another state, province, or other jurisdiction involving (a) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (b) the refusal to submit to a chemical test of the driver's blood alcohol content, the reinstatement fee shall be fifty dollars. [1988 c 148 § 9. Prior: 1985 c 407 § 4; 1985 c 211 § 1; 1984 c 258 § 325; 1983 c 165 § 18; 1983 c 165 § 17; 1982 c 212 § 5; 1981 c 91 § 1; 1979 ex.s. c 136 § 60; 1973 1st ex.s. c 36 § 1; 1969 c 1 § 2 (Initiative Measure No. 242, approved November 5, 1968); 1967 c 167 § 5; 1965 ex.s. c 121 § 27.]

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

Effective dates—1985 c 407: See note following RCW 46.04.480.

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

Intent—1984 c 258: See note following RCW 3.46.120.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.

46.20.315 Surrender of license upon suspension or revocation. The department upon suspending or revoking a license shall require that such license shall be surrendered to and be retained by the department. [1985 c 302 § 1; 1965 ex.s. c 121 § 28.]

46.20.320 Suspension, etc., effective although certificate not delivered. Any suspension, revocation, or cancellation of a vehicle driver's license shall be in effect notwithstanding the certificate itself is not delivered over or possession thereof obtained by a court, officer, or the director. [1967 c 32 § 30; 1961 c 12 § 46.20.320. Prior: 1957 c 273 § 10; prior: 1937 c 188 § 66, part; RRS § 6312-66, part; 1923 c 122 § 1, part; 1921 c 108 § 9, part; RRS § 6371, part.]

46.20.322 Driver improvement interview before suspension, etc.—Exceptions—Appearance of minor's parent or guardian. (1) Whenever the department proposes to suspend or revoke the driving privilege of any person or proposes to impose terms of probation on a person's driving privilege or proposes to refuse to renew a driver's license, notice and an opportunity for a driver improvement interview shall be given before taking such action, except as provided in RCW 46.20.324 and 46.20.325.

(2) Whenever the department proposes to suspend, revoke, restrict, or condition a minor driver's driving privilege the department may require the appearance of the minor's legal guardian or father or mother, otherwise the parent or guardian having custody of the minor.

[1979 c 61 § 10; 1973 1st ex.s. c 154 § 88; 1967 c 167 § 6; 1965 ex.s. c 121 § 29.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

46.20.323 Notice of driver improvement interview—Contents. The notice shall contain a statement setting forth the proposed action and the grounds therefor, and notify the person to appear for a driver improvement interview not less than ten days from the date notice is given. [1965 ex.s. c 121 § 30.]

46.20.324 Persons not entitled to driver improvement interview or formal hearing. A person shall not be entitled to a driver improvement interview or formal hearing as hereinafter provided:

(1) When the action by the department is made mandatory by the provisions of this chapter or other law; or

(2) When the person has refused or neglected to submit to an examination as required by RCW 46.20.305. [1965 ex.s. c 121 § 31.]

46.20.325 Suspension or probation before driver improvement interview—Alternative procedure. In the alternative to the procedure set forth in RCW 46.20.322 and 46.20.323 the department, whenever it determines from its records or other sufficient evidence that the safety of persons upon the highways requires such action, shall forthwith and without a driver improvement interview suspend the privilege of a person to operate a motor vehicle or impose reasonable terms and conditions of probation consistent with the safe operation of a motor vehicle. The department shall in such case, immediately notify such licensee in writing and upon his request shall afford him an opportunity for a driver improvement interview as early as practical within not to exceed seven days after receipt of such request, or the department, at the time it gives notice may set the date of a driver improvement interview, giving not less than ten days' notice thereof. [1965 ex.s. c 121 § 32.]

46.20.326 Failure to appear or request driver improvement interview constitutes waiver—Procedure. Failure to appear for a driver improvement interview at the time and place stated by the department in its notice as provided in RCW 46.20.322 and 46.20.323 or failure to request a driver improvement interview within ten days as provided in *section 33 of this 1965 amendatory act shall constitute a waiver of a driver improvement interview, and the department may take action without such driver improvement interview, or the department may, upon request of the person whose privilege to drive may be affected, or at its own option, re-open the case, take evidence, change or set aside any order theretofore made, or grant a driver improvement interview. [1965 ex.s. c 121 § 33.]

***Reviser's note:** The reference to "section 33 of this 1965 amendatory act" appears to be erroneous in that section 33 does not pertain to requesting a driver improvement interview and is the same section in which the reference appears. The reference apparently intended is to section 32, codified as RCW 46.20.325.

46.20.327 Conduct of driver improvement interview—Referee—Evidence—Not deemed hearing. A driver improvement interview shall be conducted in a completely informal manner before a driver improvement analyst sitting as a referee. The applicant or licensee shall have the right to make or file a written answer or statement in which he may controvert any point at issue, and present any evidence or arguments for the consideration of the department pertinent to the action taken or proposed to be taken or the grounds therefor. The department may consider its records relating to the applicant or licensee. The driver improvement interview shall not be deemed an agency hearing. [1965 ex.s. c 121 § 34.]

46.20.328 Findings and notification after driver improvement interview—Request for formal hearing. Upon the conclusion of a driver improvement interview, the department's referee shall make findings on the matter under consideration and shall notify the person involved in writing by personal service of the findings. The referee's findings shall be final unless the person involved is notified to the contrary by personal service or by certified mail within fifteen days. The decision is effective upon notice. The person upon receiving such notice may, in writing and within ten days, request a formal hearing. [1979 c 61 § 11; 1965 ex.s. c 121 § 35.]

Persons not entitled to formal hearing: RCW 46.20.324.

46.20.329 Formal hearing—Time and place—Notice—Stay pending hearing or appeal—Exception—Conduct of hearing. Upon receiving a request for a formal hearing as provided in RCW 46.20.328, the department shall fix a time and place for hearing as early as may be arranged in the county where the applicant or licensee resides, and shall give ten days' notice of the hearing to the applicant or licensee, except that the hearing may be set for a different place with the concurrence of the applicant or licensee and the period of notice may be waived.

Any decision by the department suspending or revoking a person's driving privilege shall be stayed and shall not take effect while a formal hearing is pending as herein provided or during the pendency of a subsequent appeal to superior court: *Provided*, That this stay shall be effective only so long as there is no conviction of a moving violation or a finding that the person has committed a traffic infraction which is a moving violation during pendency of hearing and appeal: *Provided further*, That nothing in this section shall be construed as prohibiting the department from seeking an order setting aside the stay during the pendency of such appeal in those cases where the action of the department is based upon physical or mental incapacity, or a failure to successfully complete an examination required by this chapter.

A formal hearing shall be conducted by the director or by a person or persons appointed by the director from among the employees of the department. [1982 c 189 § 4; 1981 c 67 § 28; 1979 ex.s. c 136 § 61; 1972 ex.s. c 29 § 1; 1965 ex.s. c 121 § 36.]

Effective date—1982 c 189: See note following RCW 34.12.020.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.20.331 Hearing and decision by director's designee. The director may appoint a designee, or designees, to preside over hearings in adjudicative proceedings that may result in the denial, restriction, suspension, or revocation of a driver's license or driving privilege, or in the imposition of requirements to be met prior to issuance or reissuance of a driver's license, under Title 46 RCW. The director may delegate to any such designees the authority to render the final decision of the department in such proceedings. Chapter 34.12 RCW shall not apply to such proceedings. [1989 c 175 § 111; 1982 c 189 § 3.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1982 c 189: See note following RCW 34.12.020.

46.20.332 Formal hearing—Evidence—Subpoenas—Reexamination—Findings and recommendations. At a formal hearing the department shall consider its records and may receive sworn testimony and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers in the manner and subject to the conditions provided in chapter 5.56 RCW relating to the issuance of subpoenas. In addition the department may require a reexamination of the licensee or applicant. Proceedings at a formal hearing shall be recorded stenographically or by mechanical device. Upon the conclusion of a formal hearing, if not heard by the director or a person authorized by him to make final decisions regarding the issuance, denial, suspension or revocation of licenses, the referee or board shall make findings on the matters under consideration and may prepare and submit recommendations to the director or such person designated by the director who is authorized to make final decisions regarding the issuance, denial, suspension, or revocation of licenses. [1972 ex.s. c 29 § 2; 1965 ex.s. c 121 § 37.]

46.20.333 Decision after formal hearing. In all cases not heard by the director or a person authorized by him to make final decisions regarding the issuance, denial, suspension, or revocation of licenses the director, or a person so authorized shall review the records, evidence, and the findings after a formal hearing, and shall render a decision sustaining, modifying, or reversing the order of suspension or revocation or the refusal to grant, or renew a license or the order imposing terms or conditions of probation, or may set aside the prior action of the department and may direct that probation be granted to the applicant or licensee and in such case may fix the terms and conditions of the probation. [1972 ex.s. c 29 § 3; 1965 ex.s. c 121 § 38.]

46.20.334 Appeal to superior court. Any person denied a license or a renewal of a license or whose license has been suspended or revoked by the department except where such suspension or revocation is mandatory under

the provisions of this chapter shall have the right within thirty days, after receiving notice of the decision following a formal hearing to file a notice of appeal in the superior court in the county of his residence. The hearing on the appeal hereunder shall be de novo. [1972 ex.s. c 29 § 4; 1965 ex.s. c 121 § 39.]

46.20.335 Probation in lieu of suspension or revocation. Whenever by any provision of this chapter the department has discretionary authority to suspend or revoke the privilege of a person to operate a motor vehicle, the department may in lieu of a suspension or revocation place the person on probation, the terms of which may include a suspension as a condition of probation, and upon such other reasonable terms and conditions as shall be deemed by the department to be appropriate. [1965 ex.s. c 121 § 40.]

46.20.336 Violations—Penalty. It is a misdemeanor for any person:

(1) To display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious or fraudulently altered driver's license or identicard;

(2) To lend his driver's license or identicard to any other person or knowingly permit the use thereof by another;

(3) To display or represent as one's own any driver's license or identicard not issued to him;

(4) Wilfully to fail or refuse to surrender to the department upon its lawful demand any driver's license or identicard which has been suspended, revoked or canceled;

(5) To use a false or fictitious name in any application for a driver's license or identicard or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;

(6) To permit any unlawful use of a driver's license or identicard issued to him. [1981 c 92 § 1; 1965 ex.s. c 121 § 41.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

46.20.342 Driving while license suspended or revoked—Penalty—Extension of suspension or revocation period. (1) Any person who drives a motor vehicle on any public highway of this state while that person is in a suspended or revoked status or when his or her privilege so to do is suspended or revoked in this or any other state or when his or her policy of insurance or bond, when required under this title, has been canceled or terminated, is guilty of a gross misdemeanor. Upon the first conviction for a violation of this section, a person shall be punished by imprisonment for not less than ten days nor more than six months. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days nor more than one year. Upon the third or subsequent such conviction, the person shall be punished by imprisonment for not less than one year. There may also be imposed in connection

with each such conviction a fine of not more than five hundred dollars.

(2) Except as otherwise provided in this subsection, upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section upon a charge of driving a vehicle while the license of the person is under suspension, the department shall extend the period of the suspension for an additional like period and if the conviction was upon a charge of driving while a license was revoked the department shall not issue a new license for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license. The department shall not so extend the period of suspension or revocation if the court recommends against the extension and:

(a) The convicted person has obtained a valid driver's license; or

(b) The department determines that the convicted person has demonstrated proof of future financial responsibility as provided for in chapter 46.29 RCW, and, if the suspension or revocation was the result of a violation of RCW 46.61.502 or 46.61.504, that the person is making satisfactory progress in any required alcoholism treatment program. [1987 c 388 § 1; 1985 c 302 § 3; 1980 c 148 § 3. Prior: 1979 ex.s. c 136 § 62; 1979 ex.s. c 74 § 1; 1969 c 27 § 2; prior: 1967 ex.s. c 145 § 52; 1967 c 167 § 7; 1965 ex.s. c 121 § 43.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Effective date—Severability—1987 c 388: See notes following RCW 46.16.710.

Effective date—1980 c 148: See note following RCW 46.10.090.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Impoundment of vehicle for driver's license violations—Release, when—Court hearing: RCW 46.20.435.

License plates and registration, confiscation and marking: RCW 46.16.710.

46.20.343 Unlawful to allow unauthorized minor child or ward to drive. No person shall cause or knowingly permit his child or ward under the age of eighteen years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this chapter. [1965 ex.s. c 121 § 44.]

46.20.344 Unlawful to allow unauthorized person to drive. No person shall authorize and knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this chapter. [1965 ex.s. c 121 § 45.]

Allowing unauthorized person to drive: RCW 46.16.011.

46.20.380 Occupational driver's license—Fee. No person may file an application for an occupational driver's license as provided in RCW 46.20.391 unless he or she first pays to the director or other person authorized to accept applications and fees for driver's licenses a fee

of twenty-five dollars. The applicant shall receive upon payment an official receipt for the payment of such fee. All such fees shall be forwarded to the director who shall transmit such fees to the state treasurer in the same manner as other driver's license fees. [1985 ex.s. c 1 § 6; 1979 c 61 § 12; 1967 c 32 § 31; 1961 c 12 § 46-20.380. Prior: 1957 c 268 § 1.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

46.20.391 Occupational driver's license—Application—Eligibility—Restrictions—Cancellation. (1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, may submit to the department an application for an occupational driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is engaged in an occupation or trade that makes it essential that the petitioner operate a motor vehicle, may issue an occupational driver's license and may set definite restrictions as provided in RCW 46.20.394. No person may petition for, and the department shall not issue, an occupational driver's license that is effective during the first thirty days of any suspension or revocation imposed under RCW 46.61.515. A person aggrieved by the decision of the department on the application for an occupational driver's license may request a hearing as provided by rule of the department.

(2) An applicant for an occupational driver's license is eligible to receive such license only if:

(a) Within one year immediately preceding the present conviction, the applicant has not been convicted of any offense relating to motor vehicles for which suspension or revocation of a driver's license is mandatory; and

(b) Within five years immediately preceding the present conviction, the applicant has not been convicted of driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor under RCW 46.61.502 or 46.61.504, of vehicular homicide under RCW 46.61.520, or of vehicular assault under RCW 46.61.522; and

(c) The applicant is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle; and

(d) The applicant files satisfactory proof of financial responsibility pursuant to chapter 46.29 RCW.

(3) The director shall cancel an occupational driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of an offense that pursuant to chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title. [1985 c 407 § 5; 1983 c 165 § 24; 1983 c 165 § 23; 1983 c 164 § 4; 1979 c 61 § 13; 1973 c 5 § 1.]

Effective dates—1985 c 407: See note following RCW 46.04.480.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.20.394 Occupational driver's license—Departmental issuance—Detailed restrictions—Violation. In issuing an occupational driver's license under RCW 46.20.391, the department shall describe the type of occupation permitted and shall set forth in detail the specific hours of the day during which the person may drive to and from his place of work, which may not exceed twelve hours in any one day; the days of the week during which the license may be used; and the general routes over which the person may travel. These restrictions shall be prepared in written form by the department, which document shall be carried in the vehicle at all times and presented to a law enforcement officer under the same terms as the occupational driver's license. Any violation of the restrictions constitutes a violation of RCW 46.20.342 and subjects the person to all procedures and penalties therefor. [1983 c 165 § 26.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.20.400 Occupational driver's license—When new driver's license may be obtained—Surrender of order and occupational driver's license. If an occupational driver's license is issued and is not revoked during the period for which issued the licensee may obtain a new driver's license at the end of such period, but no new driver's permit shall be issued to such person until he surrenders his occupational driver's license and his copy of the order and the director is satisfied that he complies with all other provisions of law relative to the issuance of a driver's license. [1967 c 32 § 33; 1961 c 12 § 46.20.400. Prior: 1957 c 268 § 3.]

46.20.410 Occupational driver's license—Penalty. Any person convicted for violation of any restriction of an occupational driver's license shall in addition to the immediate revocation of such license and any other penalties provided by law be fined not less than fifty nor more than two hundred dollars or imprisoned for not more than six months or both such fine and imprisonment. [1967 c 32 § 34; 1961 c 12 § 46.20.410. Prior: 1957 c 268 § 4.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

46.20.414 Unlicensed drivers—Placement in suspended or revoked status. The department is hereby authorized to place any unlicensed person into a suspended or revoked status under any circumstances which would have resulted in the suspension or revocation of the driver's license had that person been licensed. [1975-'76 2nd ex.s. c 29 § 2.]

46.20.416 Driving while in suspended or revoked status—Penalty. Any person who drives a motor vehicle on any public highway of this state while that person is in a suspended or revoked status is guilty of a gross misdemeanor. First, second, third, and subsequent violations of this section shall be punished in the same way as

violations of RCW 46.20.342(1). [1985 c 302 § 4; 1975-'76 2nd ex.s. c 29 § 3.]

*Allowing unauthorized person to drive—Penalty: RCW 46.16.011.
Arrest without warrant for driving while license suspended or revoked: RCW 10.31.100.*

46.20.418 Driving while in suspended or revoked status—Extension of suspension—Delay in issuing new license. The department upon receiving a record of conviction of any person or upon receiving an order by the juvenile court or any duly authorized court officer of the conviction of any juvenile under RCW 46.20.022 and 46.20.414 through 46.20.416 upon a charge of driving a vehicle while such person or juvenile is in a suspended status, shall extend the period of such suspended status for an additional like period or if the conviction was upon a charge of driving while such person or juvenile is in a revoked status, the department shall not issue a new license for an additional period of one year after the date such person or juvenile would have otherwise been entitled to apply for a new license. [1975-'76 2nd ex.s. c 29 § 4.]

46.20.420 Operation of motor vehicle under other license or permit prohibited while license is suspended or revoked. Any resident or nonresident whose driver's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this title shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this chapter. First, second, third, and subsequent violations of this section shall be punished in the same way as violations of RCW 46.20.342(1). [1985 c 302 § 5; 1967 c 32 § 35; 1961 c 134 § 2.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Impoundment of vehicle for driver's license violations—Release, when—Court hearing: RCW 46.20.435.

License plates and registration, confiscation and marking: RCW 46.16.710.

46.20.430 Stopping of vehicle registered to suspended or revoked driver—Display of license. Any police officer who has received notice of the suspension or revocation of a driver's license from the department of licensing, may, during the reported period of such suspension or revocation, stop any motor vehicle identified by its vehicle license number as being registered to the person whose driver's license has been suspended or revoked. The driver of such vehicle shall display his driver's license upon request of the police officer. [1979 c 158 § 152; 1965 ex.s. c 170 § 47.]

46.20.435 Impoundment of vehicle for driver's license violations—Release, when—Court hearing. (1) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.021 or with a license that has been expired for ninety days or more, or with a suspended or revoked

license in violation of RCW 46.20.342 or 46.20.420, a law enforcement officer may immediately impound the vehicle that the person is operating.

(2) If the driver of the vehicle is the owner of the vehicle, the officer shall not release the vehicle impounded under subsection (1) of this section until the owner of the vehicle:

(a) Establishes that any penalties, fines, or forfeitures owed by the person driving the vehicle when it was impounded have been satisfied; and

(b) Pays the reasonable costs of such impoundment and storage.

(3) If the driver of the vehicle is not the owner of the vehicle, the driver shall be responsible for any penalties, fines, or forfeitures owed or due and for the costs of impoundment and storage. The vehicle shall be released to the owner immediately upon proof of such ownership.

(4) Whenever a vehicle has been impounded by a law enforcement officer, the officer shall immediately serve upon the driver of the impounded vehicle a notice informing the recipient of his or her right to a hearing in the district court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing or the amount of towing and storage charges. A request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date of the impound. If the hearing request is not received by the district court within the ten-day period, the right to a hearing is waived and the driver is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(5)(a) The district court, within five days after the request for a hearing, shall notify the driver in writing of the hearing date and time.

(b) At the hearing, the person requesting the hearing may produce any relevant evidence to show that the impoundment was not proper.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment was proper, whether the driver was responsible for any penalties, fines, or forfeitures owed or due at the time of the impoundment, and whether they have been satisfied.

(d) A certified transcript or abstract of the driving record of the driver, as maintained by the department, is admissible in evidence in any hearing and is prima facie evidence of the status of the driving privilege of the person named in it at the time of the impoundment and whether there were penalties, fines, or forfeitures due and owing by the person named in it at the time the impoundment occurred. [1985 c 391 § 1; 1982 c 8 § 1.]

Severability—1982 c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 8 § 2.]

46.20.440 Vehicles requiring special skills—Additional examination, special endorsement—Exemption—Instruction permit, fee. (Effective until April 1,

1992.) It is unlawful for a person to operate upon the public highway any motor-truck, truck-tractor, school bus, auto stage, for hire vehicle, or private carrier bus as defined by RCW 46.04.310, 46.04.650, 46.04.521, 46.04.050, 46.04.190, and 46.04.416 respectively, found by the director to require special operating skills as hereafter provided, unless the driver has successfully completed an examination, in addition to the examinations in RCW 46.20.130, demonstrating the ability of the driver to operate and maneuver the vehicle or vehicles upon the public highway in a manner not to jeopardize the safety of persons or property: *Provided*, That this requirement does not apply to any person hauling farm commodities from the farm to the processing plant or shipping point, not to exceed a radius of fifty miles from the farm.

The director may issue an instruction permit to an applicant for a period not to exceed one hundred eighty days. This instruction permit may be renewed for one additional one hundred eighty-day period. The director shall collect a two dollars and fifty cent fee for the instruction permit or renewal, and the fee shall be deposited in the highway safety fund.

The director shall upon completion of such tests specially endorse the driver's license of the applicant to indicate the type of vehicle qualifications met. [1980 c 114 § 1; 1971 ex.s. c 126 § 1; 1970 ex.s. c 100 § 4; 1969 ex.s. c 68 § 1; 1967 ex.s. c 20 § 1.]

Effective date—1967 ex.s. c 20: See note following RCW 46.20.470.

Age limit for school bus drivers and drivers of for hire vehicles: RCW 46.20.045.

46.20.450 Vehicles requiring special skills—Rules and regulations—Public hearings. (Effective until April 1, 1992.) The director shall, pursuant to chapter 34.05 RCW, hold public hearings to adopt rules and regulations and standards and specifications pertaining to:

(1) A determination of what types of vehicles require special skills for the operation thereof, taking into consideration the extent to which a special knowledge of traffic laws pertaining to the type of vehicle and a special ability to maneuver such vehicles is necessary for the safe operation of the vehicle both alone and in relationship to other types of vehicles on the road;

(2) The establishment of reasonable classifications within one vehicle category or among several categories for the purpose of either requiring or not requiring a special skill test;

(3) The establishment of the type of examinations to be given, taking into consideration that certain categories of equipment may require a more comprehensive testing than others. The director may, however, allow the substitution of a training course or examination given by common carriers or other persons in lieu of the department's examination, if it meets the standards required by the department. [1967 ex.s. c 20 § 2.]

46.20.460 Vehicles requiring special skills—Waiver of requirements. (Effective until April 1, 1992.)

(1989 Ed.)

The director may in lieu of the special examination required in RCW 46.20.440 waive the requirement as to:

(1) Any person who is engaged in driving on the public highways a vehicle or vehicles classified pursuant to RCW 46.20.450; if

(a) His employer certifies that the applicant is well qualified by previous driving experience to operate the type of vehicle or vehicles covered by the special endorsement for which he has applied; or

(b) A self-employed driver who has been engaged in driving a vehicle or vehicles for a minimum of one year on the public highways and has passed a department approved driver training course or examination and/or his driving record on file with the department indicates that he is a safe and careful driver;

(c) Where by contract, written or implied, a labor union is required upon notice to furnish qualified and competent drivers, the department may accept the certification of the dispatching union official that the driver is qualified and competent to drive the particular equipment.

(2) Any driver who cannot qualify under subsection (1) of this section; if

(a) His employer certifies that he has satisfactorily completed a training course given by his employer which course has been approved by the director; or

(b) He is a self-employed person who furnishes a certificate that he has satisfactorily completed a course that may be given by a person or persons who have given a training course or examination approved by the director.

The director may, however, notwithstanding subsections (1) and (2) of this section require the examination to be given by the department in any case where the applicant's driving record indicates that he has violated the traffic laws to an extent that it is in the public interest to require said examination. [1971 ex.s. c 126 § 2; 1969 ex.s. c 68 § 2; 1967 ex.s. c 20 § 3.]

Effective date—1967 ex.s. c 20: See note following RCW 46.20.470.

46.20.470 Commercial driver's license—Additional fee, disposition. There shall be an additional fee for issuing any class of commercial driver's license in addition to the prescribed fee required for the issuance of the original driver's license. The additional fee for each class shall not exceed twelve dollars for the original commercial driver's license or subsequent renewals. The fee shall be deposited in the highway safety fund. [1989 c 178 § 21; 1985 ex.s. c 1 § 7; 1969 ex.s. c 68 § 3; 1967 ex.s. c 20 § 4.]

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—1967 ex.s. c 20: "Sections 1, 3, and 4 of this amendatory act shall be effective January 1, 1968." [1967 ex.s. c 20 § 5.]

46.20.500 Special endorsement for motorcycle operator's license—Moped exception. No person may drive a motorcycle or a motor-driven cycle unless such person

[Title 46 RCW—p 77]

has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles, nor may a person drive a motorcycle of a larger engine displacement than that authorized by such special endorsement or by an instruction permit for such category: *Provided*, That any person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped. [1982 c 77 § 1; 1979 ex.s. c 213 § 6; 1967 c 232 § 1.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1982 c 77: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 77 § 10.]

Mopeds

*operation and safety standards: RCW 46.61.710, 46.61.720.
registration: RCW 46.16.630.*

46.20.505 Special endorsement for motorcycle operator's license—**Examination fees, amount and distribution.** Every person applying for a special endorsement or a new category of endorsement of a driver's license authorizing such person to drive a motorcycle or a motor-driven cycle shall pay an examination fee of two dollars which is not refundable. In addition, the endorsement fee for the initial or new category motorcycle endorsement shall be six dollars and the subsequent renewal endorsement fee shall be seven dollars and fifty cents. The initial or new category and renewal endorsement fees shall be deposited in the motorcycle safety education account of the highway safety fund. [1989 c 203 § 2; 1988 c 227 § 5; 1987 c 454 § 2; 1985 ex.s. c 1 § 8; 1982 c 77 § 2; 1979 c 158 § 153; 1967 ex.s. c 145 § 50.]

Severability—1988 c 227: See RCW 46.81A.900.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Severability—1982 c 77: See note following RCW 46.20.500.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

Motorcycle safety education account: RCW 46.68.065.

46.20.510 Special endorsement for motorcycle operator's license—**Categories**—**Instruction permits**—**Fees.** (1) There shall be three categories for the special motorcycle endorsement of a driver's license. Category one shall be for motorcycles or motor-driven cycles having an engine displacement of one hundred fifty cubic centimeters or less. Category two shall be for motorcycles having an engine displacement of five hundred cubic centimeters or less. Category three shall include categories one and two, and shall be for motorcycles having an engine displacement of five hundred one cubic centimeters or more.

(2) The department may issue a motorcyclist's instruction permit to an individual who wishes to learn to ride a motorcycle or obtain an endorsement of a larger endorsement category for a period not to exceed ninety days. This motorcyclist's instruction permit may be renewed for an additional ninety days. The director shall collect a two dollar and fifty cent fee for the motorcyclist's instruction permit or renewal, and the fee

shall be deposited in the motorcycle safety education account of the highway safety fund. This permit and a valid driver's license with current endorsement, if any, shall be carried when operating a motorcycle. An individual with a motorcyclist's instruction permit may not carry passengers, may not operate a motorcycle during the hours of darkness or on a fully-controlled, limited-access facility, and shall be under the direct visual supervision of a person with a motorcycle endorsement of the appropriate category and at least five years' riding experience. [1989 c 337 § 9; 1985 ex.s. c 1 § 9; 1985 c 234 § 3; 1982 c 77 § 3.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Severability—1982 c 77: See note following RCW 46.20.500.

46.20.515 Motorcycle endorsement examination—**Emphasis.** The motorcycle endorsement examination for each displacement category shall emphasize maneuvers necessary for on-street operation, including emergency braking and turning as may be required to avoid an impending collision. [1982 c 77 § 4.]

Severability—1982 c 77: See note following RCW 46.20.500.

46.20.520 Motorcycle operator training and education program—**Advisory board.** (1) The director of licensing shall use moneys designated for the motorcycle safety education account of the highway safety fund to implement by July 1, 1983, a voluntary motorcycle operator training and education program. The director may contract with public and private entities to implement this program.

(2) There is created a motorcycle safety education advisory board to assist the director of licensing in the development of a motorcycle operator training education program. The board shall monitor this program following implementation and report to the director of licensing as necessary with recommendations including, but not limited to, administration, application, and substance of the motorcycle operator training and education program.

The board shall consist of five members appointed by the director of licensing. Three members of the board, one of whom shall be appointed chairperson, shall be active motorcycle riders or members of nonprofit motorcycle organizations which actively support and promote motorcycle safety education. One member shall be a currently employed Washington state patrol motorcycle officer with at least five years experience and at least one year cumulative experience as a motorcycle officer. One member shall be a member of the public. The term of appointment shall be two years. The board shall meet at the call of the director, but not less than two times annually and not less than five times during its term of appointment, and shall receive no compensation for services but shall be reimbursed for travel expenses while engaged in business of the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(3) The board shall submit a proposed motorcycle operator training and education program to the director

and to the legislative transportation committee for review and approval on or before January 1, 1988.

(4) The priorities of the program shall be in the following order of priority:

- (a) Public awareness of motorcycle safety.
- (b) Motorcycle safety education programs conducted by public and private entities.
- (c) Classroom and on-cycle training.
- (d) Improved motorcycle operator testing. [1987 c 454 § 3; 1982 c 77 § 5.]

Severability—1982 c 77: See note following RCW 46.20.500.

46.20.550 Wheelchair conveyances—Special examinations—Restrictions on license—Rules for performance review. Each operator of a wheelchair conveyance shall undergo a special examination conducted for the purpose of determining whether that person can properly and safely operate the conveyance on public roadways within a specified area. An operator's license issued after the special examination may specify the route, area, time, or other restrictions that are necessary to ensure the safety of the operator as well as the general motoring public. The department shall adopt rules for periodic review of the performance of operators of wheelchair conveyances. Operation of a wheelchair conveyance in violation of these rules is a traffic infraction. [1983 c 200 § 3.]

Severability—1983 c 200: See note following RCW 46.04.710.

Wheelchair conveyances

definition: RCW 46.04.710.

licensing: RCW 46.16.640.

public roadways, operating on: RCW 46.61.730.

safety standards: RCW 46.37.610.

46.20.599 Alcohol violators—Confiscation of license, issuance of temporary license. (1) Whenever any person is arrested for a violation of RCW 46.61.502 or 46.61.504, the arresting officer shall, at the time of arrest, confiscate the person's Washington state license or permit to drive, if any, and issue a temporary license to replace any confiscated license or permit.

(2) Within twenty-four hours of the arrest, the arresting officer shall transmit any confiscated license or permit to the department with a report indicating the date and location of the arrest.

(3) Any temporary license issued under this section shall be dated with the same expiration date as the confiscated license or permit. A temporary license shall be valid only until the sooner of:

- (a) Its expiration date; or
- (b) The suspension, revocation, or denial by judicial or administrative action for any reason of the license, permit, or privilege to drive of the person holding the temporary license.

(4) The department shall return, replace, or authorize renewal of any confiscated license or permit that has not been suspended or revoked for any reason upon notification:

(a) By the law enforcement agency that made the arrest that a charge has not been filed for the offense for which the license or permit was confiscated;

(b) By the prosecuting authority of the jurisdiction in which the offense occurred that the charge has been dropped or changed to other than one for which confiscation is required under this section; or

(c) By the court in which the case has been or was to be heard that prosecution on the charge has been deferred, that the charge has been dismissed, or that the person charged has been found not guilty of the charge; or

(d) By a court that the person has been convicted of the offense for which the license or permit was confiscated, but the suspension or revocation of the license or permit has been stayed pending appeal of the conviction.

(5) If a temporary license issued under this section expires before the department receives notification under subsection (4) of this section, the department shall authorize the driver to seek renewal of the license. If the driver is qualified for renewal, the department shall issue a new temporary license with the same expiration date as the driver would have received had his or her license or permit not been confiscated.

(6) Upon receipt of a returned or replaced confiscated license from the department, the driver shall return any temporary license in his or her possession or shall sign an affidavit that the temporary license has been lost, stolen, or destroyed.

(7) No temporary license issued under this section is valid to any greater degree than the confiscated license or permit that it replaces.

(8) The department shall provide courts and law enforcement agencies with the appropriate temporary license and notice forms for use under this section. [1985 c 352 § 2; 1984 c 219 § 2.]

Severability—1985 c 352: See note following RCW 10.05.010.

46.20.710 Ignition interlocks—Legislative finding. The legislature finds and declares:

(1) There is a need to reduce the incidence of drivers on the highways and roads of this state who, because of their use, consumption, or possession of alcohol, pose a danger to the health and safety of other drivers;

(2) One method of dealing with the problem of drinking drivers is to discourage the use of motor vehicles by persons who possess or have consumed alcoholic beverages;

(3) The installation of an ignition interlock breath alcohol device will provide a means of deterring the use of motor vehicles by persons who have consumed alcoholic beverages;

(4) Ignition interlock devices are designed to supplement other methods of punishment that prevent drivers from using a motor vehicle after using, possessing, or consuming alcohol;

(5) It is economically and technically feasible to have an ignition interlock device installed in a motor vehicle in such a manner that the vehicle will not start if the operator has recently consumed alcohol. [1987 c 247 § 1.]

46.20.720 Ignition interlocks—Drivers convicted of alcohol offenses. The court may order any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle to drive only a motor vehicle equipped with a functioning ignition interlock device, and the restriction shall be for a period of not less than six months.

The court shall establish a specific calibration setting at which the ignition interlock device will prevent the motor vehicle from being started and the period of time that the person shall be subject to the restriction.

For purposes of this section, "convicted" means being found guilty of an offense or being placed on a deferred prosecution program under chapter 10.05 RCW. [1987 c 247 § 2.]

46.20.730 Ignition interlock device—Definition. For the purposes of RCW 46.20.720, 46.20.740, and 46.20.750, "ignition interlock device" means breath alcohol analyzed ignition equipment, certified by the state commission on equipment, designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage. The commission shall by rule provide standards for the certification, installation, repair, and removal of the devices. [1987 c 247 § 3.]

46.20.740 Ignition interlocks—Notation on driver's license. The department shall attach or imprint a notation on the driver's license of any person restricted under RCW 46.20.720 stating that the person may operate only a motor vehicle equipped with an ignition interlock device. [1987 c 247 § 4.]

46.20.750 Ignition interlocks—Assisting another in starting or operating—Penalty. A person who knowingly assists another person who is restricted to the use of an ignition interlock device to start and operate that vehicle in violation of a court order is guilty of a gross misdemeanor.

The provisions of this section do not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle and the person subject to the court order does not operate the vehicle. [1987 c 247 § 5.]

46.20.900 Repeal and saving. Section 46.20.010, chapter 12, Laws of 1961 and RCW 46.20.010, section 46.20.020, chapter 12, Laws of 1961 as amended by section 1, chapter 134, Laws of 1961 and RCW 46.20.020, section 46.20.030, chapter 12, Laws of 1961 as amended by section 12, chapter 39, Laws of 1963 and RCW 46.20.030, section 46.20.060, chapter 12, Laws of 1961 and RCW 46.20.060, sections 46.20.080 through 46.20.090, chapter 12, Laws of 1961 and RCW 46.20.080 through 46.20.090, section 46.20.110, chapter 12, Laws of 1961 as last amended by section 10, chapter 39, Laws of 1963 and RCW 46.20.110, sections 46.20.140 through 46.20.180, chapter 12, Laws of 1961 and RCW 46.20.140 through 46.20.180, section 46.20.210, chapter

12, Laws of 1961 and RCW 46.20.210, sections 46.20.230 through 46.20.250, chapter 12, Laws of 1961 and RCW 46.20.230 through 46.20.250, section 46.20.280, chapter 12, Laws of 1961 and RCW 46.20.280, section 46.20.290, chapter 12, Laws of 1961 and RCW 46.20.290, section 46.20.310, chapter 12, Laws of 1961 and RCW 46.20.310, and section 46.20.330, chapter 12, Laws of 1961 and RCW 46.20.330; section 46.20.350, chapter 12, Laws of 1961 and RCW 46.20.350; section 46.20.360, chapter 12, Laws of 1961 and RCW 46.20.360 are each hereby repealed. Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceedings instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder. [1965 ex.s. c 121 § 46.]

46.20.910 Severability—1965 ex.s. c 121. If any provision of this 1965 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1965 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 121 § 47.]

46.20.911 Severability, implied consent law—1969 c 1. If any provision of *RCW 46.20.092, 46.20.308, 46.20.311 and 46.61.506 or its application to any person or circumstance is held invalid, the remainder of RCW 46.20.092, 46.20.308, 46.20.311 and 46.61.506, or the application of the provision to other persons or circumstances is not affected. [1969 c 1 § 6 (Initiative Measure No. 242, approved November 5, 1968).]

*Reviser's note: RCW 46.20.092 was repealed by 1986 c 101 § 1.

Chapter 46.21

DRIVER LICENSE COMPACT

Sections

46.21.010	Compact enacted—Provisions.
46.21.020	"Licensing authority" defined—Duty to furnish information.
46.21.030	Expenses of compact administrator.
46.21.040	"Executive head" defined.

46.21.010 Compact enacted—Provisions. The driver license compact prepared pursuant to resolutions of the western governors' conference and the western interstate committee on highway policy problems of the council of state governments is hereby entered into and enacted into law, the terms and provisions of which shall be as follows:

DRIVER LICENSE COMPACT

ARTICLE I—Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—Definitions

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III—Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV—Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Vehicular homicide;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this Article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this Article.

ARTICLE V—Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a non-party state.

ARTICLE VII—Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the

power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—Entry into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1983 c 164 § 5; 1963 c 120 § 1.]

46.21.020 "Licensing authority" defined—Duty to furnish information. As used in the compact, the term "licensing authority" with reference to this state, shall mean the department of licensing. Said department shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV, and V of the compact. [1979 c 158 § 154; 1967 c 32 § 36; 1963 c 120 § 2.]

46.21.030 Expenses of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment. [1963 c 120 § 3.]

46.21.040 "Executive head" defined. As used in the compact, with reference to this state, the term "executive head" shall mean governor. [1963 c 120 § 4.]

Chapter 46.23

NONRESIDENT VIOLATOR COMPACT

Sections	
46.23.010	Compact established—Provisions.
46.23.020	Reciprocal agreements authorized—Provisions.
46.23.030	Progress reports.
46.23.040	Review of agreement by legislative transportation committee.
46.23.050	Rules.

46.23.010 Compact established—Provisions. The nonresident violator compact, hereinafter called "the compact," is hereby established in the form substantially as follows, and the Washington state department of licensing is authorized to enter into such compact with all other jurisdictions legally joining therein:

NONRESIDENT VIOLATOR COMPACT

Article I — Findings, Declaration of Policy, and Purpose

(a) The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction: Must post collateral or bond to secure appearance for trial at a later date; or if unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to him [his] home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in paragraph (1) above, causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in paragraph (2) above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

(b) It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph (b) above in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

Article II — Definitions

As used in the compact, the following words have the meaning indicated, unless the context requires otherwise.

(1) "Citation" means any summons, ticket, notice of infraction, or other official document issued by a police officer for a traffic offense containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic offense.

(3) "Court" means a court of law or traffic tribunal.

(4) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(5) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(6) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(7) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(9) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(10) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic offense.

(11) "Terms of the citation" means those options expressly stated upon the citation.

Article III — Procedure for Issuing Jurisdiction

(a) When issuing a citation for a traffic violation or infraction, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a

party jurisdiction and shall not, subject to the exceptions noted in paragraph (b) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

(b) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

(c) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and insofar as practical shall contain information as specified in the compact manual as minimum requirements for effective processing by the home jurisdiction.

(d) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content substantially conforming to the compact manual.

(e) The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

(f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

(g) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

Article IV — Procedure for Home Jurisdiction

(a) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

(b) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual.

Article V — Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and a nonparty jurisdiction.

Article VI — Compact Administrator Procedures

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

(c) The board shall elect annually, from its membership, a chairman and a vice chairman.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency, and may receive, utilize, and dispose of the same.

(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, person, firm, or corporation, or any private non-profit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

Article VII — Entry into Compact and Withdrawal

(a) This compact shall become effective when it has been adopted by at least two jurisdictions.

(b) Entry into the compact shall be made by a resolution of ratification executed by the department of licensing and submitted to the chairman of the board. The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(1) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

(2) Agreement to comply with the terms and provisions of the compact.

(3) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(c) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

(d) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

Article VIII — Exceptions

The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

Article IX — Amendments to the Compact

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and may be initiated by one or more party jurisdictions.

(b) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a party jurisdiction to respond to the compact chairman within one hundred twenty days after receipt of the proposed amendment shall constitute endorsement.

Article X — Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, person, or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

Article XI — Title

This compact shall be known as the nonresident violator compact. [1982 c 212 § 1.]

46.23.020 Reciprocal agreements authorized—Provisions. (1) The Washington state department of licensing is authorized and encouraged to execute a reciprocal agreement with the Canadian province of British Columbia, and with any other state which is not a member of the nonresident violator compact, concerning the rendering of mutual assistance in the disposition of

traffic infractions committed by persons licensed in one state or province while in the jurisdiction of the other.

(2) Such agreements shall provide that if a person licensed by either state or province is issued a citation by the other state or province for a moving traffic violation covered by the agreement, he shall not be detained or required to furnish bail or collateral, and that if he fails to comply with the terms of the citation, his license shall be suspended or renewal refused by the state or province that issued the license until the home jurisdiction is notified by the issuing jurisdiction that he has complied with the terms of the citation.

(3) Such agreement shall also provide such terms and procedures as are necessary and proper to facilitate its administration. [1982 c 212 § 2.]

46.23.030 Progress reports. The department of licensing shall report biennially to the chairs of the transportation committees of the senate and house of representatives, including one copy to the staff of each of the committees, on its progress in entering into the non-resident violators compact and in attaining similar agreements with British Columbia and other nonmember states. [1987 c 505 § 47; 1982 c 212 § 3.]

46.23.040 Review of agreement by legislative transportation committee. Before any agreement made pursuant to RCW 46.23.010 or 46.23.020 may be formally executed and become effective, it shall first be submitted for review by the legislative transportation committee. [1982 c 212 § 4.]

46.23.050 Rules. The department shall adopt rules for the administration and enforcement of RCW 46.23.010 and 46.23.020 in accordance with chapter 34.05 RCW. [1982 c 212 § 6.]

Chapter 46.25

UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

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46.25.001 Short title. This chapter may be cited as the Uniform Commercial Driver's License Act. [1989 c 178 § 1.]

46.25.005 Purpose—Construction. (1) The purpose of this chapter is to implement the federal Commercial Motor Vehicle Safety Act of 1986 (CMVSA), Title XII, P.L. 99-570, and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

(a) Permitting commercial drivers to hold only one license;

(b) Disqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses;

(c) Strengthening licensing and testing standards.

(2) This chapter is a remedial law and shall be liberally construed to promote the public health, safety, and welfare. To the extent that this chapter conflicts with general driver licensing provisions, this chapter prevails. Where this chapter is silent, the general driver licensing provisions apply. [1989 c 178 § 2.]

46.25.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this chapter to an individual that authorizes the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to the CMVSA to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(4).

(6) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross weight rating of 26,001 or more pounds;

(b) If the vehicle is designed to transport sixteen or more passengers, including the driver;

(c) If the vehicle is transporting hazardous materials and is required to be identified by a placard in accordance with 49 C.F.R. part 172, subpart F; or

(d) If the vehicle is a school bus as defined in RCW 46.04.521 regardless of weight or size.

(7) "Conviction" has the definition set forth in RCW 46.20.270.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single or a combination or articulated vehicle, or the registered gross weight, whichever is greater. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units.

(13) "Hazardous materials" has the same meaning found in Section 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.).

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

(16) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person; and

(d) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(17) "State" means a state of the United States and the District of Columbia.

(18) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(19) "United States" means the fifty states and the District of Columbia. [1989 c 178 § 3.]

46.25.020 One license limit. No person who drives a commercial motor vehicle may have more than one driver's license. [1989 c 178 § 4.]

46.25.030 Duties of driver—Notice to department and employer. (1)(a) A driver of a commercial motor vehicle holding a driver's license issued by this state who is convicted of violating a state law or local ordinance relating to motor vehicle traffic control, in any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify the department in the manner specified by rule of the department within thirty days of the date of conviction.

(b) A driver of a commercial motor vehicle holding a driver's license issued by this state who is convicted of violating a state law or local ordinance relating to motor vehicle traffic control in this or any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify his or her employer in writing of the conviction within thirty days of the date of conviction.

(c) The notification requirements contained in (a) and (b) of this subsection as they relate to the federal, provincial, territorial, or municipal laws of Canada become effective only when the federal law or federal rules are changed to require the notification or a bilateral or multilateral agreement is entered into between the state of Washington and any Canadian province implementing essentially the same standards of regulation and penalties of all parties as encompassed in this chapter.

(2) A driver whose driver's license is suspended, revoked, or canceled by a state, who loses the privilege to drive a commercial motor vehicle in a state for any period, or who is disqualified from driving a commercial motor vehicle for any period, shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(3) A person who applies to be a commercial motor vehicle driver shall provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:

(a) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(b) The dates between which the applicant drove for each employer; and

(c) The reason for leaving that employer. The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information. [1989 c 178 § 5.]

46.25.040 Duties of employer. (1) An employer shall require the applicant to provide the information specified in RCW 46.25.030(3).

(2) No employer may knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(a) In which the driver has a driver's license suspended, revoked, or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle; or

(b) In which the driver has more than one driver's license. [1989 c 178 § 6.]

46.25.050 Commercial driver's license required—
Exceptions, restrictions. (1) Drivers of commercial motor vehicles shall obtain a commercial driver's license as required under this chapter by April 1, 1992. The director shall establish a program to convert all qualified commercial motor vehicle drivers by that date. After April 1, 1992, except when driving under a commercial driver's instruction permit and a valid automobile or classified license and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle they are driving. However, this requirement does not apply to any person:

(a) Who is the operator of a farm vehicle, and the vehicle is:

- (i) Controlled and operated by a farmer;
- (ii) Used to transport either agricultural products, farm machinery, farm supplies, or any combination of those materials to or from a farm;
- (iii) Not used in the operations of a common or contract motor carrier;
- (iv) Used within one hundred fifty miles of the person's farm; and
- (v) Not transporting hazardous materials required to be identified by a placard; or

(b) Who is a firefighter operating emergency equipment, and:

- (i) The firefighter has successfully completed a driver training course approved by the director; and
 - (ii) The firefighter carries a certificate attesting to the successful completion of the approved training course; or
- (c) Who is operating a recreational vehicle for non-commercial purposes.

(2) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or canceled, while subject to disqualification, or in violation of an out-of-service order. Violations of this subsection shall be punished in the same way as violations of RCW 46.20.342(1). [1989 c 178 § 7.]

46.25.060 Knowledge and skills test—Instruction permit. (1)(a) No person may be issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H, and has satisfied all other requirements of the CMVSA in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the department. In addition to the fee charged for issuance or renewal of any license, the applicant shall pay a fee of no more than ten dollars for each classified knowledge examination, classified endorsement knowledge examination, or any combination of classified license and endorsement knowledge examinations. The applicant shall pay a fee of no more than

fifty dollars for each classified skill examination or combination of classified skill examinations conducted by the department.

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

(i) The test is the same which would otherwise be administered by the state;

(ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. part 383.75; and

(iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

(2) The department may waive the skills test specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. part 383.77.

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

(4)(a) A commercial driver's instruction permit may be issued to an individual who holds a valid automobile or classified driver's license.

(b) A commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period. The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. An application for a commercial driver's instruction permit shall be accompanied by a fee of five dollars. The department shall forthwith transmit the fees collected for commercial driver's instruction permits to the state treasurer. [1989 c 178 § 8.]

46.25.070 Application—Change of address—Residency. (1) The application for a commercial driver's license or commercial driver's instruction permit must include the following:

(a) The full name and current mailing and residential address of the person;

(b) A physical description of the person, including sex, height, weight, and eye color;

(c) Date of birth;

(d) The applicant's Social Security number;

(e) The person's signature;

(f) Certifications including those required by 49 C.F.R. part 383.71(a);

(g) Proof of certification of physical examination or waiver, as required by 49 C.F.R. 391.41 through 391.49;

(h) Any other information required by the department; and

(i) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

(3) A driver of a commercial motor vehicle shall immediately apply for a driver's license upon becoming a resident of this state. No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction. [1989 c 178 § 9.]

46.25.080 License contents, classifications, endorsements, restrictions, expiration—Exchange of information. (1) The commercial driver's license must be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamper-proof. It must include, but not be limited to, the following information:

- (a) The name and residence address of the person;
- (b) The person's color photograph;
- (c) A physical description of the person including sex, height, weight, and eye color;
- (d) Date of birth;
- (e) The person's Social Security number or any number or identifier deemed appropriate by the department;
- (f) The person's signature;
- (g) The class or type of commercial motor vehicle or vehicles that the person is authorized to drive, together with any endorsements or restrictions;
- (h) The name of the state; and
- (i) The dates between which the license is valid.

(2) Commercial driver's licenses may be issued with the classifications, endorsements, and restrictions set forth in this subsection. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

(a) Licenses may be classified as follows:

(i) Class A is a combination of vehicles with a gross combined weight rating (GCWR) of 26,001 pounds or more, if the GVWR of the vehicle being towed is in excess of 10,000 pounds.

(ii) Class B is a single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds.

(iii) Class C is a single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds consisting of:

(A) Vehicles designed to transport sixteen or more passengers, including the driver;

(B) Vehicles used in the transportation of hazardous materials that requires the vehicle to be identified with a placard under 49 C.F.R., part 172, subpart F; and

(C) School buses designed to carry fewer than sixteen passengers.

(b) The following endorsements and restrictions may be placed on a license:

(i) "H" authorizes the driver to drive a vehicle transporting hazardous materials.

(ii) "K" restricts the driver to vehicles not equipped with air brakes.

(iii) "T" authorizes driving double and triple trailers.

(iv) "P" authorizes driving vehicles carrying passengers.

(v) "N" authorizes driving tank vehicles.

(vi) "X" represents a combination of hazardous materials and tank vehicle endorsements.

The license may be issued with additional endorsements and restrictions as established by rule of the director.

(3) Before issuing a commercial driver's license, the department shall obtain driving record information through the commercial driver's license information system, the national driver register, and from the current state of record.

(4) Within ten days after issuing a commercial driver's license, the department must notify the commercial driver's license information system of that fact, and provide all information required to ensure identification of the person.

(5) A commercial driver's license shall expire in the same manner as provided in RCW 46.20.181.

(6) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by RCW 46.25.070(1), providing updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the applicant shall take and pass the written test for a hazardous materials endorsement. [1989 c 178 § 10.]

46.25.090 Disqualification—Grounds for, period of—Records, notice. (1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a commercial motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(d) Using a commercial motor vehicle in the commission of a felony;

(e) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle.

If any of the violations set forth in this subsection occurred while transporting a hazardous material required to be identified by a placard, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed after October 1, 1989, may be considered in applying this subsection.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(6) Within ten days after suspending, revoking, or canceling a commercial driver's license, the department shall update its records to reflect that action. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the department shall notify the licensing authority of the state that issued the commercial driver's license. [1989 c 178 § 11.]

46.25.100 Restoration after disqualification. When a person has been disqualified from operating a commercial motor vehicle, the person is not entitled to have the commercial driver's license restored until after the expiration of the appropriate disqualification period required under RCW 46.25.090. After expiration of the appropriate period and upon payment of a requalification fee of twenty dollars, the person may apply for a new, duplicate, or renewal commercial driver's license as provided by law. If the person has been disqualified for a period of one year or more, the person shall demonstrate that he or she meets the commercial driver's license qualification standards specified in RCW 46.25.060. [1989 c 178 § 12.]

46.25.110 Driving with alcohol in system. (1) Notwithstanding any other provision of Title 46 RCW, a person may not drive, operate, or be in physical control of a commercial motor vehicle while having alcohol in his or her system.

(2) Law enforcement or appropriate officials shall issue an out-of-service order valid for twenty-four hours against a person who drives, operates, or is in physical

control of a commercial motor vehicle while having alcohol in his or her system or who refuses to take a test to determine his or her alcohol content as provided by RCW 46.25.120. [1989 c 178 § 13.]

46.25.120 Test for alcohol or drugs—Disqualification for refusal of test or positive test. (1) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to RCW 46.61-.506, to take a test or tests of that person's blood or breath for the purpose of determining that person's alcohol concentration or the presence of other drugs.

(2) A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system.

(3) The law enforcement officer requesting the test under subsection (1) of this section shall warn the person requested to submit to the test that a refusal to submit will result in that person being disqualified from operating a commercial motor vehicle under RCW 46.25.090.

(4) If the person refuses testing, or submits to a test that discloses an alcohol concentration of 0.04 or more, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to subsection (1) of this section and that the person refused to submit to testing, or submitted to a test that disclosed an alcohol concentration of 0.04 or more.

(5) Upon receipt of the sworn report of a law enforcement officer under subsection (4) of this section, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while under the influence of alcohol or any drug, whether the person was placed under arrest, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, and, if the test was administered, whether the results indicated an alcoholic concentration in that person's blood of 0.04 percent or more. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is

disqualified may file a petition in the superior court of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334. [1989 c 178 § 14.]

46.25.130 Report of violation by nonresident. Within ten days after receiving a report of the conviction of any nonresident holder of a commercial driver's license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the department shall notify the driver licensing authority in the licensing state of the conviction. [1989 c 178 § 15.]

46.25.140 Rules. The department may adopt rules necessary to carry out this chapter. [1989 c 178 § 16.]

46.25.150 Agreements to carry out chapter. The department may enter into or make agreements, arrangements, or declarations to carry out this chapter. [1989 c 178 § 17.]

46.25.160 Licenses issued by other states. Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license or commercial driver's instruction permit issued by any state in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses or permits, if the person's license or permit is not suspended, revoked, or canceled, and if the person is not disqualified from driving a commercial motor vehicle or is subject to an out-of-service order. [1989 c 178 § 18.]

46.25.170 Civil and criminal penalties. (1) A person subject to RCW 81.04.405 who is determined by the utilities and transportation commission, after notice, to have committed an act that is in violation of RCW 46.25.020, 46.25.030, 46.25.040, 46.25.050, or 46.25.110 is liable to Washington state for the civil penalties provided for in RCW 81.04.405.

(2) A person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of RCW 46.25.020, 46.25.030, 46.25.040, 46.25.050, or 46.25.110 is guilty of a gross misdemeanor. [1989 c 178 § 19.]

46.25.900 Severability—1989 c 178. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 178 § 30.]

46.25.901 Effective dates—1989 c 178. Sections 25, 26, 28, and 32 of this act shall take effect on April 1, 1992. The remainder of this act shall take effect on October 1, 1989. The director of licensing may immediately take such steps as are necessary to insure that all sections of this act are implemented on their respective effective dates. [1989 c 178 § 33.] For codification of the various sections of this act, see Codification Tables, Volume 0.

Chapter 46.29

FINANCIAL RESPONSIBILITY

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ADMINISTRATION

46.29.010 Purpose. It is the purpose of this chapter to adopt in substance the provisions of the uniform vehicle code relating to financial responsibility in order to achieve greater uniformity with the laws of other states and thereby reduce the conflicts in laws confronting motorists as they travel between states. [1963 c 169 § 1.]

46.29.020 Definitions. (1) The term "owner" as used in this chapter shall mean registered owner as defined in RCW 46.04.460.

(2) The term "registration" as used in this chapter shall mean the certificate of license registration issued under the laws of this state. [1963 c 169 § 2.]

46.29.030 Director to administer chapter. (1) The director shall administer and enforce the provisions of this chapter and may make rules and regulations necessary for its administration.

(2) The director shall prescribe and provide suitable forms requisite or deemed necessary for the purposes of this chapter. [1963 c 169 § 3.]

46.29.040 Court review. Any order of the director under the provisions of this chapter shall be subject to review, at the instance of any party in interest, by appeal to the superior court of Thurston county, or at his option to the superior court of the county of his residence. The scope of such review shall be limited to that prescribed by RCW 7.16.120 governing review by certiorari. Notice of appeal must be filed within ten days after receipt of the notice of such order. The court shall determine whether the filing of the appeal shall operate as a stay of any such order of the director. Upon the filing the notice of appeal the court shall issue an order to the director to show cause why the order should not be reversed or modified. The order to show cause shall be returnable not less than ten nor more than thirty days after the date of service thereof upon the director. The court after

hearing the matter may modify, affirm or reverse the order of the director in whole or in part. [1963 c 169 § 4.]

46.29.050 Furnishing driving record and evidence of ability to respond in damages—Fees. (1) The department shall upon request furnish any person or his attorney a certified abstract of his driving record, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved. Such abstract shall (a) indicate the total number of vehicles involved, whether the vehicles were legally parked or moving, and whether the vehicles were occupied at the time of the accident; and (b) contain reference to any convictions of the person for violation of the motor vehicle laws as reported to the department, reference to any findings that the person has committed a traffic infraction which have been reported to the department, and a record of any vehicles registered in the name of the person. The department shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund.

(2) The department shall upon request furnish any person who may have been injured in person or property by any motor vehicle, with an abstract of all information of record in the department pertaining to the evidence of the ability of any driver or owner of any motor vehicle to respond in damages. The department shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund. [1987 1st ex.s. c 9 § 1; 1985 ex.s. c 1 § 10; 1979 ex.s. c 136 § 63; 1969 ex.s. c 40 § 1; 1967 c 174 § 1; 1963 c 169 § 5.]

Severability—1987 1st ex.s. c 9: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 9 § 11.]

Effective date—1987 1st ex.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 1st ex.s. c 9 § 12.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective date—1967 c 174: "Sections 1, 2, 3 and 4 of this amendatory act shall become effective July 1, 1967." [1967 c 174 § 7.]

Abstract of operating record to be furnished insurance company: RCW 46.52.130.

SECURITY FOLLOWING ACCIDENT

46.29.060 Application of sections requiring deposit of security and suspensions for failure to deposit security. The provisions of this chapter, requiring deposit of security and suspensions for failure to deposit security, subject to certain exemptions, shall apply to the driver and owner of any vehicle of a type subject to registration under the motor vehicle laws of this state which is in any manner involved in an accident within this state, which accident has resulted in bodily injury or death of any person or damage to the property of any one person to

an apparent extent equal to or greater than the minimum amount established by rule adopted by the director. The director shall adopt rules establishing the property damage threshold at which the provisions of this chapter apply with respect to the deposit of security and suspensions for failure to deposit security. Beginning October 1, 1987, the property damage threshold shall be five hundred dollars. The thresholds shall be revised when necessary, but not more frequently than every two years. The revisions shall only be for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the time period since the last revision and by the threshold established by the chief of the Washington state patrol for the filing of accident reports as provided in RCW 46.52.030. [1987 c 463 § 1; 1977 ex.s. c 369 § 1; 1971 ex.s. c 22 § 2; 1963 c 169 § 6.]

46.29.070 Department to determine amount of security required—Notices. (1) The department, not less than twenty days after receipt of a report of an accident as described in the preceding section, shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each driver or owner. Such determination shall not be made with respect to drivers or owners who are exempt under succeeding sections of this chapter from the requirements as to security and suspension.

(2) The department shall determine the amount of security deposit required of any person upon the basis of the reports or other information submitted. In the event a person involved in an accident as described in this chapter fails to make a report or submit information indicating the extent of his injuries or the damage to his property within one hundred eighty days after the accident and the department does not have sufficient information on which to base an evaluation of such injuries or damage, then the department after reasonable notice to such person, if it is possible to give such notice, otherwise without such notice, shall not require any deposit of security for the benefit or protection of such person.

(3) The department after receipt of report of any accident referred to herein and upon determining the amount of security to be required of any person involved in such accident or to be required of the owner of any vehicle involved in such accident shall give written notice to every such person of the amount of security required to be deposited by him and that an order of suspension will be made as hereinafter provided not less than twenty days and not more than sixty days after the sending of such notice unless within said time security be deposited as required by said notice. [1981 c 309 § 1; 1979 c 78 § 1; 1963 c 169 § 7.]

Proof of financial security for the future required in addition to security after accident: RCW 46.29.420.

46.29.080 Exceptions as to requirement of security. The requirements as to security and suspension in this chapter shall not apply:

(1) To the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the vehicle involved in the accident, except that a driver shall not be exempt under this subsection if at the time of the accident the vehicle was being operated without the owner's permission, express or implied;

(2) To the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his driving of vehicles not owned by him;

(3) To the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond as to which there is a bona fide dispute concerning coverage of such driver as evidenced by the pendency of litigation seeking a declaration of said driver's coverage under such policy or bond;

(4) To the driver, whether or not the owner, if there is a bona fide claim on the part of the driver that there was in effect at the time of the accident, an automobile liability policy or bond insuring or covering such driver;

(5) To any person qualifying as a self-insurer under RCW 46.29.630 or to any person operating a vehicle for such self-insurer;

(6) To the driver or the owner of a vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such driver or owner;

(7) To the driver or owner of a vehicle which at the time of the accident was parked, unless such vehicle was parked at a place where parking was at the time of the accident prohibited under any applicable law or ordinance;

(8) To the owner of a vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such vehicle without such permission, except if the vehicle was operated by his minor child or spouse;

(9) To the owner of a vehicle involved in an accident if at the time of the accident such vehicle was owned by or leased to the United States, this state or any political subdivision of this state or a municipality thereof, or to the driver of such vehicle if operating such vehicle with permission; or

(10) To the driver or the owner of a vehicle in the event at the time of the accident the vehicle was being operated by or under the direction of a police officer who, in the performance of his duties, shall have assumed custody of such vehicle. [1965 c 124 § 1; 1963 c 169 § 8.]

46.29.090 Requirements as to policy or bond. (1) No policy or bond is effective under RCW 46.29.080 unless issued by an insurance company or surety company authorized to do business in this state, except as provided in subsection (2) of this section, nor unless such

policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of, property to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident.

(2) No policy or bond is effective under RCW 46.29-.080 with respect to any vehicle which was not registered in this state or was a vehicle which was registered elsewhere than in this state at the effective date of the policy or bond or the most recent renewal thereof, unless the insurance company or surety company issuing such policy or bond is authorized to do business in this state, or if said company is not authorized to do business in this state, unless it executes a power of attorney authorizing the director of licensing to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident.

(3) The department may rely upon the accuracy of the information in a required report of an accident as to the existence of insurance or a bond unless and until the department has reason to believe that the information is erroneous. [1980 c 117 § 3; 1979 c 158 § 155; 1967 ex.s. c 3 § 1; 1963 c 169 § 9.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: "This amendatory act shall take effect on July 1, 1968." [1967 ex.s. c 3 § 6.]

46.29.100 Form and amount of security. (1) The security required under this chapter shall be in such form and in such amount as the department may require, but in no case in excess of the limits specified in RCW 46.29.090 in reference to the acceptable limits of a policy or bond.

(2) Every depositor of security shall designate in writing every person in whose name such deposit is made and may at any time change such designation, but any single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident. [1963 c 169 § 10.]

46.29.110 Failure to deposit security—Suspensions. In the event that any person required to deposit security under this chapter fails to deposit such security within thirty days after the department has sent the notice as hereinbefore provided, the department shall thereupon suspend:

(1) The driver's license of each driver in any manner involved in the accident;

(2) The driver's license of the owner of each vehicle of a type subject to registration under the laws of this state involved in such accident;

(3) If the driver or owner is a nonresident, the privilege of operating within this state a vehicle of a type subject to registration under the laws of this state;

Such suspensions shall be made in respect to persons required by the department to deposit security who fail to deposit such security except as otherwise provided under succeeding sections of this chapter. [1987 c 378 § 1; 1967 c 32 § 37; 1963 c 169 § 11.]

46.29.120 Release from liability. (1) A person shall be relieved from the requirement for deposit of security for the benefit or protection of another person injured or damaged in the accident in the event he is released from liability by such other person.

(2) In the event the department has evaluated the injuries or damage to any minor the department may accept, for the purposes of this chapter only, evidence of a release from liability executed by a natural guardian or a legal guardian on behalf of such minor without the approval of any court or judge. [1965 c 124 § 2; 1963 c 169 § 12.]

46.29.130 Adjudication of nonliability. A person shall be relieved from the requirement for deposit of security in respect to a claim for injury or damage arising out of the accident in the event such person has been finally adjudicated not to be liable in respect to such claim. [1963 c 169 § 13.]

46.29.140 Agreements for payment of damages. (1) Any two or more of the persons involved in or affected by an accident as described in RCW 46.29.060 may at any time enter into a written agreement for the payment of an agreed amount with respect to all claims of any of such persons because of bodily injury to or death or property damage arising from such accident, which agreement may provide for payment in installments, and may file a signed copy thereof with the department.

(2) The department, to the extent provided by any such written agreement filed with it, shall not require the deposit of security and shall terminate any prior order of suspension, or, if security has previously been deposited, the department shall immediately return such security to the depositor or his personal representative.

(3) In the event of a default in any payment under such agreement and upon notice of such default the department shall take action suspending the license of such person in default as would be appropriate in the event of failure of such person to deposit security when required under this chapter.

(4) Such suspension shall remain in effect and such license shall not be restored unless and until:

(a) Security is deposited as required under this chapter in such amount as the department may then determine,

(b) When, following any such default and suspension, the person in default has paid the balance of the agreed amount,

(c) When, following any such default and suspension, the person in default has resumed installment payments under an agreement acceptable to the creditor, or

(d) Three years have elapsed following the accident and evidence satisfactory to the department has been filed with it that during such period no action at law

upon such agreement has been instituted and is pending. [1981 c 309 § 2; 1963 c 169 § 14.]

46.29.150 Payment upon judgment. The payment of a judgment arising out of an accident or the payment upon such judgment of an amount equal to the maximum amount which could be required for deposit under this chapter shall, for the purposes of this chapter, release the judgment debtor from the liability evidenced by such judgment. [1963 c 169 § 15.]

46.29.160 Termination of security requirement. The department, if satisfied as to the existence of any fact which under RCW 46.29.120, 46.29.130, 46.29.140 or 46.29.150 would entitle a person to be relieved from the security requirements of this chapter, shall not require the deposit of security by the person so relieved from such requirement, or if security has previously been deposited by such person, the department shall immediately return such deposit to such person or to his personal representative. [1963 c 169 § 16.]

46.29.170 Duration of suspension. Unless a suspension is terminated under other provisions of this chapter, any order of suspension by the department under this chapter shall remain in effect and no license shall be renewed for or issued to any person whose license is so suspended until:

(1) Such person shall deposit or there shall be deposited on his behalf the security required under this chapter, or

(2) Three years have elapsed following the date of the accident resulting in such suspension and evidence satisfactory to the department has been filed with it that during such period no action for damages arising out of the accident resulting in such suspension has been instituted.

An affidavit of the applicant that no action at law for damages arising out of the accident has been filed against him or, if filed, that it is not still pending shall be prima facie evidence of that fact. The department may take whatever steps are necessary to verify the statement set forth in any said affidavit. [1981 c 309 § 3; 1963 c 169 § 17.]

46.29.180 Application to nonresidents, unlicensed drivers, unregistered vehicles, and accidents in other states. (1) In case the driver or the owner of a vehicle of a type subject to registration under the laws of this state involved in an accident within this state has no driver's license in this state, then such driver shall not be allowed a driver's license until he has complied with the requirements of this chapter to the same extent that would be necessary if, at the time of the accident, he had held a license or been the owner of a vehicle registered in this state.

(2) When a nonresident's driving privilege is suspended pursuant to RCW 46.29.110, the department shall transmit a certified copy of the record or abstract of such action to the official in charge of the issuance of licenses and registration certificates in the state in which

such nonresident resides, if the law of such other state provided for action in relation thereto similar to that provided for in subsection (3) of this section.

(3) Upon receipt of such certification that the driving privilege of a resident of this state has been suspended or revoked in any such other state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the department to suspend a nonresident's driving privilege had the accident occurred in this state, the department shall suspend the license of such resident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security. [1967 c 32 § 38; 1963 c 169 § 18.]

46.29.190 Authority of department to decrease amount of security. The department may reduce the amount of security ordered in any case if in its judgment the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith. [1965 c 124 § 3; 1963 c 169 § 19.]

46.29.200 Correction of action by department. Whenever the department has taken any action or has failed to take any action under this chapter by reason of having received erroneous information, then upon receiving correct information within three years after the date of an accident the department shall take appropriate action to carry out the purposes and effect of this chapter. The foregoing, however, shall not be deemed to require the department to reevaluate the amount of any deposit required under this chapter. [1967 c 61 § 1; 1965 c 124 § 4; 1963 c 169 § 20.]

46.29.210 Custody of security. The department shall place any security deposited with it under this chapter in the custody of the state treasurer. [1963 c 169 § 21.]

46.29.220 Disposition of security. (1) Such security shall be applicable and available only:

(a) For the payment of any settlement agreement covering any claim arising out of the accident upon instruction of the person who made the deposit, or

(b) For the payment of a judgment or judgments, rendered against the person required to make the deposit, for damages arising out of the accident in an action at law begun not later than three years after the date of the accident.

(2) Every distribution of funds from the security deposits shall be subject to the limits of the department's evaluation on behalf of a claimant. [1981 c 309 § 4; 1963 c 169 § 22.]

46.29.230 Return of deposit. Upon the expiration of three years from the date of the accident resulting in the security requirement, any security remaining on deposit shall be returned to the person who made such deposit or

to his personal representative if an affidavit or other evidence satisfactory to the department has been filed with it:

(1) That no action for damages arising out of the accident for which deposit was made is pending against any person on whose behalf the deposit was made, and

(2) That there does not exist any unpaid judgment rendered against any such person in such an action.

The foregoing provisions of this section shall not be construed to limit the return of any deposit of security under any other provision of this chapter authorizing such return. [1981 c 309 § 5; 1963 c 169 § 23.]

46.29.240 Certain matters not evidence in civil suits.

The report required following an accident, the action taken by the department pursuant to this chapter, the findings, if any, of the department upon which such action is based, and the security filed as provided in this chapter, shall not be referred to in any way, and shall not be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. [1963 c 169 § 24.]

PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

46.29.250 Application of sections requiring deposit of proof of financial responsibility for the future. The provisions of this chapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, shall apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws, or who have failed to pay judgments upon causes of action arising out of ownership, maintenance or use of vehicles of a type subject to registration under the laws of this state, or who having driven or owned a vehicle involved in an accident are required to deposit security under the provisions of RCW 46.29.070. [1963 c 169 § 25.]

46.29.260 Meaning of "proof of financial responsibility for the future." The term "proof of financial responsibility for the future" as used in this chapter means: Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a vehicle of a type subject to registration under the laws of this state, in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of ten thousand dollars because of injury to or destruction of property of others in any one accident. Wherever used in this chapter the terms "proof of financial responsibility" or "proof" shall be synonymous with the term "proof of financial responsibility for the future." [1980 c 117 § 4; 1967 ex.s. c 3 § 2; 1963 c 169 § 26.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

46.29.270 Meaning of "judgment" and "state." The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section.

(1) The term "judgment" shall mean: Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any vehicle of a type subject to registration under the laws of this state, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(2) The term "state" shall mean: Any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada. [1963 c 169 § 27.]

46.29.280 Suspension continues until proof furnished.

Whenever, under any law of this state, the license of any person is suspended or revoked by reason of a conviction, forfeiture of bail, or finding that a traffic infraction has been committed, the suspension or revocation hereinbefore required shall remain in effect and the department shall not issue to such person any new or renewal of license until permitted under the motor vehicle laws of this state, and not then unless and until such person shall give and thereafter maintain proof of financial responsibility for the future. Upon receiving notice of the termination or cancellation of proof of financial responsibility for the future, the department shall resuspend or rerevoke the person's driving privilege until the person again gives and thereafter maintains proof of financial responsibility for the future. [1985 c 157 § 1; 1979 ex.s. c 136 § 64; 1963 c 169 § 28.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.29.290 Action in respect to unlicensed person. If a person has no license, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, no license shall be thereafter issued to such person unless he shall give and thereafter maintain proof of financial responsibility for the future. [1965 c 124 § 5; 1963 c 169 § 29.]

46.29.300 Action in respect to nonresidents. Whenever the department suspends or revokes a nonresident's driving privilege by reason of a conviction, forfeiture of bail, or finding that a traffic infraction has been committed such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of

financial responsibility for the future. [1979 ex.s. c 136 § 65; 1967 c 32 § 39; 1963 c 169 § 30.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.29.310 When courts to report nonpayment of judgments. Whenever any person fails within thirty days to satisfy any judgment, then it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state to forward immediately to the department the following:

- (1) A certified copy or abstract of such judgment;
- (2) A certificate of facts relative to such judgment;
- (3) Where the judgment is by default, a certified copy or abstract of that portion of the record which indicates the manner in which service of summons was effectuated and all the measures taken to provide the defendant with timely and actual notice of the suit against him. [1969 ex.s. c 44 § 1; 1963 c 169 § 31.]

46.29.320 Further action with respect to nonresidents. If the defendant named in any certified copy or abstract of a judgment reported to the department is a nonresident, the department shall transmit those certificates furnished to it under RCW 46.29.310 to the official in charge of the issuance of licenses and registrations of the state of which the defendant is a resident. [1969 ex.s. c 44 § 2; 1963 c 169 § 32.]

46.29.330 Suspension for nonpayment of judgments—Hearing after default judgment. The department upon receipt of the certificates provided for by RCW 46.29.310, on a form provided by the department, shall forthwith suspend the license and any nonresident's driving privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section or in other sections of this chapter.

When the certificates transmitted to the department under RCW 46.29.310 indicate that a default judgment has been entered against the defendant but do not indicate clearly that service of summons was on the person of the defendant, then the department shall promptly notify the defendant by first class mail addressed to the address in the department's records under RCW 46.20.205 (if a nonresident, then to the comparable record in his home state) that within twenty-five days of the mailing date, which shall be indicated on the notice, he may request a hearing on the question of the suspension of his license or nonresident driving privilege. If the defendant does not make a timely request for a hearing, then the suspension shall be forthwith executed. Should a hearing be timely requested, then the department shall convene a hearing in conformity with chapter 34.05 RCW, as now law or hereafter amended. The defendant's license or nonresident driving privilege shall not be suspended if at such hearing he overcomes the following presumptions:

- (a) That he received actual and timely notice of the suit against him.

- (b) That he would have received actual and timely notice had he conformed to the provisions of RCW 46.20.205.

- (c) That he would have received actual and timely notice had he not thwarted the attempt or attempts to so notify him. [1969 ex.s. c 44 § 3; 1967 c 32 § 40; 1963 c 169 § 33.]

46.29.340 Exception in relation to government vehicles. The provisions of RCW 46.29.330 shall not apply with respect to any such judgment arising out of an accident caused by the ownership or operation, with permission, of a vehicle owned or leased to the United States, this state or any political subdivision of this state or a municipality thereof. [1963 c 169 § 34.]

46.29.350 Exception when consent granted by judgment creditor. If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed a license or nonresident's driving privilege, the same may be allowed by the department, in its discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in RCW 46.29.400, provided the judgment debtor furnishes proof of financial responsibility. [1967 c 32 § 41; 1963 c 169 § 35.]

46.29.360 Exception when insurer liable. No license or nonresident's driving privilege of any person shall be suspended under the provisions of this chapter if the department shall find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this chapter, but has not paid such judgment for any reason. A finding by the department that an insurer is obligated to pay a judgment shall not be binding upon such insurer and shall have no legal effect whatever except for the purpose of administering this section. If the department finds that no insurer is obligated to pay such a judgment, the judgment debtor may file with the department a written notice of his intention to contest such finding by an action in the superior court. In such a case the license or the nonresident's driving privilege of such judgment debtor shall not be suspended by the department under the provisions of this chapter for thirty days from the receipt of such notice nor during the pendency of any judicial proceedings brought in good faith to determine the liability of an insurer so long as the proceedings are being diligently prosecuted to final judgment by such judgment debtor. Whenever in any judicial proceedings it shall be determined by any final judgment, decree or order that an insurer is not obligated to pay any such judgment, the department, notwithstanding any contrary finding theretofore made by it, shall forthwith suspend the license and any nonresident's driving privilege of any person against whom such judgment was rendered, as provided in RCW 46.29.330. [1967 c 32 § 42; 1963 c 169 § 36.]

46.29.370 Suspension continues until judgments paid and proof given. Such license and nonresident's driving privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in RCW 46.29.350, 46.29.360 and 46.29.400. [1967 c 32 § 43; 1963 c 169 § 37.]

46.29.390 Payments sufficient to satisfy requirements. (1) Judgments herein referred to are, for the purpose of this chapter only, deemed satisfied:

(a) When twenty-five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(b) When, subject to such limit of twenty-five thousand dollars because of bodily injury to or death of one person, the sum of fifty thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(c) When ten thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(2) Payments made in settlements of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section. [1980 c 117 § 5; 1979 c 61 § 14; 1967 ex.s. c 3 § 3; 1963 c 169 § 39.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

46.29.400 Installment payment of judgments—Default. (1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The department shall not suspend a license or nonresident's driving privilege, and shall restore any license or nonresident's driving privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtain such an order permitting the payment of such judgment in installments, and while the payment of any said installments is not in default. [1967 c 32 § 44; 1963 c 169 § 40.]

46.29.410 Action if breach of agreement. In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the department shall forthwith suspend the license or nonresident's driving privilege of the judgment debtor

until such judgment is satisfied, as provided in this chapter. [1967 c 32 § 45; 1963 c 169 § 41.]

46.29.420 Proof required in addition to deposit of security after accident. Any person required to deposit security under RCW 46.29.070, for the benefit or protection of another person injured or damaged in an accident, shall in addition be required to give proof of financial responsibility for the future. The department shall give written notice of such additional requirement to every such person at the time and in the manner provided in RCW 46.29.070 for giving notice of the requirement for security. [1963 c 169 § 42.]

46.29.430 Additional proof required—Suspension or revocation for failure to give proof. In the event that any person required to give proof of financial responsibility under RCW 46.29.420 fails to give such proof within twenty days after the department has sent notice as hereinbefore provided, the department shall suspend, or continue in effect any existing suspension or revocation of, the license or any nonresident's driving privilege of such person. [1987 c 371 § 1; 1967 c 32 § 46; 1963 c 169 § 43.]

46.29.440 Additional proof required—Suspension to continue until proof given and maintained. Such license or nonresident's driving privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until such person shall give and thereafter maintain proof of financial responsibility for the future. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The department shall endorse appropriate restrictions on the license held by such person or may issue a new license containing such restrictions. [1967 c 32 § 47; 1965 c 124 § 6; 1963 c 169 § 44.]

46.29.450 Alternate methods of giving proof. Proof of financial responsibility when required under this chapter, with respect to such a vehicle or with respect to a person who is not the owner of such a vehicle, may be given by filing:

(1) A certificate of insurance as provided in RCW 46.29.460 or 46.29.470;

(2) A bond as provided in RCW 46.29.520;

(3) A certificate of deposit of money or securities as provided in RCW 46.29.550; or

(4) A certificate of self-insurance, as provided in RCW 46.29.630, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obliged to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer. [1963 c 169 § 45.]

46.29.460 Certificate of insurance as proof. Proof of financial responsibility for the future may be furnished

by filing with the department the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle. [1963 c 169 § 46.]

46.29.470 Certificate furnished by nonresident as proof. A nonresident may give proof of financial responsibility by filing with the department a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the vehicle, or vehicles, owned by such nonresident is registered, or in the state in which such nonresident resides, if he does not own a vehicle, provided such certificate otherwise conforms with the provisions of this chapter, and the department shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(1) Said insurance carrier shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state;

(2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued therein. [1963 c 169 § 47.]

46.29.480 Default by nonresident insurer. If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the department shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues. [1963 c 169 § 48.]

46.29.490 "Motor vehicle liability policy" defined. (1) Certification. A "motor vehicle liability policy" as said term is used in this chapter means an "owner's policy" or an "operator's policy" of liability insurance, certified as provided in RCW 46.29.460 or 46.29.470 as proof of financial responsibility for the future, and issued, except as otherwise provided in RCW 46.29.470, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named in the policy as insured.

(2) Owner's policy. Such owner's policy of liability insurance:

(a) Shall designate by explicit description or by appropriate reference all vehicles with respect to which coverage is to be granted by the policy; and

(b) Shall insure the person named therein and any other person, as insured, using any such vehicle or vehicles with the express or implied permission of such

named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle as follows: Twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

(3) Operator's policy. Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(4) Required statements in policies. Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided under the policy in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(5) Policy need not insure workers' compensation, etc. Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) Provisions incorporated in policy. Every motor vehicle liability policy is subject to the following provisions which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this chapter becomes absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy defeats or voids said policy.

(b) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

(c) The insurance carrier may settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof is deductible from the limits of liability specified in subdivision (b) of subsection (2) of this section.

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter constitutes the entire contract between the parties.

(7) Excess or additional coverage. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and such excess or additional coverage is not subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" applies only to that part of the coverage which is required by this section.

(8) Reimbursement provision permitted. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(9) Proration of insurance permitted. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(10) Multiple policies. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carrier which policies together meet such requirements.

(11) Binders. Any binder issued pending the issuance of a motor vehicle liability policy is deemed to fulfill the requirements for such a policy. [1980 c 117 § 6; 1967 ex.s. c 3 § 4; 1963 c 169 § 49.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

46.29.500 Notice of cancellation or termination of certified policy. When an insurance carrier has certified a motor vehicle liability policy under RCW 46.29.460 or 46.29.470 the insurance so certified shall not be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance so certified shall be filed in the department, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any vehicle designated in both certificates. [1963 c 169 § 50.]

46.29.510 Chapter not to affect other policies. (1) This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform with the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

(2) This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of vehicles not owned by the insured. [1963 c 169 § 51.]

46.29.520 Bond as proof. Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties each owning real estate within this state, and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by a judge of the superior court, which said bond shall be conditioned for payment of the amounts specified in RCW 46.29.260. Such bond shall be filed with the department and shall not be cancellable except after ten days written notice to the department. [1963 c 169 § 52.]

46.29.530 When bond constitutes a lien. Before a bond with individual sureties is accepted by the department it shall be recorded as other instruments affecting real property in the county or counties wherein any real estate scheduled in such bond is located. Such bond shall constitute a lien from the date of such recording in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damage because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a vehicle of a type subject to registration under the laws of this state after such bond was filed. [1963 c 169 § 53.]

46.29.540 Action on bond. If a judgment, rendered against the principal on any bond described in RCW 46.29.520, shall not be satisfied within thirty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. Such an action to foreclose a lien shall be prosecuted in the same manner as an action to foreclose a mortgage on real estate. [1963 c 169 § 54.]

46.29.550 Money or securities as proof. Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him sixty thousand dollars in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of sixty thousand dollars. The state treasurer shall not accept any such deposit and issue a certificate therefor and the department shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides. [1980 c 117 § 7; 1967 ex.s. c 3 § 5; 1963 c 169 § 55.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

46.29.560 Application of deposit. Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a vehicle of a type subject to registration under the laws of this state after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. Any interest or other income accruing to such money or securities, so deposited, shall be paid by the state treasurer to the depositor, or his order, as received. [1963 c 169 § 56.]

46.29.570 Owner may give proof for others. The owner of a motor vehicle may give proof of financial responsibility on behalf of his employee or a member of his immediate family or household in lieu of the furnishing of proof by any said person. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The department shall endorse appropriate restrictions on the license held by such person, or may issue a new license containing such restrictions. [1963 c 169 § 57.]

46.29.580 Substitution of proof. The department shall consent to the cancellation of any bond or certificate of insurance or the department shall direct and the state treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter. [1963 c 169 § 58.]

46.29.590 Other proof required, when. Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the department shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration pending the filing of such other proof. [1963 c 169 § 59.]

46.29.600 Duration of proof—When proof may be canceled or returned. (1) The department shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the department shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility, or the department shall waive the requirement of filing proof, in any of the following events:

(a) At any time after three years from the date such proof was required when, during the three-year period preceding the request, the department has not received record of a conviction, forfeiture of bail, or finding that

a traffic infraction has been committed which would require or permit the suspension or revocation of the license of the person by or for whom such proof was furnished; or

(b) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) In the event the person who has given proof surrenders his license to the department;

(2) Provided, however, that the department shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has within one year immediately preceding such request been involved as a driver or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

(3) Whenever any person whose proof has been canceled or returned under subdivision (1)(c) of this section applies for a license within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period. [1979 ex.s. c 136 § 66; 1963 c 169 § 60.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

VIOLETIONS OF THIS CHAPTER

46.29.605 Suspension of registration, notice—Surrender of license plates—Penalties. (1) Whenever the involvement in a motor vehicle accident in this state results in the driving privilege of a person being suspended for failure to pay a judgment or deposit security, the department shall suspend the Washington registration of the motor vehicle if the person driving at the time of the accident was also the registered owner of the motor vehicle.

(2) A notice of suspension shall be mailed by first class mail to the owner's last known address of record in the department and shall be effective notwithstanding the owner's failure to receive the notice.

(3) Upon suspension of the registration of a motor vehicle, the registered owner shall surrender all vehicle license plates registered to the vehicle. The department shall destroy the license plates and, upon reinstatement of the registration, shall issue new vehicle license plates as provided in RCW 46.16.270.

(4) Failure to surrender license plates under subsection (3) of this section is a misdemeanor punishable by imprisonment for not less than one day nor more than five days and by a fine of not less than fifty dollars nor more than two hundred fifty dollars.

(5) No vehicle license plates or certificate of ownership or registration for a motor vehicle may be issued and no vehicle license may be renewed during the time the registration of the motor vehicle is suspended.

(6) Any person who operates a vehicle in this state while the registration of the vehicle is suspended is guilty of a gross misdemeanor and upon conviction thereof shall be imprisoned for not less than two days nor more than five days and fined not less than one hundred dollars nor more than five hundred dollars. [1981 c 309 § 6.]

46.29.610 Surrender of license—Penalty. (1) Any person whose license shall have been suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, shall immediately return his license to the department. If any person shall fail to return to the department the license as provided herein, the department shall forthwith direct any peace officer to secure possession thereof and to return the same to the department.

(2) Any person wilfully failing to return [a] license as required in paragraph (1) of this section shall be guilty of a misdemeanor. [1963 c 169 § 61.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

46.29.620 Forged proof—Penalty. Any person who shall forge, or, without authority, sign any evidence of proof of financial responsibility for the future, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a gross misdemeanor. [1963 c 169 § 62.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

46.29.625 Driving when license suspended or revoked until proof of ability to respond in damages furnished—Penalty. Any person whose driver's license or other privilege to operate a motor vehicle has been suspended or revoked and restoration thereof or issuance of a new license is contingent upon the furnishing of proof of ability to respond in damages and who in the absence of full authorization from the director, drives a motor vehicle upon any highway shall be punished by imprisonment for not less than ten days nor more than six months and there may be imposed in addition thereto a fine of not more than five hundred dollars. [1969 ex.s. c 281 § 21.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Revoked license not renewed or restored until proof of financial responsibility given: RCW 46.20.311.

MISCELLANEOUS PROVISIONS RELATING TO FINANCIAL RESPONSIBILITY

46.29.630 Self-insurers. (1) Any person in whose name more than twenty-five vehicles are registered in

this state may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in subsection (2) of this section.

(2) The department may, in its discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgment obtained against such person. Such certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both.

(3) Upon not less than five days' notice and a hearing pursuant to such notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after, such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. [1963 c 169 § 63.]

46.29.640 Chapter not to prevent other process. Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. [1963 c 169 § 64.]

46.29.900 Construction—1963 c 169. RCW 46.29.010 through 46.29.640 shall be codified as a single chapter of the Revised Code of Washington. RCW 46.29.010 through 46.29.050 shall be captioned "ADMINISTRATION." RCW 46.29.060 through 46.29.240 shall be captioned "SECURITY FOLLOWING ACCIDENT." RCW 46.29.250 through 46.29.600 shall be captioned "PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE." RCW 46.29.610 through 46.29.620 shall be captioned "VIOLATIONS OF THIS CHAPTER." RCW 46.29.630 through 46.29.640 shall be captioned "MISCELLANEOUS PROVISIONS RELATING TO FINANCIAL RESPONSIBILITY." Such captions and subsection headings, as used in this chapter, do not constitute any part of the law. [1963 c 169 § 67.]

46.29.910 Severability—1963 c 169. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 169 § 68.]

Reviser's note: Chapter 169, Laws of 1963 also amended RCW 46.52.130 and 46.52.140.

46.29.920 Repeals and saving. Sections 46.24.010 through 46.24.910 and sections 46.28.010 through 46.28.200, chapter 12, Laws of 1961 and RCW 46.24.010 through 46.24.910 and RCW 46.28.010 through 46.28.200 are each repealed.

Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder. [1963 c 169 § 69.]

Chapter 46.30

MANDATORY LIABILITY INSURANCE

Sections

46.30.010	Legislative intent.
46.30.020	Liability insurance or other financial responsibility required—Violations—Exceptions.
46.30.030	Insurance identification card.
46.30.040	Display of identification card or proof of financial responsibility—Penalty for falsification.
46.30.900	Severability—1989 c 353.
46.30.901	Effective date—1989 c 353.

46.30.010 Legislative intent. It is a privilege granted by the state to operate a motor vehicle upon the highways of this state. The legislature recognizes the threat that uninsured drivers are to the people of the state. In order to alleviate the threat posed by uninsured drivers it is the intent of the legislature to require that all persons driving vehicles registered in this state satisfy the financial responsibility requirements of this chapter. By enactment of this chapter it is not the intent of the legislature to modify, amend, or invalidate existing insurance contract terms, conditions, limitations, or exclusions or to preclude insurance companies from using similar terms, conditions, limitations, or exclusions in future contracts. [1989 c 353 § 1.]

Report on uninsured motorists: "The director of licensing shall compile records on uninsured motorists and file a report with the legislature after accumulating data for twelve months after January 1, 1990." [1989 c 353 § 9.]

46.30.020 Liability insurance or other financial responsibility required—Violations—Exceptions. (1) No person may operate a motor vehicle subject to registration under chapter 46.16 RCW in this state unless the person is insured under a motor vehicle liability policy with liability limits of at least the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least the amounts provided in RCW 46.29.090.

(2) A violation of this section constitutes a traffic infraction punishable by a fine of two hundred and fifty dollars unless a court determines that in the interest of justice the fine should be reduced. In lieu of the fine, a court may permit the defendant to perform community service designated by the court.

(3) If a person cited for a violation of this section appears in person before the court and provides written evidence that at the time the person was cited, he or she was in compliance with this section, the citation shall be dismissed. In lieu of personal appearance, a person cited for a violation of this section may, before the date scheduled for the person's appearance before the court, submit by mail to the court written evidence that at the time the person was cited, he or she was in compliance with this section, in which case the citation shall be dismissed.

(4) The provisions of this chapter shall not govern:

(a) The operation of a motor vehicle registered under RCW 46.16.310 or 46.16.315, governed by RCW 46.16-.020, registered with the Washington utilities and transportation commission as common or contract carriers; or

(b) The operation of a motorcycle as defined in RCW 46.04.330, a motor-driven cycle as defined in RCW 46-.04.332, or a moped as defined in RCW 46.04.304.

(5) RCW 46.29.490 shall not be deemed to govern all motor vehicle liability policies required by this chapter but only those certified for the purposes stated in chapter 46.29 RCW. [1989 c 353 § 2.]

Notice of liability insurance requirement: RCW 46.16.212.

46.30.030 Insurance identification card. (1) Whenever an insurance company issues or renews a motor vehicle liability insurance policy, the company shall provide the policyholder with an identification card as specified by the department of licensing. At the policyholder's request, the insurer shall provide the policyholder a card for each vehicle covered under the policy.

(2) The department of licensing shall adopt rules specifying the type, style, and content of insurance identification cards to be used for proof of compliance with RCW 46.30.020, including the method for issuance of such identification cards by persons or organizations providing proof of compliance through self-insurance, certificate of deposit, or bond. In adopting such rules the department shall consider the guidelines for insurance identification cards developed by the insurance industry committee on motor vehicle administration. [1989 c 353 § 3.]

46.30.040 Display of identification card or proof of financial responsibility—Penalty for falsification. (1) Whenever a person operates a motor vehicle subject to registration under chapter 46.16 RCW, the person shall have in his or her possession an identification card of the type specified in RCW 46.30.030 and shall display the card upon demand to a law enforcement officer.

(2) Every person who drives a motor vehicle required to be registered in another state that requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility shall, when requested by a law enforcement officer, provide evidence of financial responsibility or insurance as is required by the laws of the state in which the vehicle is registered.

(3) Any person who knowingly provides false evidence of financial responsibility to a law enforcement officer or to a court, including an expired or canceled insurance policy, bond, or certificate of deposit is guilty of a misdemeanor. [1989 c 353 § 4.]

46.30.900 Severability—1989 c 353. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 353 § 12.]

46.30.901 Effective date—1989 c 353. This act shall take effect January 1, 1990. The director of the department of licensing may immediately take such

steps as are necessary to ensure that this act is implemented on its effective date. [1989 c 353 § 13.]

Chapter 46.32
VEHICLE INSPECTION

Sections

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46.32.020	Rules—Supplies—Assistants.
46.32.040	Frequency of inspection—Inspection free.
46.32.050	Prohibited practices—Penalty.
46.32.060	Moving defective vehicle unlawful—Impounding authorized.
46.32.070	Inspection of damaged vehicle.

46.32.010 Buses and drivers—Inspection authorized—Stations—Duties of state patrol—Penalties. (1) The chief of the Washington state patrol may operate, maintain, or designate, throughout the state of Washington, stations for the inspection of school buses and private carrier buses, with respect to vehicle equipment, drivers' qualifications, and hours of service and to set reasonable times when inspection of vehicles shall be performed.

(2) The inspection of private, common, and contract carriers with respect to vehicle equipment, drivers' qualifications, and hours of service shall be done in conjunction with weight enforcement under RCW 46.44.100.

(3) It is unlawful for any vehicle required to be inspected to be operated over the public highways of this state unless and until it has been approved periodically as to equipment.

(4) Inspections shall be performed by a responsible employee of the chief of the Washington state patrol, who shall be duly authorized and who shall have authority to secure and withhold, with written notice to the director of licensing, the certificate of license registration and license plates of any vehicle found to be defective in equipment so as to be unsafe or unfit to be operated upon the highways of this state, and it shall be unlawful for any person to operate such vehicle unless and until it has been placed in a condition satisfactory to pass a subsequent equipment inspection. The police officer in charge of such vehicle equipment inspection shall grant to the operator of such defective vehicle the privilege to move such vehicle to a place for repair under such restrictions as may be reasonably necessary.

(5) In the event any insignia, sticker, or other marker is adopted to be displayed upon vehicles in connection with the inspection of vehicle equipment, it shall be displayed as required by the rules of the chief of the Washington state patrol, and it is a traffic infraction for any person to mutilate, destroy, remove, or otherwise interfere with the display thereof.

(6) It is a traffic infraction for any person to refuse to have his motor vehicle examined as required by the chief of the Washington state patrol, or, after having had it examined, to refuse to place an insignia, sticker, or other marker, if issued, upon the vehicle, or fraudulently to obtain any such insignia, sticker, or other marker, or to

refuse to place his motor vehicle in proper condition after having had it examined, or in any manner, to fail to conform to the provisions of this chapter.

(7) It is a traffic infraction for any person to perform false or improvised repairs, or repairs in any manner not in accordance with acceptable and customary repair practices, upon a motor vehicle. [1986 c 123 § 1; 1979 ex.s. c 136 § 67; 1979 c 158 § 156; 1967 c 32 § 48; 1961 c 12 § 46.32.010. Prior: 1947 c 267 § 1; 1945 c 44 § 1; 1937 c 189 § 7; Rem. Supp. 1947 § 6360-7.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.32.020 Rules—Supplies—Assistants. The chief of the Washington state patrol may adopt reasonable rules regarding types of vehicles to be inspected, inspection criteria, times for the inspection of vehicle equipment, and all other matters with respect to the conduct of vehicle equipment inspections.

The chief of the Washington state patrol shall prepare and furnish such stickers, tags, record and report forms, stationery, and other supplies as shall be deemed necessary. The chief of the Washington state patrol is empowered to appoint and employ such assistants as he may consider necessary and to fix hours of employment and compensation. [1986 c 123 § 2; 1961 c 12 § 46.32.020. Prior: 1945 c 44 § 2; 1937 c 189 § 8; Rem. Supp. 1945 § 6360-8.]

46.32.040 Frequency of inspection—Inspection free. Vehicle equipment inspection shall be at such intervals as required by the chief of the Washington state patrol and shall be made without charge. [1986 c 123 § 3; 1961 c 12 § 46.32.040. Prior: 1945 c 44 § 4; 1937 c 189 § 10; Rem. Supp. 1945 § 6360-10.]

46.32.050 Prohibited practices—Penalty. It shall be unlawful for any person employed by the chief of the Washington state patrol at any vehicle equipment inspection station, to order, direct, recommend, or influence the correction of vehicle equipment defects by any person or persons whomsoever.

It shall be unlawful for any person employed by the chief of the Washington state patrol while in or about any vehicle equipment inspection station, to perform any repair or adjustment upon any vehicle or any equipment or appliance of any vehicle whatsoever.

It shall be unlawful for any person to solicit in any manner the repair to any vehicle or the adjustment of any equipment or appliance of any vehicle, upon the property of any vehicle equipment inspection station or upon any public highway adjacent thereto.

Violation of the provisions of this section is a traffic infraction. [1986 c 123 § 4; 1979 ex.s. c 136 § 68; 1961 c 12 § 46.32.050. Prior: 1945 c 44 § 5; 1937 c 189 § 11; Rem. Supp. 1945 § 6360-11.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.32.060 Moving defective vehicle unlawful—Impounding authorized. It shall be unlawful for any person

to operate or move, or for any owner to cause or permit to be operated or moved upon any public highway, any vehicle or combination of vehicles, which is not at all times equipped in the manner required by this title, or the equipment of which is not in a proper condition and adjustment as required by this title or rules adopted by the chief of the Washington state patrol.

Any vehicle operating upon the public highways of this state and at any time found to be defective in equipment in such a manner that it may be considered unsafe shall be an unlawful vehicle and may be prevented from further operation until such equipment defect is corrected and any peace officer is empowered to impound such vehicle until the same has been placed in a condition satisfactory to vehicle inspection. The necessary cost of impounding any such unlawful vehicle and any cost for the storage and keeping thereof shall be paid by the owner thereof. The impounding of any such vehicle shall be in addition to any penalties for such unlawful operation.

The provisions of this section shall not be construed to prevent the operation of any such defective vehicle to a place for correction of equipment defect in the manner directed by any peace officer or representative of the state patrol. [1987 c 330 § 705; 1986 c 123 § 5; 1961 c 12 § 46.32.060. Prior: 1937 c 189 § 12; RRS § 6360-12.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.32.070 Inspection of damaged vehicle. If a vehicle required to be inspected becomes damaged or deteriorated in such a manner that such vehicle has become unsafe for operation upon the public highways of this state, it is unlawful for the owner or operator thereof to cause such vehicle to be operated upon a public highway upon its return to service unless such owner or operator presents such vehicle for inspection of equipment within twenty-four hours after its return to service. [1986 c 123 § 6; 1961 c 12 § 46.32.070. Prior: 1937 c 189 § 13; RRS § 6360-13.]

Chapter 46.37

VEHICLE LIGHTING AND OTHER EQUIPMENT

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Emission control program: Chapter 46.37 RCW.

46.37.005 State patrol—Additional powers and duties. In addition to those powers and duties elsewhere granted, the chief of the Washington state patrol shall have the power and the duty to adopt, apply, and enforce such reasonable rules and regulations (1) relating to proper types of vehicles or combinations thereof for hauling passengers, commodities, freight, and supplies, (2) relating to vehicle equipment, and (3) relating to the enforcement of the provisions of this title with regard to vehicle equipment, as may be deemed necessary for the public welfare and safety in addition to but not inconsistent with the provisions of this title.

The chief of the Washington state patrol is authorized to adopt by regulation, federal standards relating to motor vehicles and vehicle equipment, issued pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, or any amendment to said act, notwithstanding any provision in Title 46 RCW inconsistent with such standards. Federal standards adopted pursuant to this section shall be applicable only to vehicles manufactured in a model year following the adoption of such standards. [1987 c 330 § 706; 1985 c 165 § 1; 1982 c 106 § 1; 1967 ex.s. c 145 § 56; 1967 c 32 § 49; 1961 c 12 § 46.37.005. Prior: 1943 c 133 § 1; 1937 c 189 § 6; Rem. Supp. 1943 § 6360-6; 1927 c 309 § 14, part; RRS § 6362-14, part. Formerly RCW 46.36.010.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

Towing operators, appointment of: RCW 46.55.115.

46.37.010 Scope and effect of regulations—General penalty. (1) It is a traffic infraction for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter or in regulations issued by the chief of the Washington state patrol, or which is equipped in any manner in violation of this chapter or the state patrol's regulations, or for any person to do any act forbidden or fail to perform any act required under this chapter or the state patrol's regulations.

(2) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

(3) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(4) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(5) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(6) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles except as herein made applicable.

(7) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(8) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

(9) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee. [1989 c 178 § 22; 1987 c 330 § 707; 1979 ex.s. c 136 § 69; 1977 ex.s. c 355 § 1;

1963 c 154 § 1; 1961 c 12 § 46.37.010. Prior: 1955 c 269 § 1; prior: 1937 c 189 § 14, part; RRS § 6360-14, part; RCW 46.40.010, part; 1929 c 178 § 2; 1927 c 309 § 19; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS § 6362-19.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 355: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 355 § 57.]

Effective date—1963 c 154: "This act shall take effect on January 1, 1964." [1963 c 154 § 32.]

46.37.020 When lighted lamps and signaling devices are required. Every vehicle upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand feet ahead shall display lighted head lights, other lights, and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, and such stop lights, turn signals, and other signaling devices shall be lighted as prescribed for the use of such devices. [1977 ex.s. c 355 § 2; 1974 ex.s. c 124 § 2; 1963 c 154 § 2; 1961 c 12 § 46.37.020. Prior: 1955 c 269 § 2; prior: 1937 c 189 § 14, part; RRS § 6360-14, part; RCW 46.40.010, part; 1929 c 178 § 2; 1927 c 309 § 19; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS § 6362-19.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

Local twenty-four hour headlight policy: RCW 47.04.180.

Motorcycles and motor-driven cycles—When headlamps and tail lamps to be lighted: RCW 46.37.522.

46.37.030 Visibility distance and mounted height of lamps. (1) Whenever requirement is hereinafter declared as to distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in RCW 46.37.020 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(2) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

(3) No additional lamp, reflective device, or other motor vehicle equipment shall be added which impairs the effectiveness of this standard. [1977 ex.s. c 355 § 3;

1961 c 12 § 46.37.030. Prior: 1955 c 269 § 3; prior: 1937 c 189 § 14, part; RRS § 6360-14, part; RCW 46.40.010, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.040 Head lamps on motor vehicles. (1) Every motor vehicle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this chapter.

(2) Every head lamp upon every motor vehicle shall be located at a height measured from the center of the head lamp of not more than fifty-four inches nor less than twenty-four inches to be measured as set forth in RCW 46.37.030(2). [1977 ex.s. c 355 § 4; 1961 c 12 § 46.37.040. Prior: 1955 c 269 § 4; prior: 1937 c 189 § 15; RRS § 6360-15; RCW 46.40.020; 1933 c 156 § 1, part; 1929 c 178 § 3, part; 1927 c 309 §§ 20, part, 24; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS §§ 6362-20, part, 6362-24.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.050 Tail lamps. (1) After January 1, 1964, every motor vehicle, trailer, semitrailer, and pole trailer, and any other vehicle which is being drawn at the end of a combination of vehicles, shall be equipped with at least two tail lamps mounted on the rear, which, when lighted as required in RCW 46.37.020, shall emit a red light plainly visible from a distance of one thousand feet to the rear, except that passenger cars manufactured or assembled prior to January 1, 1939, shall have at least one tail lamp. On a combination of vehicles only the tail lamps on the rearmost vehicle need actually be seen from the distance specified. On vehicles equipped with more than one tail lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable.

(2) Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two inches nor less than fifteen inches.

(3) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted. [1977 ex.s. c 355 § 5; 1963 c 154 § 3; 1961 c 12 § 46.37.050. Prior: 1955 c 269 § 5; prior: 1947 c 267 § 2, part; 1937 c 189 § 16, part; Rem. Supp. 1947 § 6360-16, part; RCW 46.40-.030, part; 1929 c 178 § 7; 1927 c 309 § 27; RRS § 6362-27; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.060 Reflectors. (1) Every motor vehicle, trailer, semitrailer, and pole trailer shall carry on the rear, either as a part of the tail lamps or separately, two or more red reflectors meeting the requirements of this section: *Provided, however,* That vehicles of the types mentioned in RCW 46.37.090 shall be equipped with reflectors meeting the requirements of RCW 46.37.110 and 46.37.120.

(2) Every such reflector shall be mounted on the vehicle at a height not less than fifteen inches nor more than seventy-two inches measured as set forth in RCW 46.37.030(2), and shall be of such size and characteristics and so mounted as to be visible at night from all distances within six hundred feet to one hundred feet from such vehicle when directly in front of lawful upper beams of head lamps, except that reflectors on vehicles manufactured or assembled prior to January 1, 1970, shall be visible at night from all distances within three hundred and fifty feet to one hundred feet when directly in front of lawful upper beams of head lamps. [1977 ex.s. c 355 § 6; 1963 c 154 § 4; 1961 c 12 § 46.37.060. Prior: 1955 c 269 § 6; prior: 1947 c 267 § 2, part; 1937 c 189 § 16, part; Rem. Supp. 1947 § 6360-16, part; RCW 46.40.030, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.070 Stop lamps and turn signals required. (1) After January 1, 1964, every motor vehicle, trailer, semitrailer, and pole trailer shall be equipped with two or more stop lamps meeting the requirements of RCW 46.37.200, except that passenger cars manufactured or assembled prior to January 1, 1964, shall be equipped with at least one such stop lamp. On a combination of vehicles, only the stop lamps on the rearmost vehicle need actually be seen from the distance specified in RCW 46.37.200(1).

(2) After January 1, 1960, every motor vehicle, trailer, semitrailer and pole trailer shall be equipped with electric turn signal lamps meeting the requirements of RCW 46.37.200(2), except that passenger cars, trailers, semitrailers, pole trailers, and trucks less than eighty inches in width, manufactured or assembled prior to January 1, 1953, need not be equipped with electric turn signal lamps. [1977 ex.s. c 355 § 7; 1963 c 154 § 5; 1961 c 12 § 46.37.070. Prior: 1959 c 319 § 32; 1955 c 269 § 7; prior: 1953 c 248 § 2, part; 1947 c 267 § 4, part; 1937 c 189 § 23, part; Rem. Supp. 1947 § 6360-23, part; RCW 46.40.090, part; 1929 c 178 § 1, part; 1927 c 309 § 15, part; RRS § 6362-15, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.080 Application of succeeding sections. Those sections of this chapter which follow immediately, including RCW 46.37.090, 46.37.100, 46.37.110, 46.37.120, and 46.37.130, relating to clearance lamps, marker lamps, and reflectors, shall apply as stated in said sections to vehicles of the type therein enumerated, namely

buses, trucks, truck tractors, and trailers, semitrailers, and pole trailers, respectively, when operated upon any highway, and said vehicles shall be equipped as required and all lamp equipment required shall be lighted at the times mentioned in RCW 46.37.020. For purposes of the sections enumerated above, a camper, when mounted upon a motor vehicle, shall be considered part of the permanent structure of that motor vehicle. [1977 ex.s. c 355 § 8; 1963 c 154 § 6; 1961 c 12 § 46.37.080. Prior: 1955 c 269 § 8; prior: 1947 c 267 § 3, part; 1937 c 189 § 17, part; Rem. Supp. 1947 § 6360-17, part; RCW 46.40.040, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.090 Additional equipment required on certain vehicles. In addition to other equipment required in RCW 46.37.040, 46.37.050, 46.37.060, and 46.37.070, the following vehicles shall be equipped as herein stated under the conditions stated in RCW 46.37.080, and in addition, the reflectors elsewhere enumerated for such vehicles shall conform to the requirements of RCW 46.37.120(1).

(1) Buses, trucks, motor homes, and motor vehicles with mounted campers eighty inches or more in over-all width:

(a) On the front, two clearance lamps, one at each side, and on vehicles manufactured or assembled after January 1, 1964, three identification lamps meeting the specifications of subdivision (6) [(7)] of this section;

(b) On the rear, two clearance lamps, one at each side, and after January 1, 1964, three identification lamps meeting the specifications of subdivision (6) [(7)] of this section;

(c) On each side, two side marker lamps, one at or near the front and one at or near the rear;

(d) On each side, two reflectors, one at or near the front and one at or near the rear.

(2) Trailers and semitrailers eighty inches or more in over-all width:

(a) On the front, two clearance lamps, one at each side;

(b) On the rear, two clearance lamps, one at each side, and after January 1, 1964, three identification lamps meeting the specifications of subdivision (6) [(7)] of this section;

(c) On each side, two side marker lamps, one at or near the front and one at or near the rear;

(d) On each side, two reflectors, one at or near the front and one at or near the rear: *Provided,* That a mobile home as defined by RCW 46.04.302 need not be equipped with two side marker lamps or two side reflectors as required by subsection (2) (c) and (d) of this section while operated under the terms of a special permit authorized by RCW 46.44.090.

(3) Truck tractors:

On the front, two cab clearance lamps, one at each side, and on vehicles manufactured or assembled after January 1, 1964, three identification lamps meeting the specifications of subdivision (6) [(7)] of this section.

(4) Trailers, semitrailers, and pole trailers thirty feet or more in over-all length:

On each side, one amber side marker lamp and one amber reflector, centrally located with respect to the length of the vehicle: *Provided*, That a mobile home as defined by RCW 46.04.302 need not be equipped with such side marker lamp or reflector while operated under the terms of a special permit authorized by RCW 46.44.090.

(5) Pole trailers:

(a) On each side, one amber side marker lamp at or near the front of the load;

(b) One amber reflector at or near the front of the load;

(c) On the rearmost support for the load, one combination marker lamp showing amber to the front and red to the rear and side, mounted to indicate maximum width of the pole trailer.

(6) Boat trailers eighty inches or more in overall width:

(a) One on each side, at or near the midpoint, one clearance lamp performing the function of both a front and rear clearance lamp;

(b) On the rear, after June 1, 1978, three identification lamps meeting the specifications of subsection (7) of this section;

(c) One on each side, two side marker lamps, one at or near the front and one at or near the rear;

(d) On each side, two reflectors, one at or near the front and one at or near the rear.

(7) Whenever required or permitted by this chapter, identification lamps shall be grouped in a horizontal row, with lamp centers spaced not less than six nor more than twelve inches apart, and mounted on the permanent structure of the vehicle as close as practicable to the vertical centerline: *Provided, however*, That where the cab of a vehicle is not more than forty-two inches wide at the front roof line, a single identification lamp at the center of the cab shall be deemed to comply with the requirements for front identification lamps. [1977 ex.s. c 355 § 9; 1963 c 154 § 7; 1961 c 12 § 46.37.090. Prior: 1955 c 269 § 9; prior: 1947 c 267 § 3, part; 1937 c 189 § 17, part; Rem. Supp. 1947 § 6360-17, part; RCW 46.40.040, part; 1933 c 156 §§ 5, part, 6, part; 1929 c 178 §§ 7, part, 8, part; 1927 c 309 §§ 27, part, 28, part; RRS §§ 6362-27, part, 6362-28, part; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.100 Color of clearance lamps, side marker lamps, back-up lamps, and reflectors. (1) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(2) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(3) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color,

except the stop lamp or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white or amber. [1961 c 12 § 46.37.100. Prior: 1955 c 269 § 10; prior: 1947 c 267 § 3, part; 1937 c 189 § 17, part; Rem. Supp. 1947 § 6360-17, part; RCW 46.40.040, part; 1933 c 156 §§ 5, part, 6, part; 1929 c 178 §§ 7, part, 8, part; 1927 c 309 §§ 27, part, 28, part; RRS §§ 6362-27, part, 6362-28, part; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part.]

46.37.110 Mounting of reflectors, clearance lamps, identification lamps, and side marker lamps. (1) Reflectors when required by RCW 46.37.090 shall be mounted at a height not less than twenty-four inches and not higher than sixty inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than twenty-four inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this chapter.

(2) Clearance lamps shall be mounted on the permanent structure of the vehicle in such a manner as to indicate the extreme height and width of the vehicle. When rear identification lamps are required and are mounted as high as is practicable, rear clearance lamps may be mounted at optional height, and when the mounting of front clearance lamps results in such lamps failing to indicate the extreme width of the trailer, such lamps may be mounted at optional height but must indicate, as near as practicable, the extreme width of the trailer. Clearance lamps on truck tractors shall be located so as to indicate the extreme width of the truck tractor cab. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both: *Provided*, That no rear clearance lamp may be combined in any shell or housing with any tail lamp or identification lamp. [1977 ex.s. c 355 § 10; 1961 c 12 § 46.37.110. Prior: 1955 c 269 § 11; prior: 1947 c 267 § 3, part; 1937 c 189 § 17, part; Rem. Supp. 1947 § 6360-17, part; RCW 46.40.040, part; 1933 c 156 §§ 5, part, 6, part; 1929 c 178 §§ 7, part, 8, part; 1927 c 309 §§ 27, part, 28, part; RRS §§ 6362-27, part, 6362-28, part; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.120 Visibility of reflectors, clearance lamps, identification lamps, and side marker lamps. (1) Every reflector upon any vehicle referred to in RCW 46.37.090 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within six hundred feet to one hundred feet from

the vehicle when directly in front of lawful lower beams of head lamps, except that the visibility for reflectors on vehicles manufactured or assembled prior to January 1, 1970, shall be measured in front of the lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(2) Front and rear clearance lamps and identification lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between five hundred feet and fifty feet from the front and rear, respectively, of the vehicle.

(3) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between five hundred feet and fifty feet from the side of the vehicle on which mounted. [1977 ex.s. c 355 § 11; 1963 c 154 § 8; 1961 c 12 § 46.37.120. Prior: 1955 c 269 § 12; prior: 1947 c 267 § 3, part; 1937 c 189 § 17, part; Rem. Supp. 1947 § 6360-17, part; RCW 46.40.040, part; 1933 c 156 §§ 5, part, 6, part; 1929 c 178 §§ 7, part, 8, part; 1927 c 309 §§ 27, part, 28, part; RRS §§ 6362-27, part, 6362-28, part; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.130 Obstructed lights not required. Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted. [1961 c 12 § 46.37.130. Prior: 1955 c 269 § 13.]

46.37.140 Lamps, reflectors, and flags on projecting load. Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in RCW 46.37.020, two red lamps, visible from a distance of at least five hundred feet to the rear, two red reflectors visible at night from all distances within six hundred feet to one hundred feet to the rear when directly in front of lawful lower beams of headlamps, and located so as to indicate maximum width, and on each side one red lamp, visible from a distance of at least five hundred feet to the side, located so as to indicate maximum overhang. There shall be displayed at all other times on any vehicle having a load which extends beyond its sides or more than four feet beyond its rear, red flags, not less than twelve inches square, marking the extremities of such loads, at each point where a lamp would otherwise be required by this

section, under RCW 46.37.020. [1977 ex.s. c 355 § 12; 1963 c 154 § 9; 1961 c 12 § 46.37.140. Prior: 1955 c 269 § 14; prior: 1937 c 189 § 18; RRS § 6360-18; RCW 46.40.050; 1929 c 178 § 11, part; 1927 c 309 § 32, part; RRS § 6362-32, part; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.150 Lamps on vehicles—Parked or stopped vehicles, lighting requirements. (1) Every vehicle shall be equipped with one or more lamps, which, when lighted, shall display a white or amber light visible from a distance of one thousand feet to the front of the vehicle, and a red light visible from a distance of one thousand feet to the rear of the vehicle. The location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic.

(2) Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half hour after sunset and a half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of one thousand feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(3) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, outside an incorporated city or town, whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and there is insufficient light to reveal any person or object within a distance of one thousand feet upon such highway, such vehicle so parked or stopped shall be equipped with and shall display lamps meeting the requirements of subsection (1) of this section.

(4) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed. [1977 ex.s. c 355 § 13; 1963 c 154 § 10; 1961 c 12 § 46.37.150. Prior: 1955 c 269 § 15; prior: 1937 c 189 § 19; RRS § 6360-19; RCW 46.40.060; 1933 c 156 § 8; 1929 c 178 § 10; 1927 c 309 § 31; RRS § 6362-31.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.160 Hazard warning lights and reflectors on farm equipment—Slow-moving vehicle emblem. (1) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1970, shall be equipped with vehicular hazard warning lights of the type described in RCW 46.37.215 visible from a distance of not less than one thousand feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

(2) Every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1970, shall at all times, and every other

motor vehicle shall at times mentioned in RCW 46.37-.020, be equipped with lamps and reflectors as follows:

(a) At least two headlamps meeting the requirements of RCW 46.37.220, 46.37.240, or 46.37.260;

(b) At least one red lamp visible when lighted from a distance of not less than one thousand feet to the rear mounted as far to the left of center of vehicle as practicable;

(c) At least two red reflectors visible from all distances within six hundred to one hundred feet to the rear when directly in front of lawful lower beams of headlamps.

(3) Every combination of farm tractor and towed farm equipment or towed implement of husbandry shall at all times mentioned in RCW 46.37.020 be equipped with lamps and reflectors as follows:

(a) The farm tractor element of every such combination shall be equipped as required in subsections (1) and (2) of this section;

(b) The towed unit of farm equipment or implement of husbandry element of such combination shall be equipped on the rear with two red lamps visible when lighted from a distance of not less than one thousand feet to the rear, and two red reflectors visible to the rear from all distances within six hundred feet to one hundred feet to the rear when directly in front of lawful upper beams of head lamps. One reflector shall be so positioned to indicate, as nearly as practicable, the extreme left projection of the towed unit;

(c) If the towed unit or its load obscures either of the vehicle hazard warning lights on the tractor, the towed unit shall be equipped with vehicle hazard warning lights described in subsection (1) of this section.

(4) The two red lamps and the two red reflectors required in the foregoing subsections of this section on a self-propelled unit of farm equipment or implement of husbandry or combination of farm tractor and towed farm equipment shall be so positioned as to show from the rear as nearly as practicable the extreme width of the vehicle or combination carrying them: *Provided*, That if all other requirements are met, reflective tape or paint may be used in lieu of reflectors required by subsection (3) of this section.

(5) After January 1, 1970, every farm tractor and every self-propelled unit of farm equipment or implement of husbandry designed for operation at speeds not in excess of twenty-five miles per hour shall at all times be equipped with a slow moving vehicle emblem mounted on the rear except as provided in subsection (6) of this section.

(6) After January 1, 1970, every combination of farm tractor and towed farm equipment or towed implement of husbandry normally operating at speeds not in excess of twenty-five miles per hour shall at all times be equipped with a slow moving vehicle emblem as follows:

(a) Where the towed unit is sufficiently large to obscure the slow moving vehicle emblem on the farm tractor, the towed unit shall be equipped with a slow moving vehicle emblem. In such cases, the towing vehicle need not display the emblem;

(b) Where the slow moving vehicle emblem on the farm tractor unit is not obscured by the towed unit, then either or both may be equipped with the required emblem but it shall be sufficient if either has it.

(7) The emblem required by subsections (5) and (6) of this section shall comply with current standards and specifications as promulgated by the Washington state patrol. [1987 c 330 § 708; 1977 ex.s. c 355 § 14; 1969 ex.s. c 281 § 22; 1963 c 154 § 11; 1961 c 12 § 46.37.160. Prior: 1955 c 269 § 16.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.170 Lamps and reflectors on other vehicles and equipment—Slow-moving vehicle emblem on animal-drawn vehicles.

(1) Every vehicle, including animal-drawn vehicles and vehicles referred to in RCW 46.37.010(3), not specifically required by the provisions of RCW 46.37.020 through 46.37.330 to be equipped with lamps, or other lighting devices, shall at all times specified in RCW 46.37.020 be equipped with at least one lamp displaying a white light visible from a distance of not less than one thousand feet to the front of said vehicle, and shall also be equipped with two lamps displaying red light visible from a distance of not less than one thousand feet to the rear of said vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than one thousand feet to the rear and two red reflectors visible from all distances of six hundred to one hundred feet to the rear when illuminated by the lawful lower beams of head lamps.

(2) After June 1, 1978, every animal-drawn vehicle shall at all times be equipped with a slow-moving vehicle emblem complying with RCW 46.37.160(7). [1977 ex.s. c 355 § 15; 1963 c 154 § 12; 1961 c 12 § 46.37.170. Prior: 1955 c 269 § 17; prior: 1937 c 189 § 21; RRS § 6360-21; RCW 46.40.080; 1927 c 309 § 34; 1921 c 96 § 22, part; 1917 c 40 § 1; RRS § 6362-34.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.180 Spot lamps and auxiliary lamps. (1) Spot lamps. Any motor vehicle may be equipped with not to exceed two spot lamps and every lighted spot lamp shall be so aimed and used that no part of the high intensity portion of the beam will strike the windshield, or any windows, mirror, or occupant of another vehicle in use.

(2) Fog lamps. Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height of not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above

requirements may be used with lower head lamp beams as specified in RCW 46.37.220.

(3) Auxiliary passing lamps. Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands. The provisions of RCW 46.37.220 shall apply to any combinations of head lamps and auxiliary passing lamps.

(4) Auxiliary driving lamps. Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands. The provisions of RCW 46.37.220 shall apply to any combination of head lamps and auxiliary driving lamps. [1963 c 154 § 13; 1961 c 12 § 46.37.180. Prior: 1955 c 269 § 18; prior: 1949 c 157 § 1; Rem. Supp. 1949 § 6360-22a; RCW 46.40.110, 46.40.120.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.184 Red flashing lights on fire department vehicles. All fire department vehicles in service shall be identified by red lights of an intermittent flashing type, visible from both front and rear for a distance of five hundred feet under normal atmospheric conditions. Such red flashing lights shall be well separated from the headlights so that they will not black out when headlights are on. Such red flashing lights shall be in operation at all times when such vehicle is on emergency status. [1961 c 12 § 46.37.184. Prior: 1953 c 161 § 1. Formerly RCW 46.40.220.]

46.37.185 Green light on firemen's private cars. Firemen, when approved by the chief of their respective service, shall be authorized to use a green light on the front of their private cars when on emergency duty only. Such green light shall be visible for a distance of two hundred feet under normal atmospheric conditions and shall be of a type and mounting approved by the Washington state patrol. The use of the green light shall only be for the purpose of identification and the operator of a vehicle so equipped shall not be entitled to any of the privileges provided in RCW 46.61.035 for the operators of authorized emergency vehicles. [1987 c 330 § 709; 1971 ex.s. c 92 § 3; 1961 c 12 § 46.37.185. Prior: 1953 c 161 § 2. Formerly RCW 46.40.230.]

Construction—**Application of rules**—**Severability**—1987 c 330: See notes following RCW 28B.12.050.

46.37.186 Fire department sign or plate on private car. (1) No private vehicle, bearing a sign or plate indicating a fire department connection, shall be driven or operated on any public highway, except when the owner thereof is a bona fide member of a fire department.

(2) Any sign or plate indicating fire department connection on a private car of any member of a fire department shall include the name of the municipality or fire department organization to which the owner belongs. [1961 c 12 § 46.37.186. Prior: 1953 c 161 § 3. Formerly RCW 46.40.240.]

46.37.187 Green light, sign or plate—Identification card required. Any individual displaying a green light as authorized in RCW 46.37.185, or a sign or plate as authorized in RCW 46.37.186, shall also carry attached to a convenient location on the private vehicle to which the green light or sign or plate is attached, an identification card showing the name of the owner of said vehicle, the organization to which he or she belongs and bearing the signature of the chief of the service involved. [1971 ex.s. c 92 § 2; 1961 c 12 § 46.37.187. Prior: 1953 c 161 § 4. Formerly RCW 46.40.250.]

46.37.188 Penalty for violation of RCW 46.37.184 through 46.37.188. Every violation of RCW 46.37.184, 46.37.185, 46.37.186, or 46.37.187 is a traffic infraction. [1979 ex.s. c 136 § 70; 1961 c 12 § 46.37.188. Prior: 1953 c 161 § 5. Formerly RCW 46.40.260.]

Effective date—**Severability**—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.37.190 Warning devices on buses, emergency vehicles—Driver's duty to yield and stop. (1) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive marking required by this chapter, be equipped with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal.

(2) Every school bus and private carrier bus shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a "stop" signal upon a background not less than fourteen by eighteen inches displaying the word "stop" in letters of distinctly contrasting colors not less than eight inches high, and shall further be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level and these lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight.

(3) Vehicles operated by public agencies whose law enforcement duties include the authority to stop and detain motor vehicles on the public highways of the state may be equipped with a siren and lights of a color and type designated by the state patrol for that purpose. The state patrol may prohibit the use of these sirens and lights on vehicles other than the vehicles described in this subsection.

(4) The lights described in this section shall not be mounted nor used on any vehicle other than a school bus, a private carrier bus, or an authorized emergency or law enforcement vehicle. Optical strobe light devices shall not be installed or used on any vehicle other than an emergency vehicle authorized by the state patrol or a publicly-owned law enforcement or emergency vehicle. An "optical strobe light device" means a strobe light device which emits an optical signal at a specific frequency to a traffic control light enabling the vehicle in which

the strobe light device is used to obtain the right of way at intersections.

(5) The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in RCW 46.61.210, 46.61.370, and 46.61.350. [1987 c 330 § 710; 1985 c 331 § 1; 1982 c 101 § 1; 1971 ex.s. c 92 § 1; 1970 ex.s. c 100 § 5; 1965 ex.s. c 155 § 53; 1963 c 154 § 14; 1961 c 12 § 46.37.190. Prior: 1957 c 66 § 1; 1955 c 269 § 19.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Construction—**Application of rules**—**Severability**—1987 c 330: See notes following RCW 28B.12.050.

46.37.194 Authorized emergency vehicles—**Rules, tests, approval by state patrol.** The state patrol may make rules and regulations relating to authorized emergency vehicles and shall test and approve sirens and emergency vehicle lamps to be used on such vehicles. [1987 c 330 § 711; 1961 c 12 § 46.37.194. Prior: 1957 c 66 § 3.]

Construction—**Application of rules**—**Severability**—1987 c 330: See notes following RCW 28B.12.050.

46.37.196 Red lights on emergency tow trucks. All emergency tow trucks shall be identified by an intermittent or revolving red light capable of 360° visibility at a distance of five hundred feet under normal atmospheric conditions. This intermittent or revolving red light shall be used only at the scene of an emergency or accident, and it will be unlawful to use such light while traveling to or from an emergency or accident, or for any other purposes. [1977 ex.s. c 355 § 16.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.200 Stop lamps and electric turn signals. (1) Any vehicle may be equipped and when required under this chapter shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred feet and on any vehicle manufactured or assembled after January 1, 1964, three hundred feet to the rear in normal sunlight, and which shall be actuated upon application of a service brake, and which may but need not be incorporated with one or more other rear lamps.

(2) Any vehicle may be equipped and when required under RCW 46.37.070(2) shall be equipped with electric turn signals which shall indicate an intention to turn by flashing lights showing to the front and rear of a vehicle or on a combination of vehicles on the side of the vehicle or combination toward which the turn is to be made. The lamps showing to the front shall be mounted on the same level and as widely spaced laterally as practicable and, when signaling, shall emit amber light: *Provided*, That on any vehicle manufactured prior to January 1, 1969, the lamps showing to the front may emit white or amber light, or any shade of light between white and amber. The lamp showing to the rear shall be mounted

on the same level and as widely spaced laterally as practicable, and, when signaling, shall emit a red or amber light, or any shade of color between red and amber. Turn signal lamps shall be visible from a distance of not less than five hundred feet to the front and rear in normal sunlight. Turn signal lamps may, but need not be, incorporated in other lamps on the vehicle. [1977 ex.s. c 355 § 17; 1963 c 154 § 15; 1961 c 12 § 46.37.200. Prior: 1955 c 269 § 20; prior: 1953 c 248 § 2, part; 1947 c 267 § 4, part; 1937 c 189 § 23, part; Rem. Supp. 1947 § 6360-23, part; RCW 46.40.090, part; 1929 c 178 § 1, part; 1927 c 309 § 15, part; RRS § 6362-15.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.210 Additional lighting equipment. (1) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(2) Any motor vehicle may be equipped with not more than one running-board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(3) Any motor vehicle may be equipped with one or more back-up lamps either separately or in combination with other lamps, but any such back-up lamp or lamps shall not be lighted when the motor vehicle is in forward motion.

(4) Any vehicle may be equipped with one or more side marker lamps, and any such lamp may be flashed in conjunction with turn or vehicular hazard warning signals. Side marker lamps located toward the front of a vehicle shall be amber, and side marker lamps located toward the rear shall be red.

(5) Any vehicle eighty inches or more in over-all width, if not otherwise required by RCW 46.37.090, may be equipped with not more than three identification lamps showing to the front which shall emit an amber light without glare and not more than three identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be mounted as specified in RCW 46.37.090(7).

(6) (a) Every motor vehicle, trailer, semitrailer, truck tractor, and pole trailer used in the state of Washington may be equipped with an auxiliary lighting system consisting of:

(i) One green light to be activated when the accelerator of the motor vehicle is depressed;

(ii) Not more than two amber lights to be activated when the motor vehicle is moving forward, or standing and idling, but is not under the power of the engine.

(b) Such auxiliary system shall not interfere with the operation of vehicle stop lamps or turn signals, as required by RCW 46.37.070. Such system, however, may operate in conjunction with such stop lamps or turn signals.

(c) Only one color of the system may be illuminated at any one time, and at all times either the green light, or amber light or lights shall be illuminated when the stop lamps of the vehicle are not illuminated.

(d) The green light, and the amber light or lights, when illuminated shall be plainly visible at a distance of one thousand feet to the rear.

(e) Only one such system may be mounted on a motor vehicle, trailer, semitrailer, truck tractor, or pole trailer; and such system shall be rear mounted in a horizontal fashion, at a height of not more than seventy-two inches, nor less than twenty inches, as provided by RCW 46.37.050.

(f) On a combination of vehicles, only the lights of the rearmost vehicle need actually be seen and distinguished as provided in subparagraph (d) of this subsection.

(g) Each manufacturer's model of such a system as described in this subsection shall be approved by the state patrol as provided for in RCW 46.37.005 and 46.37.320, before it may be sold or offered for sale in the state of Washington. [1987 c 330 § 712; 1977 ex.s. c 355 § 18; 1975 1st ex.s. c 242 § 1; 1963 c 154 § 16; 1961 c 12 § 46.37.210. Prior: 1955 c 269 § 21; prior: 1937 c 189 § 24; RRS § 6360-24; RCW 46.40.100.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.215 Hazard warning lamps. (1) Any vehicle may be equipped with lamps for the purpose of warning other operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing.

(2) After June 1, 1978, every motor home, bus, truck, truck tractor, trailer, semitrailer, or pole trailer eighty inches or more in overall width or thirty feet or more in overall length shall be equipped with lamps meeting the requirements of this section.

(3) Vehicular hazard warning signal lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable, and shall display simultaneously flashing amber light: *Provided*, That on any vehicle manufactured prior to January 1, 1969, the lamps showing to the front may display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than five hundred feet in normal sunlight. [1977 ex.s. c 355 § 19.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.220 Multiple-beam road-lighting equipment. Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles shall be so arranged that the driver may select at will between distributions of light projected to different elevations, and such lamps may be so arranged that such selection can

be made automatically subject to the following limitations:

(1) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of four hundred fifty feet ahead for all conditions of loading;

(2) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of one hundred fifty feet ahead; and on a straight level road under any conditions of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver;

(3) Every new motor vehicle registered in this state after January 1, 1948, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. [1977 ex.s. c 355 § 20; 1961 c 12 § 46.37.220. Prior: 1955 c 269 § 22; prior: 1947 c 267 § 5, part; Rem. Supp. 1947 § 6360-25a, part; RCW 46.40.140, part; 1933 c 156 § 3, part; 1929 c 178 § 5, part; 1927 c 309 § 22, part; RRS § 6362-22, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.230 Use of multiple-beam road-lighting equipment. (1) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in RCW 46.37.020, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(2) Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in RCW 46.37.220(2) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(3) Whenever the driver of a vehicle approaches another vehicle from the rear within three hundred feet such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in RCW 46.37.220(1). [1963 c 154 § 17; 1961 c 12 § 46.37.230. Prior: 1955 c 269 § 23; prior: 1947 c 267 § 5, part; Rem. Supp. 1947 § 6360-25a, part; RCW 46.40.140, part; 1933 c 156 § 3, part; 1929 c 178 § 5, part; 1927 c 309 § 22, part; RRS § 6362-22, part.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.240 Single-beam road-lighting equipment. Head lamp systems which provide only a single distribution of light shall be permitted on all farm tractors regardless of date of manufacture, and on all other motor

vehicles manufactured and sold prior to one year after March 18, 1955, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

(1) The head lamps shall be so aimed that when the vehicle is not loaded none of the high intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead;

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet. [1977 ex.s. c 355 § 21; 1963 c 154 § 18; 1961 c 12 § 46.37.240. Prior: 1955 c 269 § 24; prior: 1947 c 267 § 5, part; Rem. Supp. 1947 § 6360-25a, part; RCW 46.40.140, part; 1933 c 156 § 3, part; 1929 c 178 § 5, part; 1927 c 309 § 22, part; RRS § 6362-22, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.260 Alternate road lighting equipment. Any motor vehicle may be operated under the conditions specified in RCW 46.37.020 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects one hundred feet ahead in lieu of lamps required in RCW 46.37.220 or 46.37.240: *Provided, however,* That at no time shall it be operated at a speed in excess of twenty miles per hour. [1977 ex.s. c 355 § 22; 1961 c 12 § 46.37.260. Prior: 1955 c 269 § 26; prior: 1937 c 189 § 27; RRS § 6360-27; RCW 46.40.150.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.270 Number of lamps required—Number of additional lamps permitted. (1) At all times specified in RCW 46.37.020, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(2) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than three hundred candlepower, not more than a total of two of any such additional lamps on the front of a vehicle shall be lighted at any one time when upon a highway. [1977 ex.s. c 355 § 23; 1961 c 12 § 46.37.270. Prior: 1955 c 269 § 27; prior: 1937 c 189 § 28; RRS § 6360-28; RCW 46.40.160; 1929 c 178 § 2; 1927 c 309 § 19; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS § 6362-19.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.280 Special restrictions on lamps. (1) During the times specified in RCW 46.37.020, any lighted lamp

or illuminating device upon a motor vehicle, other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps, warning lamps authorized by the state patrol and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(2) Except as required in RCW 46.37.190 no person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof.

(3) Flashing lights are prohibited except as required in RCW 46.37.190, 46.37.200, 46.37.210, 46.37.215, and 46.37.300, and warning lamps authorized by the state patrol. [1987 c 330 § 713; 1977 ex.s. c 355 § 24; 1963 c 154 § 19; 1961 c 12 § 46.37.280. Prior: 1955 c 269 § 28; prior: 1949 c 157 § 2; 1947 c 267 § 6; 1947 c 200 § 2; 1937 c 189 § 29; Rem. Supp. 1949 § 6360-29; RCW 46.40.170; 1927 c 309 § 33; RRS § 6362-33.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.290 Special lighting equipment on school buses and private carrier buses. The chief of the Washington state patrol is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses and private carrier buses consistent with the provisions of this chapter, but supplemental thereto. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers. [1987 c 330 § 714; 1977 c 45 § 1; 1970 ex.s. c 100 § 6; 1961 c 12 § 46.37.290. Prior: 1955 c 269 § 29; prior: 1937 c 189 § 25, part; RRS § 6360-25, part; RCW 46.40.130, part; 1929 c 178 § 3, part; 1927 c 309 § 20, part; RRS § 6362-20, part.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.300 Standards for lights on snow-removal or highway maintenance and service equipment. (1) The state patrol shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on snow-removal and other highway maintenance and service equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by this chapter. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow-removal and other highway maintenance and service equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and, so far as possible, conform with those

approved by the American association of state highway officials.

(2) It shall be unlawful to operate any snow-removal and other highway maintenance and service equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section. [1987 c 330 § 715; 1963 c 154 § 20; 1961 c 12 § 46.37-.300. Prior: 1955 c 269 § 30.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.310 Selling or using lamps or equipment. (1) No person may have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer, or use upon any such vehicle any head lamp, auxiliary or fog lamp, rear lamp, signal lamp, or reflector, which reflector is required under this chapter, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the state patrol and conforming to rules adopted by it.

(2) No person may have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer any lamp or device mentioned in this section conforming to rules adopted by the state patrol unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed.

(3) No person may use upon any motor vehicle, trailer, or semitrailer any lamps mentioned in this section unless the lamps are mounted, adjusted, and aimed in accordance with instructions of the state patrol. [1987 c 330 § 716; 1986 c 113 § 1; 1961 c 12 § 46.37.310. Prior: 1955 c 269 § 31; prior: 1937 c 189 § 30; RRS § 6360-30; RCW 46.40.180; 1929 c 178 § 12; 1927 c 309 § 35; RRS § 6362-35.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.320 Authority of state patrol regarding lighting devices or other safety equipment. (1) The chief of the state patrol is hereby authorized to adopt and enforce rules establishing standards and specifications governing the performance of lighting devices and their installation, adjustment, and aiming, when in use on motor vehicles, and other safety equipment, components, or assemblies of a type for which regulation is required in this chapter or in rules adopted by the state patrol. Such rules shall correlate with and, so far as practicable, conform to federal motor vehicle safety standards adopted pursuant to the national traffic and motor vehicle safety act of 1966 (15 U.S.C. Sec. 1381 et seq.) covering the same aspect of performance, or in the absence of such federal standards, to the then current standards and specifications of the society of automotive engineers applicable to such equipment: *Provided*, That the sale, installation, and use of any headlamp meeting the standards of either the society of automotive engineers

or the United Nations agreement concerning motor vehicle equipment and parts done at Geneva on March 20, 1958, or as amended and adopted by the Canadian standards association (CSA standard D106.2), as amended, shall be lawful in this state.

(2) Every manufacturer who sells or offers for sale lighting devices or other safety equipment subject to requirements established by the state patrol shall, if the lighting device or safety equipment is not in conformance with applicable federal motor vehicle safety standards, provide for submission of such lighting device or safety equipment to any recognized organization or agency such as, but not limited to, the American national standards institute, the society of automotive engineers, or the American association of motor vehicle administrators, as the agent of the state patrol. Issuance of a certificate of compliance for any lighting device or item of safety equipment by that agent is deemed to comply with the standards set forth by the state patrol. Such certificate shall be issued by the agent of the state before sale of the product within the state.

(3) The state patrol may at any time request from the manufacturer a copy of the test data showing proof of compliance of any device with the requirements established by the state patrol and additional evidence that due care was exercised in maintaining compliance during production. If the manufacturer fails to provide such proof of compliance within sixty days of notice from the state patrol, the state patrol may prohibit the sale of the device in this state until acceptable proof of compliance is received by the state patrol.

(4) The state patrol or its agent may purchase any lighting device or other safety equipment, component, or assembly subject to this chapter or rules adopted by the state patrol under this chapter, for purposes of testing or retesting the equipment as to its compliance with applicable standards or specifications. [1987 c 330 § 717; 1986 c 113 § 2. Prior: 1977 ex.s. c 355 § 25; 1977 ex.s. c 20 § 1; 1961 c 12 § 46.37.320; prior: 1955 c 269 § 32; prior: 1937 c 189 § 31; RRS § 6360-31; RCW 46.40-.190; 1933 c 156 § 4, part; 1929 c 178 § 6, part; 1927 c 309 § 23, part; RRS § 6362-23, part.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.330 Revocation of certificate of approval on devices—Reapproval, conditions. (1) When the state patrol has reason to believe that an approved device does not comply with the requirements of this chapter or regulations issued by the state patrol, it may, after giving thirty days' previous notice to the person holding the certificate of approval for such device in this state, conduct a hearing upon the question of compliance of said approved device. After said hearing the state patrol shall determine whether said approved device meets the requirements of this chapter and regulations issued by the state patrol. If said device does not meet the requirements of this chapter or the state patrol's regulations it shall give notice to the one to whom the certificate of

approval has been issued of the state patrol's intention to suspend or revoke the certificate of approval for such device in this state.

(2) If at the expiration of ninety days after such notice the person holding the certificate of approval for such device has failed to satisfy the state patrol that said approved device as thereafter to be sold or offered for sale meets the requirements of this chapter or the state patrol's regulations, the state patrol shall suspend or revoke the approval issued therefor and shall require the withdrawal of all such devices from the market and may require that all said devices sold since the notification be replaced with devices that do comply.

(3) When a certificate of approval has been suspended or revoked pursuant to this chapter or regulations by the state patrol, the device shall not be again approved unless and until it has been submitted for reapproval and it has been demonstrated, in the same manner as in an application for an original approval, that the device fully meets the requirements of this chapter or regulations issued by the state patrol. The state patrol may require that all previously approved items are being effectively recalled and removed from the market as a condition of reapproval. [1987 c 330 § 718; 1977 ex.s. c 355 § 26; 1961 c 12 § 46.37.330. Prior: 1955 c 269 § 33; prior: 1937 c 189 § 32; RRS § 6360-32; RCW 46.40.200; 1933 c 156 § 4, part; 1929 c 178 § 6, part; 1927 c 309 § 23, part; RRS § 6362-23, part.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.340 Braking equipment required. Every motor vehicle, trailer, semitrailer, and pole trailer, and any combination of such vehicle operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(1) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in RCW 46.04.552, shall be equipped with service brakes complying with the performance requirements of RCW 46.37.351 and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(2) Parking brakes—adequacy. Every such vehicle and combination of vehicles shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied

with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors, and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(3) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

(a) Trailers, semitrailers, or pole trailers of a gross weight not exceeding three thousand pounds, provided that:

(i) The total weight on and including the wheels of the trailer or trailers shall not exceed forty percent of the gross weight of the towing vehicle when connected to the trailer or trailers; and

(ii) The combination of vehicles consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of RCW 46.37.351;

(b) Trailers, semitrailers, or pole trailers manufactured and assembled prior to July 1, 1965, shall not be required to be equipped with brakes when the total weight on and including the wheels of the trailer or trailers does not exceed two thousand pounds;

(c) Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of RCW 46.37.351;

(d) Trucks and truck tractors manufactured before July 25, 1980, and having three or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. Trucks and truck tractors manufactured on or after July 25, 1980, and having three or more axles are required to have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. Such trucks and truck tractors may be equipped with an automatic device to reduce the front-wheel braking effort by up to fifty percent of the normal braking force, regardless of whether or not antilock system failure has occurred on any axle, and:

(i) Must not be operable by the driver except upon application of the control that activates the braking system; and

(ii) Must not be operable when the pressure that transmits brake control application force exceeds eighty-five pounds per square inch (psi) on air-mechanical braking systems, or eighty-five percent of the maximum system pressure in vehicles utilizing other than compressed air.

All trucks and truck tractors having three or more axles must be capable of complying with the performance requirements of RCW 46.37.351;

(e) Special mobile equipment as defined in RCW 46.04.552 and all vehicles designed primarily for off-

highway use with braking systems which work within the power train rather than directly at each wheel;

(f) Vehicles manufactured prior to January 1, 1930, may have brakes operating on only two wheels.

(g) For a forklift manufactured after January 1, 1970, and being towed, wheels need not have brakes except for those on the rearmost axle so long as such brakes, together with the brakes on the towing vehicle, shall be adequate to stop the combination within the stopping distance requirements of RCW 46.37.351.

(4) Automatic trailer brake application upon breakaway. Every trailer, semitrailer, and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer, and pole trailer with a gross weight in excess of three thousand pounds, manufactured or assembled after January 1, 1964, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen minutes, upon breakaway from the towing vehicle.

(5) Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1964, and used to tow a trailer, semitrailer, or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(6) Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1964, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(7) Two means of emergency brake operation.

(a) Air brakes. After January 1, 1964, every towing vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, and all other vehicles equipped with air controlled brakes, shall be equipped with two means for emergency application of the brakes. One of these means shall apply the brakes automatically in the event of a reduction of the vehicle's air supply to a fixed pressure which shall be not lower than twenty pounds per square inch nor higher than forty-five pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

(b) Vacuum brakes. After January 1, 1964, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by subsection (8) of this section, a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless

the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(8) Single control to operate all brakes. After January 1, 1964, every motor vehicle, trailer, semitrailer, and pole trailer, and every combination of such vehicles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control in the towing vehicle.

(9) Reservoir capacity and check valve.

(a) Air brakes. Every bus, truck, or truck tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty percent. Each reservoir shall be provided with means for readily draining accumulated oil or water.

(b) Vacuum brakes. After January 1, 1964, every truck with three or more axles equipped with vacuum assistor type brakes and every truck tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty percent.

(c) Reservoir safeguarded. All motor vehicles, trailers, semitrailers, and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(10) Warning devices.

(a) Air brakes. Every bus, truck, or truck tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the primary supply air reservoir pressure of the vehicle is below fifty percent of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

(b) Vacuum brakes. After January 1, 1964, every truck tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three or more axles using vacuum in the operation

of its brakes, except those in driveway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight inches of mercury.

(c) Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement. [1989 c 221 § 1; 1979 c 11 § 1. Prior: 1977 ex.s. c 355 § 27; 1977 ex.s. c 148 § 2; 1965 ex.s. c 170 § 49; 1963 c 154 § 21; 1961 c 12 § 46.37.340; prior: 1955 c 269 § 34; prior: 1937 c 189 § 34, part; RRS § 6360-34, part; RCW 46.36.020, 46.36.030, part; 1929 c 180 § 6; 1927 c 309 § 16; 1923 c 181 § 5; 1921 c 96 § 23; 1915 c 142 § 22; RRS § 6362-16.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.351 Performance ability of brakes. Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brakes, shall be capable of:

(1) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification,

(2) Decelerating to a stop from not more than twenty miles per hour at not less than the feet per second per second tabulated herein for its classification, and

(3) Stopping from a speed of twenty miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one percent grade), dry, smooth, hard surface that is free from loose material.

Classification of Vehicles	Braking force as a percent—age of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of 20 m.p.h.
A Passenger vehicles with a seating capacity of 10 people or less including driver, not having a manufacturer's gross vehicle weight rating	52.8%	17	25

Classification of Vehicles	Braking force as a percent—age of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of 20 m.p.h.
B-1 All motorcycles and motor-driven cycles	43.5%	14	30
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of 10,000 pounds or less	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight rating of more than 10,000 pounds	43.5%	14	40
C-2 Combinations of a two-axle towing vehicle and a trailer with a gross trailer weight of 3,000 pounds or less	43.5%	14	40
C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating	43.5%	14	40
C-4 All combinations of vehicles in driveway-towaway operations	43.5%	14	40
D All other vehicles and combinations of vehicles	43.5%	14	50

[1963 c 154 § 22.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.360 Maintenance of brakes—Brake system failure indicator. (1) All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the front and back wheels and to wheels on opposite sides of the vehicle.

(2) All passenger cars manufactured on or after January 1, 1968, and other types of vehicles manufactured on or after September 1, 1975, shall be equipped with brake system failure indicator lamps which shall be maintained in good working order. The brake system shall demonstrate good working order and integrity by the application of a force of one hundred twenty-five pounds to the brake pedal for ten seconds without the occurrence of any of the following:

- (i) Illumination of the brake system failure indicator lamp;
- (ii) A decrease of more than eighty percent of service brake pedal height as measured from its free position to

the floorboard or any other object which restricts service brake pedal travel;

(iii) Failure of any hydraulic line or other part.

(3) Brake hoses shall not be mounted so as to contact the vehicle body or chassis. In addition, brake hoses shall not be cracked, chafed, flattened, abraded, or visibly leaking. Protection devices such as "rub rings" shall not be considered part of the hose or tubing.

(4) Disc and drum condition. If the drum is embossed with a maximum safe diameter dimension or the rotor is embossed with a minimum safety thickness dimension, the drum or disc shall be within the appropriate specifications. These dimensions will be found on motor vehicles manufactured since January 1, 1971, and may be found on vehicles manufactured for several years prior to that time. If the drums and discs are not embossed, the drums and discs shall be within the manufacturer's specifications.

(5) Friction materials. On each brake the thickness of the lining or pad shall not be less than one thirty-second of an inch over the rivet heads, or the brake shoe on bonded linings or pads. Brake linings and pads shall not have cracks or breaks that extend to rivet holes except minor cracks that do not impair attachment. Drum brake linings shall be securely attached to brake shoes. Disc brake pads shall be securely attached to shoe plates.

(6) Backing plates and caliper assemblies shall not be deformed or cracked. System parts shall not be broken, misaligned, missing, binding, or show evidence of severe wear. Automatic adjusters and other parts shall be assembled and installed correctly. [1977 ex.s. c 355 § 28; 1961 c 12 § 46.37.360. Prior: 1955 c 269 § 36; prior: 1951 c 56 § 2, part; 1937 c 189 § 34, part; RRS § 6360-34, part; RCW 46.36.020, 46.36.030, part; 1929 c 180 § 6; 1927 c 309 § 16; 1923 c 181 § 5; 1921 c 96 § 23; 1915 c 142 § 22; RRS § 6362-16.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.365 Hydraulic brake fluid—Defined—Standards and specifications. (1) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(2) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(3) The chief of the Washington state patrol shall, in compliance with the provisions of chapter 34.05 RCW, the administrative procedure act, which govern the adoption of rules, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(4) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section and the standard

specifications adopted by the state patrol. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section and the standards and specifications adopted by the state patrol.

(5) Subsections (3) and (4) of this section shall not apply to petroleum base fluids in vehicles with brake systems designed to use them. [1987 c 330 § 719; 1977 ex.s. c 355 § 29; 1963 c 154 § 24.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.369 Wheels and front suspension. (1) No vehicle shall be equipped with wheel nuts, hub caps, or wheel discs extending outside the body of the vehicle when viewed from directly above which:

(a) Incorporate winged projections; or

(b) Constitute a hazard to pedestrians and cyclists.

For the purposes of this section, a wheel nut is defined as an exposed nut which is mounted at the center or hub of a wheel, and is not one of the ordinary hexagonal nuts which secure a wheel to an axle and are normally covered by a hub cap or wheel disc.

(2) Tire rims and wheel discs shall have no visible cracks, elongated bolt holes, or indications of repair by welding. In addition, the lateral and radial runout of each rim bead area shall not exceed one-eighth of an inch of total indicated runout.

(3) King pins or ball joints shall not be worn to the extent that front wheels tip in or out more than one-quarter of an inch at the lower edge of the tire. [1977 ex.s. c 355 § 30.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.375 Steering and suspension systems. (1) Construction of steering control system. The steering control system shall be constructed and maintained so that no components or attachments, including horn activating mechanism and trim hardware, can catch the driver's clothing or jewelry during normal driving maneuvers.

(2) Maintenance of steering control system. System play, lash, or free play in the steering system shall not exceed the values tabulated herein.

Steering wheel diameter (inches)	Lash (inches)
16 or less	2
18	2-1/4
20	2-1/2
22	2-3/4

(3) Linkage play. Free play in the steering linkage shall not exceed one-quarter of an inch.

(4) Other components of the steering system such as the power steering belt, tie rods, or idler arms or Pitman arms shall not be broken, worn out, or show signs of breakage.

(5) Suspension condition. Ball joint seals shall not be cut or cracked. Structural parts shall not be bent or

damaged. Stabilizer bars shall be connected. Springs shall not be broken, or extended by spacers. Shock absorber mountings, shackles, and U-bolts shall be securely attached. Rubber bushings shall not be cracked, or extruded out or missing from suspension joints. Radius rods shall not be missing or damaged.

(6) Shock absorber system. Shock absorbers shall not be loose from mountings, leak, or be inoperative.

(7) Alignment. Toe-in and toe-out measurements shall not be greater than one and one-half times the value listed in the vehicle manufacturer's service specification for alignment setting. [1977 ex.s. c 355 § 31.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.380 Horns, warning devices, and theft alarms.

(1) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device may emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(2) No vehicle may be equipped with nor may any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(3) It is permissible for any vehicle to be equipped with a theft alarm signal device so long as it is so arranged that it cannot be used by the driver as an ordinary warning signal. Such a theft alarm signal device may use a whistle, bell, horn, or other audible signal but shall not use a siren.

(4) Any authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type conforming to rules adopted by the state patrol, but the siren shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which latter events the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of its approach. [1987 c 330 § 720; 1986 c 113 § 3; 1977 ex.s. c 355 § 32; 1961 c 12 § 46.37.380. Prior: 1955 c 269 § 38; prior: 1937 c 189 § 35; RRS § 6360-35; RCW 46.36.040.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Motorcycles and motor-driven cycles—Additional requirements and limitations: RCW 46.37.539.

46.37.390 Mufflers, prevention of noise—Smoke and air contaminants—Standards—Definitions. (1) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, and no person

shall use a muffler cut-out, bypass, or similar device upon a motor vehicle on a highway.

(2) (a) No motor vehicle first sold and registered as a new motor vehicle on or after January 1, 1971, shall discharge into the atmosphere at elevations of less than three thousand feet any air contaminant for a period of more than ten seconds which is:

(i) As dark as or darker than the shade designated as No. 1 on the Ringelmann chart, as published by the United States bureau of mines; or

(ii) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subsection (a)(i) above.

(b) No motor vehicle first sold and registered prior to January 1, 1971, shall discharge into the atmosphere at elevations of less than three thousand feet any air contaminant for a period of more than ten seconds which is:

(i) As dark as or darker than the shade designated as No. 2 on the Ringelmann chart, as published by the United States bureau of mines; or

(ii) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subsection (b)(i) above.

(c) For the purposes of this subsection the following definitions shall apply:

(i) "Opacity" means the degree to which an emission reduces the transmission of light and obscures the view of an object in the background;

(ii) "Ringelmann chart" means the Ringelmann smoke chart with instructions for use as published by the United States bureau of mines in May 1967 and as thereafter amended, information circular 7718.

(3) No person shall modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the engine of such vehicle above that emitted by the muffler originally installed on the vehicle, and it shall be unlawful for any person to operate a motor vehicle not equipped as required by this subsection, or which has been amplified as prohibited by this subsection. [1977 ex.s. c 355 § 33; 1972 ex.s. c 135 § 1; 1967 c 232 § 3; 1961 c 12 § 46.37.390. Prior: 1955 c 269 § 39; prior: 1937 c 189 § 36; RRS § 6360-36; RCW 46.36.050; 1927 c 309 § 17; 1921 c 96 § 21; 1915 c 142 § 20; RRS § 6362-17.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Motorcycles and motor-driven cycles—Additional requirements and limitations: RCW 46.37.539.

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

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

(3) All mirrors required by this section shall be maintained in good condition. [1977 ex.s. c 355 § 34; 1963 c 154 § 25; 1961 c 12 § 46.37.400. Prior: 1955 c 269 § 40; prior: 1937 c 189 § 37; RRS § 6360-37; RCW 46.36.060.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

Motorcycles and motor-driven cycles—Additional requirements and limitations: RCW 46.37.539.

46.37.410 Windshields required, exception—Must be unobstructed and equipped with wipers. (1) All motor vehicles operated on the public highways of this state shall be equipped with a front windshield manufactured of safety glazing materials for use in motor vehicles in accordance with RCW 46.37.430, except, however, on such vehicles not so equipped or where windshields are not in use, the operators of such vehicles shall wear glasses, goggles, or face shields pursuant to RCW 46.37.530(1)(b).

(2) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

(3) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle. After January 1, 1938, it shall be unlawful for any person to operate a new motor vehicle first sold or delivered after that date which is not equipped with such device or devices in good working order capable of cleaning the windshield thereof over two separate arcs, one each on the left and right side of the windshield, each capable of cleaning a surface of not less than one hundred twenty square inches, or other device or devices capable of accomplishing substantially the same result.

(4) Every windshield wiper upon a motor vehicle shall be maintained in good working order. [1977 ex.s. c 355 § 35; 1961 c 12 § 46.37.410. Prior: 1955 c 269 § 41; prior: (i) 1937 c 189 § 38; RRS § 6360-38; RCW 46.36.070. (ii) 1937 c 189 § 39; RRS § 6360-39; RCW 46.36.080.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.420 Restrictions as to tire equipment. (1) It is unlawful to operate a vehicle upon the public highways of this state unless it is completely equipped with pneumatic rubber tires.

(2) No tire on a vehicle moved on a highway may have on its periphery any block, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances that will not injure the highway, and except also that it is permissible to use tire chains or metal studs imbedded within the

tire of reasonable proportions and of a type conforming to rules adopted by the state patrol, upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. It is unlawful to use metal studs imbedded within the tire between April 1st and November 1st. The state department of transportation may, from time to time, determine additional periods in which the use of tires with metal studs imbedded therein is lawful.

(3) The state department of transportation and local authorities in their respective jurisdictions may issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this section.

(4) Tires with metal studs imbedded therein may be used between November 1st and April 1st upon school buses and fire department vehicles, any law or regulation to the contrary notwithstanding. [1987 c 330 § 721; 1986 c 113 § 4; 1984 c 7 § 50; 1971 ex.s. c 32 § 1; 1969 ex.s. c 7 § 1; 1961 c 12 § 46.37.420. Prior: 1955 c 269 § 42; prior: (i) 1937 c 189 § 41; RRS § 6360-41; RCW 46.36.100. (ii) 1937 c 189 § 42; RRS § 6360-42; RCW 46.36.120; 1929 c 180 § 7; 1927 c 309 § 46; RRS § 6362-46.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1984 c 7: See note following RCW 47.01.141.

Dangerous road conditions requiring special tires, chains, metal studs: RCW 47.36.250.

Motorcycles and motor-driven cycles—Additional requirements and limitations: RCW 46.37.539.

46.37.423 Pneumatic passenger car tires—Standards—Exception for off-highway use—Penalty. No person, firm, or corporation shall sell or offer for sale for use on the public highways of this state any new pneumatic passenger car tire which does not meet the standards established by federal motor vehicle safety standard No. 109, as promulgated by the United States department of transportation under authority of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 719, 728; 15 U.S.C. 1392, 1407).

The applicable standard shall be the version of standard No. 109 in effect at the time of manufacture of the tire.

It is a traffic infraction for any person, firm, or corporation to sell or offer for sale any new pneumatic passenger car tire which does not meet the standards prescribed in this section unless such tires are sold for off-highway use, as evidenced by a statement signed by the purchaser at the time of sale certifying that he is not purchasing such tires for use on the public highways of this state. [1979 ex.s. c 136 § 71; 1971 c 77 § 1.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.37.424 Regrooved tires—Standards—Exception for off-highway use—Penalty. No person,

firm, or corporation shall sell or offer for sale any regrooved tire or shall regroove any tire for use on the public highways of this state which does not meet the standard established by federal motor vehicle standard part 569—regrooved tires, as promulgated by the United States department of transportation under authority of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 719, 728; 15 U.S.C. 1392, 1407).

The applicable standard shall be the version of the federal regrooved tire standard in effect at the time of regrooving.

It is a traffic infraction for any person, firm, or corporation to sell or offer for sale any regrooved tire or shall regroove any tire which does not meet the standards prescribed in this section unless such tires are sold or regrooved for off-highway use, as evidenced by a statement signed by the purchaser or regroover at the time of sale or regrooving certifying that he is not purchasing or regrooving such tires for use on the public highways of this state. [1979 ex.s. c 136 § 72; 1977 ex.s. c 355 § 36; 1971 c 77 § 2.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.425 Authority of state patrol regarding tires—Rules and regulations—Penalty. No person shall drive or move or cause to be driven or moved any vehicle, the tires of which have contact with the driving surface of the road, subject to registration in this state, upon the public highways of this state unless such vehicle is equipped with tires in safe operating condition in accordance with requirements established by this section or by the state patrol.

The state patrol shall promulgate rules and regulations setting forth requirements of safe operating condition of tires capable of being employed by a law enforcement officer by visual inspection of tires mounted on vehicles including visual comparison with simple measuring gauges. These rules shall include effects of tread wear and depth of tread.

A tire shall be considered unsafe if it has:

(1) Any ply or cord exposed either to the naked eye or when cuts or abrasions on the tire are probed; or

(2) Any bump, bulge, or knot, affecting the tire structure; or

(3) Any break repaired with a boot; or

(4) A tread depth of less than 2/32 of an inch measured in any two major tread grooves at three locations equally spaced around the circumference of the tire, or for those tires with tread wear indicators, a tire shall be considered unsafe if it is worn to the point that the tread wear indicators contact the road in any two major tread grooves at three locations equally spaced around the circumference of the tire; or

(5) A legend which indicates the tire is not intended for use on public highways such as, "not for highway use" or "for racing purposes only"; or

(6) Such condition as may be reasonably demonstrated to render it unsafe; or

(7) If not matched in tire size designation, construction, and profile to the other tire and/or tires on the same axle.

No person, firm, or corporation shall sell any vehicle for use on the public highways of this state unless the vehicle is equipped with tires that are in compliance with the provisions of this section. If the tires are found to be in violation of the provisions of this section, the person, firm, or corporation selling the vehicle shall cause such tires to be removed from the vehicle and shall equip the vehicle with tires that are in compliance with the provisions of this section.

It is a traffic infraction for any person to operate a vehicle on the public highways of this state, or to sell a vehicle for use on the public highways of this state, which is equipped with a tire or tires in violation of the provisions of this section or the rules and regulations promulgated by the state patrol hereunder: *Provided, however,* That if the violation relates to items (1) to (7) inclusive of this section then the condition or defect must be such that it can be detected by a visual inspection of tires mounted on vehicles, including visual comparison with simple measuring gauges. [1987 c 330 § 722; 1979 ex.s. c 136 § 73; 1977 ex.s. c 355 § 37; 1971 c 77 § 3.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1971 c 77: "The provisions of RCW 46.37.425 shall have an effective date of January 1, 1972, but the state commission on equipment shall have the authority to proceed with the promulgation of the rules and regulations provided for in RCW 46.37.425 so the rules and regulations may have an effective date of January 1, 1972." [1971 c 77 § 4.]

46.37.430 Safety glazing materials in motor vehicles—Application of tinting or coloring material. (1) No person may sell any new motor vehicle as specified in this title, nor may any new motor vehicle as specified in this title be registered unless such vehicle is equipped with safety glazing material of a type approved by the state patrol wherever glazing material is used in doors, windows, and windshields. The foregoing provisions apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material apply to all glazing material used in doors, windows, and windshields in the drivers' compartments of such vehicles except as provided by subsection (4) of this section.

(2) The term "safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) The director of licensing shall not register any motor vehicle which is subject to the provisions of this

section unless it is equipped with an approved type of safety glazing material, and he shall suspend the registration of any motor vehicle so subject to this section which he finds is not so equipped until it is made to conform to the requirements of this section.

(4) No person may sell or offer for sale, nor may any person operate a motor vehicle registered in this state which is equipped with, any camper manufactured after May 23, 1969, unless such camper is equipped with safety glazing material of a type conforming to rules adopted by the state patrol wherever glazing materials are used in outside windows and doors.

(5) No tinting or coloring material that reduces light transmittance to any degree may be applied to the surface of the safety glazing material in a motor vehicle unless it meets the following standards for such material:

(a) The maximum level of film sunscreening material to be applied to windshields and any windows shall have a total reflectance of thirty-five percent or less, plus or minus three percent, and a light transmission of thirty-five percent or more, plus or minus three percent, when measured in conjunction with the safety glazing material.

(b) This section shall permit a greater degree of light reduction on all windows of a vehicle operated by or carrying as a passenger a person who possesses a written verification from a licensed physician that the operator or passenger must be protected from exposure to sunlight for physical or medical reasons.

(c) Windshield application. The application of sunscreening material is restricted to the top six-inch area of a vehicle's windshield.

(d) If sunscreening material is applied to the rearview window, outside mirrors on both the left and right sides shall be located so as to reflect to the driver a view of the roadway, through each mirror, a distance of at least two hundred feet to the rear of the vehicle.

(e) The following types of colors of sunscreening material are not permitted:

- (i) Mirror finish products;
- (ii) Red, gold, yellow, or black material; or
- (iii) Sunscreening material that is in liquid preapplication form and brushed or sprayed on.

Nothing in this section prohibits the use of shaded or heat-absorbing safety glazing material in which the shading or heat-absorbing characteristics have been applied at the time of manufacture of the safety glazing material and which meet the standards of the state patrol for such safety glazing materials.

(6) It is a misdemeanor for any person to operate a vehicle for use on the public highways of this state, if the vehicle is equipped with tinting or coloring material in violation of this section.

(7) Limousines and passenger buses used to transport persons for compensation are exempt from the requirements of this section. [1989 c 210 § 1; 1987 c 330 § 723; 1986 c 113 § 5; 1985 c 304 § 1; 1979 c 158 § 157; 1969 ex.s. c 281 § 47; 1961 c 12 § 46.37.430. Prior: 1955 c 269 § 43; prior: 1947 c 220 § 1; 1937 c 189 § 40; Rem. Supp. 1947 § 6360-40; RCW 46.36.090.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.440 Flares or other warning devices required on certain vehicles. (1) No person may operate any motor truck, passenger bus, truck tractor, motor home, or travel trailer over eighty inches in overall width upon any highway outside the corporate limits of municipalities at any time unless there is carried in such vehicle the following equipment except as provided in subsection (2) of this section:

(a) At least three flares or three red electric lanterns or three portable red emergency reflectors, each of which shall be capable of being seen and distinguished at a distance of not less than six hundred feet under normal atmospheric conditions at nighttime.

No flare, fusee, electric lantern, or cloth warning flag may be used for the purpose of compliance with this section unless such equipment is of a type which has been submitted to the state patrol and conforms to rules adopted by it. No portable reflector unit may be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to be capable of reflecting red light clearly visible from all distances within six hundred feet to one hundred feet under normal atmospheric conditions at night when directly in front of lawful upper beams of head lamps, and unless it is of a type which has been submitted to the state patrol and conforms to rules adopted by it;

(b) At least three red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried;

(c) At least two red-cloth flags, not less than twelve inches square, with standards to support such flags.

(2) No person may operate at the time and under conditions stated in subsection (1) of this section any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases or liquefied gases, or any motor vehicle using compressed gas as a fuel unless there is carried in such vehicle three red electric lanterns or three portable red emergency reflectors meeting the requirements of subsection (1) of this section, and there shall not be carried in any said vehicle any flares, fusees, or signal produced by flame. [1987 c 330 § 724; 1986 c 113 § 6; 1977 ex.s. c 355 § 38; 1971 ex.s. c 97 § 1; 1961 c 12 § 46.37.440. Prior: 1955 c 269 § 44; prior: 1947 c 267 § 7, part; Rem. Supp. 1947 § 6360-32a, part; RCW 46.40.210, part.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.450 Disabled vehicle—Display of warning devices. (1) Whenever any motor truck, passenger bus, truck tractor over eighty inches in overall width, trailer, semitrailer, or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside any municipality at any time when lighted lamps are required on vehicles, the driver of such vehicle shall display the following warning devices upon the highway

during the time the vehicle is so disabled on the highway except as provided in subsection (2) of this section:

(a) A lighted fusee, a lighted red electric lantern, or a portable red emergency reflector shall be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

(b) As soon thereafter as possible but in any event within the burning period of the fusee (fifteen minutes), the driver shall place three liquid-burning flares (pot torches), three lighted red electric lanterns, or three portable red emergency reflectors on the traveled portion of the highway in the following order:

(i) One, approximately one hundred feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane.

(ii) One, approximately one hundred feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle.

(iii) One at the traffic side of the disabled vehicle not less than ten feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with subdivision (a) of this subsection, it may be used for this purpose.

(2) Whenever any vehicle referred to in this section is disabled within five hundred feet of a curve, hillcrest, or other obstruction to view, the warning signal in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than five hundred feet from the disabled vehicle.

(3) Whenever any vehicle of a type referred to in this section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices prescribed in subsections (1) and (5) of this section shall be placed as follows:

One at a distance of approximately two hundred feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane; one at a distance of approximately one hundred feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane; and one at the traffic side of the vehicle and approximately ten feet from the vehicle in the direction of the nearest approaching traffic.

(4) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder thereof outside any municipality at any time when the display of fusees, flares, red electric lanterns, or portable red emergency reflectors is not required, the driver of the vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of approximately one hundred feet in advance of the vehicle, and one at a distance of approximately one hundred feet to the rear of the vehicle.

(5) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled upon a highway of this state at

any time or place mentioned in subsection (1) of this section, the driver of such vehicle shall immediately display the following warning devices: One red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle, and two red electric lanterns or portable red reflectors, one placed approximately one hundred feet to the front and one placed approximately one hundred feet to the rear of this disabled vehicle in the center of the traffic lane occupied by such vehicle. Flares, fusees, or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this subsection.

(6) Whenever any vehicle, other than those described in subsection (1) of this section, is disabled upon the traveled portion of any highway or shoulder thereof outside any municipality, the state patrol or the county sheriff shall, upon discovery of the disabled vehicle, place a reflectorized warning device on the vehicle. The warning device and its placement shall be in accordance with rules adopted by the state patrol. Neither the standards for, placement or use of, nor the lack of placement or use of a warning device under this subsection gives rise to any civil liability on the part of the state of Washington, the state patrol, any county, or any law enforcement agency or officer.

(7) The flares, fusees, red electric lanterns, portable red emergency reflectors, and flags to be displayed as required in this section shall conform with the requirements of RCW 46.37.440 applicable thereto. [1987 c 330 § 725; 1987 c 226 § 1; 1984 c 119 § 1; 1961 c 12 § 46.37.450. Prior: 1955 c 269 § 45; prior: 1947 c 267 § 7, part; Rem. Supp. 1947 § 6360-32a, part; RCW 46.40-.210, part.]

Reviser's note: This section was amended by 1987 c 226 § 1 and by 1987 c 330 § 725, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.460 Vehicles transporting explosives. Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(1) Said vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "danger" in white letters six inches high.

(2) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used. [1961 c 12 § 46.37.460. Prior: 1955 c 269 § 46.]

46.37.465 Fuel system. (1) The fuel system shall be manufactured, installed, and maintained with due regard for the safety of the occupants of the vehicle and the public. Fuel tanks shall be equipped with approved caps.

(2) There shall be no signs of leakage from the carburetor or the fuel pump or the fuel hoses in the engine

compartment or between the fuel tank and the engine compartment.

(3) No person shall operate any motor vehicle upon the public highways of this state unless the fuel tank is securely attached and so located that another vehicle would not be exposed to direct contact with the fuel tank in the event of a rear end collision. [1977 ex.s. c 355 § 39.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.467 Vehicle with alternative fuel source—Placard required. (1) Every automobile, truck, motorcycle, motor home, or off-road vehicle that is fueled by an alternative fuel source shall bear a reflective placard issued by the national fire protection association indicating that the vehicle is so fueled. Violation of this subsection is a traffic infraction.

(2) As used in this section "alternative fuel source" includes propane, compressed natural gas, liquid petroleum gas, or any chemically similar gas but does not include gasoline or diesel fuel.

(3) If a placard for a specific alternative fuel source has not been issued by the national fire protection association, a placard issued by the director of community development, through the director of fire protection, shall be required. The director of community development, through the director of fire protection, shall develop rules for the design, size, and placement of the placard which shall remain effective until a specific placard is issued by the national fire protection association. [1986 c 266 § 88; 1984 c 145 § 1; 1983 c.237 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

Legislative finding—1983 c 237: "The legislature finds that vehicles using alternative fuel sources such as propane, compressed natural gas, liquid petroleum gas, or other hydrocarbon gas fuels require fire fighters to use a different technique if the vehicles catch fire. A reflective placard on such vehicles would warn fire fighters of the danger so they could react properly." [1983 c 237 § 1.]

46.37.470 Air-conditioning equipment. (1) The term "air-conditioning equipment" as used or referred to in this section shall mean mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.

(2) Such equipment shall be manufactured, installed and maintained with due regard for the safety of the occupants of the vehicle and the public and shall not contain any refrigerant which is toxic to persons or which is flammable.

(3) The state patrol may adopt and enforce safety requirements, regulations and specifications consistent with the requirements of this section applicable to such equipment which shall correlate with and, so far as possible, conform to the current recommended practice or standard applicable to such equipment approved by the society of automotive engineers.

(4) No person shall have for sale, offer for sale, sell or equip any motor vehicle with any such equipment unless it complies with the requirements of this section.

(5) No person shall operate on any highway any motor vehicle equipped with any air-conditioning equipment unless said equipment complies with the requirements of this section. [1987 c 330 § 726; 1961 c 12 § 46.37.470. Prior: 1955 c 269 § 47.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.480 Television viewers—Earphones. (1) No person shall drive any motor vehicle equipped with any television viewer, screen, or other means of visually receiving a television broadcast which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle.

(2) No person shall operate any motor vehicle on a public highway while wearing any headset or earphones connected to any electronic device capable of receiving a radio broadcast or playing a sound recording for the purpose of transmitting a sound to the human auditory senses and which headset or earphones muffle or exclude other sounds. This subsection does not apply to students and instructors participating in a Washington state motorcycle safety program.

(3) This section does not apply to authorized emergency vehicles. [1988 c 227 § 6; 1987 c 176 § 1; 1977 ex.s. c 355 § 40; 1961 c 12 § 46.37.480. Prior: 1949 c 196 § 11; Rem. Supp. 1949 § 6360-98d. Formerly RCW 46.36.150.]

Severability—1988 c 227: See RCW 46.81A.900.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.490 Safety load chains and devices required. It shall be unlawful to operate any vehicle upon the public highways of this state without having the load thereon securely fastened and protected by safety chains or other device. The chief of the Washington state patrol is hereby authorized to adopt and enforce reasonable rules and regulations as to what shall constitute adequate and safe chains or other devices for the fastening and protection of loads upon vehicles. [1987 c 330 § 727; 1961 c 12 § 46.37.490. Prior: 1937 c 189 § 43; RRS § 6360-43; 1927 c 309 § 18; RRS § 6362-18. Formerly RCW 46.36.110.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.500 Fenders or splash aprons. (1) Except as authorized under subsection (2) of this section, no person may operate any motor vehicle, trailer, or semitrailer that is not equipped with fenders, covers, flaps, or splash aprons adequate for minimizing the spray or splash of water or mud from the roadway to the rear of the vehicle. All such devices shall be as wide as the tires behind which they are mounted and extend downward at least to the center of the axle.

(2) A motor vehicle that is not less than forty years old and is owned and operated primarily as a collector's item need not be equipped with fenders when the vehicle

is used and driven during fair weather on well-maintained, hard-surfaced roads. [1988 c 15 § 2; 1977 ex.s. c 355 § 41; 1961 c 12 § 46.37.500. Prior: 1947 c 200 § 3, part; 1937 c 189 § 44, part; Rem. Supp. 1947 § 6360-44, part. Formerly RCW 46.36.130 (second paragraph).]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.505 Child passenger restraint systems. The state patrol shall adopt standards for the performance, design, and installation of passenger restraint systems for children less than five years old and shall approve those systems which meet its standards. [1987 c 330 § 728; 1983 c 215 § 1.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1983 c 215: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 215 § 3.]

Child passenger restraint required: RCW 46.61.687.

46.37.510 Seat belts and shoulder harnesses. (1) No person may sell any automobile manufactured or assembled after January 1, 1964, nor may any owner cause such vehicle to be registered thereafter under the provisions of chapter 46.12 RCW unless such motor car or automobile is equipped with automobile seat belts installed for use on the front seats thereof which are of a type and installed in a manner conforming to rules adopted by the state patrol. Where registration is for transfer from an out-of-state license, the applicant shall be informed of this section by the issuing agent and has thirty days to comply. The state patrol shall adopt and enforce standards as to what constitutes adequate and safe seat belts and for the fastening and installation of them. Such standards shall not be below those specified as minimum requirements by the Society of Automotive Engineers on June 13, 1963.

(2) Every passenger car manufactured or assembled after January 1, 1965, shall be equipped with at least two lap-type safety belt assemblies for use in the front seating positions.

(3) Every passenger car manufactured or assembled after January 1, 1968, shall be equipped with a lap-type safety belt assembly for each permanent passenger seating position. This requirement shall not apply to police vehicles.

(4) Every passenger car manufactured or assembled after January 1, 1968, shall be equipped with at least two shoulder harness-type safety belt assemblies for use in the front seating positions.

(5) The state patrol shall excuse specified types of motor vehicles or seating positions within any motor vehicle from the requirements imposed by subsections (1), (2), and (3) of this section when compliance would be impractical.

(6) No person may distribute, have for sale, offer for sale, or sell any safety belt or shoulder harness for use in motor vehicles unless it meets current minimum standards and specifications conforming to rules adopted by

the state patrol or the United States department of transportation. [1987 c 330 § 729; 1986 c 113 § 7; 1977 ex.s. c 355 § 42; 1963 c 117 § 1.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Safety belts, use required: RCW 46.61.688.

46.37.513 Bumpers. When any motor vehicle was originally equipped with bumpers or any other collision energy absorption or attenuation system, that system shall be maintained in good operational condition, and no person shall remove or disconnect, and no owner shall cause or knowingly permit the removal or disconnection of, any part of that system except temporarily in order to make repairs, replacements, or adjustments. [1977 ex.s. c 355 § 43.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.517 Body and body hardware. (1) The body, fenders, and bumpers shall be maintained without protrusions which could be hazardous to pedestrians. In addition, the bumpers shall be so attached and maintained so as to not protrude beyond the original bumper line.

(2) The hood, hood latches, hood fastenings, doors, and door latches shall be maintained in a condition sufficient to ensure proper working equal to that at the time of original vehicle manufacture. [1977 ex.s. c 355 § 44.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.520 Beach vehicles with soft tires—"Dune buggies"—Inspection and approval required—Fee. It shall be unlawful for any person to lease for hire or permit the use of any vehicle with soft tires commonly used upon the beach and referred to as a dune buggy unless such vehicle has been inspected by and approved by the state patrol, which may charge a reasonable fee therefor to go into the motor vehicle fund. [1987 c 330 § 730; 1971 ex.s. c 91 § 4; 1965 ex.s. c 170 § 61.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.522 Motorcycles and motor-driven cycles—When head lamps and tail lamps to be lighted. Every motorcycle and motor-driven cycle shall have its head lamps and tail lamps lighted whenever such vehicle is in motion upon a highway. [1977 ex.s. c 355 § 45.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.523 Motorcycles and motor-driven cycles—Head lamps. (1) Every motorcycle and every motor-driven cycle shall be equipped with at least one lamp which shall comply with the requirements and limitations of this section.

(2) Every head lamp upon every motorcycle and motor-driven cycle shall be located at a height of not more

than fifty-four inches nor less than twenty-four inches to be measured as set forth in RCW 46.37.030(2).

(3) Every motorcycle other than a motor-driven cycle shall be equipped with multiple-beam road-lighting equipment.

(4) Such equipment shall:

(a) Reveal persons and vehicles at a distance of at least three hundred feet ahead when the uppermost distribution of light is selected;

(b) Reveal persons and vehicles at a distance of at least one hundred fifty feet ahead when the lowermost distribution of light is selected, and on a straight, level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver. [1977 ex.s. c 355 § 46.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.524 Motor-driven cycles—Head lamps. The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every such head lamp or head lamps on a motor-driven cycle shall be of a sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motor-driven cycle is operated at any speed less than twenty-five miles per hour and at a distance of not less than two hundred feet when the motor-driven cycle is operated at a speed of twenty-five or more miles per hour, and at a distance of not less than three hundred feet when the motor-driven cycle is operated at a speed of thirty-five or more miles per hour;

(2) In the event the motor-driven cycle is equipped with a multiple-beam head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in RCW 46.37.220(1), and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in RCW 46.37.220;

(3) In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, such lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes. [1977 ex.s. c 355 § 47.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.525 Motorcycles and motor-driven cycles—Tail lamps, reflectors, and stop lamps. (1) Every motorcycle and motor-driven cycle shall have at least one tail lamp which shall be located at a height of not more than seventy-two nor less than fifteen inches.

(2) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail

lamp or tail lamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

(3) Every motorcycle and motor-driven cycle shall carry on the rear, either as part of the tail lamp or separately, at least one red reflector meeting the requirements of RCW 46.37.060.

(4) Every motorcycle and motor-driven cycle shall be equipped with at least one stop lamp meeting the requirements of RCW 46.37.070. [1977 ex.s. c 355 § 48.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.527 Motorcycles and motor-driven cycles—Brake requirements. Every motorcycle and motor-driven cycle must comply with the provisions of RCW 46.37-.351, except that:

(1) Motorcycles and motor-driven cycles need not be equipped with parking brakes;

(2) The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, and the front wheel of a motor-driven cycle need not be equipped with brakes, if such motorcycle or motor-driven cycle is otherwise capable of complying with the braking performance requirements of RCW 46.37.528 and 46.37.529;

(3) Motorcycles shall be equipped with brakes operating on both the front and rear wheels unless the vehicle was originally manufactured without both front and rear brakes: *Provided*, That a front brake shall not be required on any motorcycle over twenty-five years old which was originally manufactured without a front brake and which has been restored to its original condition and is being ridden to or from or otherwise in conjunction with an antique or classic motorcycle contest, show or other such assemblage: *Provided further*, That no front brake shall be required on any motorcycle manufactured prior to January 1, 1931. [1982 c 77 § 6; 1977 ex.s. c 355 § 49.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1982 c 77: See note following RCW 46.20.500.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.528 Motorcycles and motor-driven cycles—Performance ability of brakes. Every motorcycle and motor-driven cycle, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(1) Developing a braking force that is not less than forty-three and one-half percent of its gross weight;

(2) Decelerating to a stop from not more than twenty miles per hour at not less than fourteen feet per second per second; and

(3) Stopping from a speed of twenty miles per hour in not more than thirty feet, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one percent grade), dry, smooth, hard surface that is free from loose material. [1977 ex.s. c 355 § 50.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.529 Motor-driven cycles—Braking system inspection. (1) The state patrol is authorized to require an inspection of the braking system on any motor-driven cycle and to disapprove any such braking system on a vehicle which it finds will not comply with the performance ability standard set forth in RCW 46.37.351, or which in its opinion is equipped with a braking system that is not so designed or constructed as to ensure reasonable and reliable performance in actual use.

(2) The director of licensing may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when the state patrol determines that the braking system thereon does not comply with the provisions of this section.

(3) No person shall operate on any highway any vehicle referred to in this section in the event the state patrol has disapproved the braking system upon such vehicle. [1987 c 330 § 731; 1979 c 158 § 158; 1977 ex.s. c 355 § 51.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.530 Motorcycles or motor-driven cycles—Mirrors, glasses, goggles, face shields, helmets—Children—Rules by state patrol. (1) It is unlawful:

(a) For any person to operate a motorcycle or motor-driven cycle not equipped with mirrors on the left and right sides of the motorcycle which shall be so located as to give the driver a complete view of the highway for a distance of at least two hundred feet to the rear of the motorcycle or motor-driven cycle: *Provided*, That mirrors shall not be required on any motorcycle or motor-driven cycle over twenty-five years old originally manufactured without mirrors and which has been restored to its original condition and which is being ridden to or from or otherwise in conjunction with an antique or classic motorcycle contest, show, or other such assemblage: *Provided further*, That no mirror is required on any motorcycle manufactured prior to January 1, 1931;

(b) For any person to operate a motorcycle or motor-driven cycle which does not have a windshield unless wearing glasses, goggles, or a face shield of a type conforming to rules adopted by the state patrol;

(c) For any person under the age of eighteen years to operate or ride upon a motorcycle or motor-driven cycle on a state highway, county road, or city street unless wearing upon his or her head a protective helmet of a type conforming to rules adopted by the *commission on equipment. The helmet must be equipped with either a

neck or chin strap which shall be fastened securely while the motorcycle or motor-driven cycle is in motion;

(d) For any person to transport a child under the age of five on a motorcycle or motor-driven cycle;

(e) For any person to sell or offer for sale a motorcycle helmet which does not meet the requirements established by the state patrol.

(2) The state patrol is hereby authorized and empowered to adopt and amend rules, pursuant to the administrative procedure act, concerning the standards and procedures for conformance of rules adopted for glasses, goggles, face shields, and protective helmets. [1987 c 454 § 1; 1987 c 330 § 732; 1986 c 113 § 8; 1982 c 77 § 7; 1977 ex.s. c 355 § 55; 1971 ex.s. c 150 § 1; 1969 c 42 § 1; 1967 c 232 § 4.]

Reviser's note: (1) This section was amended by 1987 c 330 § 732 and by 1987 c 454 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

* (2) The powers and duties of the commission on equipment were transferred to the Washington state patrol by 1987 c 330 § 706. See RCW 46.37.005.

Rules of court: Monetary penalty schedule—JTIR 6.2.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1982 c 77: See note following RCW 46.20.500.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Maximum height for handlebars: RCW 46.61.611.

Riding on motorcycles: RCW 46.61.610.

46.37.535 Motorcycles or motor-driven cycles—Helmet requirements when rented. It is unlawful for any person to rent out motorcycles unless he also has on hand for rent helmets of a type conforming to rules adopted by the state patrol. [1987 c 330 § 733; 1986 c 113 § 9; 1977 ex.s. c 355 § 56; 1967 c 232 § 10.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

License requirement for person renting motorcycle: RCW 46.20.220.

46.37.537 Motorcycles—Exhaust system. No person shall modify the exhaust system of a motorcycle in a manner which will amplify or increase the noise emitted by the engine of such vehicle above that emitted by the muffler originally installed on the vehicle, and it shall be unlawful for any person to operate a motorcycle not equipped as required by this section, or which has been amplified as prohibited by this section. [1977 ex.s. c 355 § 52.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.539 Motorcycles and motor-driven cycles—Additional requirements and limitations. Every motorcycle and every motor-driven cycle shall also comply with the requirements and limitations of:

RCW 46.37.380 on horns and warning devices;

RCW 46.37.390 on mufflers and prevention of noise;
 RCW 46.37.400 on mirrors; and
 RCW 46.37.420 on tires.
 [1977 ex.s. c 355 § 53.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.540 Odometers—Disconnecting, resetting, or turning back prohibited. It shall be unlawful for any person to disconnect, turn back, or reset the odometer of any motor vehicle with the intent to reduce the number of miles indicated on the odometer gauge. [1983 c 3 § 119; 1969 c 112 § 2.]

Motor vehicle dealers, unlawful acts and practices: RCW 46.70.180.

46.37.550 Odometers—Selling motor vehicle knowing odometer turned back unlawful. It shall be unlawful for any person to sell a motor vehicle in this state if such person has knowledge that the odometer on such motor vehicle has been turned back and if such person fails to notify the buyer, prior to the time of sale, that the odometer has been turned back or that he had reason to believe that the odometer has been turned back. [1969 c 112 § 3.]

46.37.560 Odometers—Selling motor vehicle knowing odometer replaced unlawful. It shall be unlawful for any person to sell a motor vehicle in this state if such person has knowledge that the odometer on such motor vehicle has been replaced with another odometer and if such person fails to notify the buyer, prior to the time of sale, that the odometer has been replaced or that he believes the odometer to have been replaced. [1969 c 112 § 4.]

46.37.570 Odometers—Selling, advertising, using, or installing device which causes other than true mileage to be registered. It shall be unlawful for any person to advertise for sale, to sell, to use, or to install on any part of a motor vehicle or on an odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage driven. For the purposes of this section the true mileage driven is that driven by the car as registered by the odometer within the manufacturer's designed tolerance. [1969 c 112 § 5.]

46.37.590 Odometers—Purchaser plaintiff to recover costs and attorney's fee, when. In any suit brought by the purchaser of a motor vehicle against the seller of such vehicle, the purchaser shall be entitled to recover his court costs and a reasonable attorney's fee fixed by the court, if: (1) The suit or claim is based substantially upon the purchaser's allegation that the odometer on such vehicle has been tampered with contrary to RCW 46.37.540 and 46.37.550 or replaced contrary to RCW 46.37.560; and (2) it is found in such suit that the seller of such vehicle or any of his employees or agents knew or had reason to know that the odometer on such vehicle

had been so tampered with or replaced and failed to disclose such knowledge to the purchaser prior to the time of sale. [1975 c 24 § 1; 1969 c 112 § 7.]

46.37.600 Liability of operator, owner, lessee for violations. Whenever an act or omission is declared to be unlawful in chapter 46.37 RCW, if the operator of the vehicle is not the owner or lessee of such vehicle, but is so operating or moving the vehicle with the express or implied permission of the owner or lessee, then the operator and/or owner or lessee are both subject to the provisions of this chapter with the primary responsibility to be that of the owner or lessee.

If the person operating the vehicle at the time of the unlawful act or omission is not the owner or lessee of the vehicle, such person is fully authorized to accept the citation and execute the promise to appear on behalf of the owner or lessee. [1980 c 104 § 4; 1969 ex.s. c 69 § 3.]

46.37.610 Wheelchair conveyance standards. The state patrol shall adopt rules for wheelchair conveyance safety standards. Operation of a wheelchair conveyance that is in violation of these standards is a traffic infraction. [1987 c 330 § 734; 1983 c 200 § 4.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1983 c 200: See note following RCW 46.04.710.

Wheelchair conveyances

definition: RCW 46.04.710.

licensing: RCW 46.16.640.

operator's license: RCW 46.20.550.

public roadways, operating on: RCW 46.61.730.

Chapter 46.38

VEHICLE EQUIPMENT SAFETY COMPACT

Sections	
46.38.010	Compact enacted—Provisions.
46.38.020	Legislative findings.
46.38.030	Effective date of rules, etc. of vehicle safety equipment commission.
46.38.040	Appointment of commissioner and alternate commissioner.
46.38.050	Cooperation of state agencies with vehicle equipment safety commission.
46.38.060	State officers for the filing of documents and receipt of notices.
46.38.070	Vehicle equipment safety commission to submit budgets to director of financial management.
46.38.080	State auditor to inspect accounts of vehicle equipment safety commission.
46.38.090	Withdrawal from compact, "executive head" defined.

46.38.010 Compact enacted—Provisions. The vehicle equipment safety compact prepared pursuant to resolutions of the western governors' conference and the western interstate committee on highway policy problems of the council of state governments, is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

VEHICLE EQUIPMENT SAFETY COMPACT

ARTICLE I—Findings and Purposes

(a) The party states find that:

(1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to:

(1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this Article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II—Definitions

As used in this compact:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III—The Commission

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the Commission. The Commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the Commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been

given to the Commission in such form as the Commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the Commission for expenses actually incurred in attending Commission meetings or while engaged in the business of the Commission.

(b) The commissioners shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The Commission may appoint an Executive Director and fix his duties and compensation. Such Executive Director shall serve at the pleasure of the Commission, and together with the Treasurer shall be bonded in such amount as the Commission shall determine. The Executive Director also shall serve as secretary. If there be no Executive Director, the Commission shall elect a Secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the Executive Director with the approval of the Commission, or the Commission if there be no Executive Director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the Commission's functions, and shall fix the duties and compensation of such personnel.

(f) The Commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the Commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize, and dispose of the same.

(i) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all Commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The Commission annually shall make to the governor and legislature of each party state a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been issued by the Commission. The Commission may make such additional reports as it may deem desirable.

ARTICLE IV—Research and Testing

The Commission shall have power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the Commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V—Vehicular Equipment

(a) In the interest of vehicular and public safety, the Commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the Commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this Article. No less than sixty days after the publication of a report containing the results of such study, the Commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this Article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the Commission may issue rules, regulations or codes embodying performance

requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the Commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the Commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The Commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this Article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any Commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this Article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the Commission pursuant to this Article if such agency specifically finds, after public hearing on due notice, that a variation from the Commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the Commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI—Finance

(a) The Commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the Commission may employ such source or sources of information as, in its

judgment present the most equitable and accurate comparisons among the party states. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under Article III (h) hereof, the Commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

ARTICLE VII—Conflict of Interest

(a) The Commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the Commission and contractors with the Commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the Commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a Commission rule or regulation adopted pursuant to this Article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the Commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the Commission subject to cancellation by the Commission.

(b) Nothing contained in this Article shall be deemed to prevent a contractor for the Commission from using

any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the Commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII—Advisory and Technical Committees

The Commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX—Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X—Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1963 c 204 § 1.]

46.38.020 Legislative findings. The legislature finds that:

(1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.

(2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

(3) The state patrol, acting upon recommendations of the vehicle equipment safety commission and pursuant to the vehicle equipment safety compact provides a just, equitable and orderly means of promoting the public

safety in the manner and within the scope contemplated by this chapter. [1987 c 330 § 735; 1963 c 204 § 2.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.38.030 Effective date of rules, etc. of vehicle safety equipment commission. Pursuant to Article V(e) of the vehicle equipment safety compact it is the intention of this state and it is hereby provided that any rule, regulation, or code issued by the vehicle equipment safety commission in accordance with Article V of the compact shall take effect when issued in accordance with the administrative procedure act by the state patrol. [1987 c 330 § 736; 1967 ex.s. c 145 § 57; 1963 c 204 § 3.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.38.040 Appointment of commissioner and alternate commissioner. The commissioner of this state on the vehicle equipment safety commission shall be appointed by the chief of the state patrol to serve at the chief's pleasure. The chief of the state patrol may also designate an alternate commissioner to serve whenever the commissioner of this state is unable to participate on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of such alternate shall be as determined by the chief of the state patrol. [1987 c 330 § 737; 1963 c 204 § 4.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.38.050 Cooperation of state agencies with vehicle equipment safety commission. Within appropriations available therefor, the departments, agencies and officers of the government of this state may cooperate with and assist the vehicle equipment safety commission within the scope contemplated by Article III(h) of the compact. The departments, agencies and officers of the government of this state are authorized generally to cooperate with said commission. [1963 c 204 § 5.]

46.38.060 State officers for the filing of documents and receipt of notices. Filing of documents as required by Article III(j) of the compact shall be with the chief of the state patrol. Any and all notices required by commission bylaws to be given pursuant to Article III(j) of the compact shall be given to the commissioner of this state, his alternate, if any, and the chief of the state patrol. [1987 c 330 § 738; 1963 c 204 § 6.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.38.070 Vehicle equipment safety commission to submit budgets to director of financial management. Pursuant to Article VI(a) of the compact, the vehicle equipment safety commission shall submit its budgets to

the director of financial management. [1979 c 151 § 160; 1963 c 204 § 7.]

46.38.080 State auditor to inspect accounts of vehicle equipment safety commission. Pursuant to Article VI(e) of the compact, the state auditor is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission. [1963 c 204 § 8.]

46.38.090 Withdrawal from compact, "executive head" defined. The term "executive head" as used in Article IX(b) of the compact shall, with reference to this state, mean the governor. [1963 c 204 § 9.]

Chapter 46.39

INTERSTATE COMPACT FOR SCHOOL BUS SAFETY

Sections

46.39.010	Compact enacted—Provisions.
46.39.020	Designation of Washington state commissioners.

46.39.010 Compact enacted—Provisions. The "Interstate Compact for School Bus Safety" is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE COMPACT FOR SCHOOL BUS SAFETY ARTICLE I FINDINGS AND PURPOSES

(a) The party states find that:

(1) School transportation is an integral part of our education systems. The increasing volume of traffic on streets and highways, with larger numbers of school children being transported each year, presents a serious problem in safety that requires regulation and control.

(2) During recent years the various states have each developed their own rules, regulations and standards which govern the operation of school buses in the individual states, thus creating vast differences in construction standards and operational procedures.

(3) Standardization by means of interstate cooperation, exchange of information, and the promulgation of uniform practices among the states can do much to mitigate present hazards and at the same time generate cost reductions and improved service.

(b) The purposes of this compact are to:

(1) Promote uniformity in regulation of and standards for school bus equipment.

(2) Secure uniformity of law and administrative practices in school bus vehicle regulation and related safety standards, incorporating desirable equipment changes in the interest of greater school bus safety.

(3) Establish a means whereby the states party to this compact shall jointly agree on certain school bus minimum standards and procedures including, without limitation by the enumeration, the following:

(i) Items which affect the motorist, such as use of lights, signs, and signaling devices that control traffic;

(ii) Procedural activities of school bus drivers in controlling traffic; and in the loading and unloading of buses;

(iii) Construction and other specifications which can lead to lower initial costs and the interchangeability of school buses among states;

(iv) A framework within which the party states may develop uniform driver training programs; and

(v) Development of accurate and uniform accident statistical reporting among the party states.

(4) Encourage and utilize research which will facilitate achievement of the foregoing purposes, with due regard for the findings set forth in subsection (a) of this Article.

(5) It is recognized that there are inherent differences in transportation needs in each of the party states. It shall not be the purpose of this compact to abridge, impair or adversely affect the jurisdiction or authority of the individual states to regulate and control their own school transportation systems.

(6) Investigate the safety and economic advantage of children being transported.

ARTICLE II DEFINITIONS

(a) "State" means a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other special commonwealth as may be established by the Government of the United States.

(b) "School bus" shall have the same meaning as provided in RCW 46.04.521.

(c) "Equipment" means the equipment required for school buses under chapter 46.37 RCW.

ARTICLE III THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Western States School Bus Safety Commission" (hereinafter called the Commission). The Commission shall consist of not less than one nor more than three commissioners from each State, each of whom shall be a citizen of the State from which he is appointed, and not less than one or nor more than three commissioners representing the United States Government. The commissioners from each State shall be chosen in the manner and for the terms provided by the laws of the States from which they shall be appointed, provided that at least one member shall be appointed from the State agency which has primary responsibility for pupil transportation in that State. Any commissioner may be removed or suspended from office as provided by the law of the State from which he shall be appointed. The commissioners representing the United States shall be appointed by the President of the United States, or in such other manner as may be provided by Congress. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred in and incidental to the performance of their duties; but nothing herein shall prevent the appointment

of an officer or employee of any State or of the United States Government.

(b) Each state delegation shall be entitled to one vote, and the presence of commissioners from a majority of the party states shall constitute a quorum for the transaction of business at any meeting of the Commission. A majority vote of the quorum will be required to adopt any measure before the Commission. The commissioners representing the United States Government shall act in an advisory capacity and shall not have voting powers.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The Commission shall appoint an Executive Director who shall serve at its pleasure and who shall also act as Secretary, and who, together with the Treasurer, shall be bonded in such amounts as the Commission may require.

(e) The Executive Director, with the approval of the Commission, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The Commission may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Commission may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(i) The Commission shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The Commission shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The Commission annually shall make to the governor and the legislature of each party state, a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been adopted by the Commission. The Commission may issue such additional reports as it may deem desirable.

ARTICLE IV FUNCTIONS AND ACTIVITIES

(a) The Commission shall have power to perform the following functions and activities that relate to school bus transportation:

(1) Recommend and encourage research, testing and training activities to the extent the Commission finds necessary.

(2) Contract for research, testing and training activities on behalf of the Commission itself or for one or more governmental agencies if they provide special funding for that purpose.

(3) Engage directly in such activities to the extent approved by the Commission.

(4) Recommend to the party states of needed changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination of school bus construction, equipment, safety programs, and school bus driver training.

(5) The Commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(6) Each party state, recognizing that to carry out the intent of this compact, obligates itself to adopt in identical terms, all rules, regulations and specifications which are standardized through due process to the States.

(b) The Commission may establish such advisory and technical committees as may be necessary, membership on which may include public officials and private citizens. The Commission may also cooperate with other governmental agencies and interstate organizations and with organizations representing the private sector.

ARTICLE V FINANCE

(a) Moneys necessary to finance the Commission in carrying out its duties shall be provided through appropriations from the states party to this compact, said payments to be in direct proportion to the number of school buses registered in the respective party states. The initial rate of payment shall be figured at \$0.50 per bus, provided that no state shall contribute less than \$500.00 per annum. The annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars. Subsequent budgets shall be determined by the Commission, and the cost thereof allocated in the same proportion as the initial budget.

(b) The Commission may accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional and otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize and dispose of the same.

ARTICLE VI ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into immediate force and effect as to any state when enacted by it into law, and such state shall thereafter be a party thereto with any and all states joining therein.

(b) It is the purpose of this compact to provide the necessary legal basis for implementation and adoption by each party state of the standardized rules, regulations and specifications as adopted by the Commission. Consistent with the laws of each party state, there shall be a "compact administrator" who, acting jointly with like officials of other party states, shall promulgate necessary rules, regulations and specifications within that state to carry out the actions and directives of the Commission.

(c) Any state party to this compact may, by legislative act after one year's notice to the Commission, withdraw from the compact. The compact may also be terminated at any time by the unanimous agreement of the several party states. Withdrawal shall not relieve a state from its obligations hereunder prior to the effective withdrawal date.

(d) If any state shall at any time default in the performance of any of its obligations assumed herein or with respect to any obligation imposed upon said state as authorized by and in compliance with the terms and provisions of this compact, all rights, privileges and benefits of such defaulting state and its members on the Commission shall be suspended after the date of such default. Such suspension shall in no manner release such defaulting state from any accrued obligation or otherwise affect this compact or the rights, duties, privileges or obligations of the remaining states thereunder.

ARTICLE VII SEVERABILITY

(a) The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to any other state, agency, person or circumstances shall not be affected thereby. It is the legislative intent that the provisions of this compact be reasonably and liberally construed. [1977 ex.s. c 88 § 1.]

46.39.020 Designation of Washington state commissioners. The Washington state commissioners to the western states school bus safety commission shall be the secretary of transportation, the superintendent of public instruction, and the chief of the Washington state patrol or their respective designees. Annually the Washington commissioners shall elect a chairman from their own membership who shall serve for one year commencing July 1st. Election as chairman shall not interfere with the member's right to vote on all matters before the Washington commissioners. The Washington commissioners may by majority vote designate one of their members to represent the state on any matter coming before the Western states school bus safety commission. [1984 c 7 § 51; 1977 ex.s. c 88 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 46.44
SIZE, WEIGHT, LOAD

Sections

46.44.010	Outside width limit.
46.44.020	Maximum height—Impaired clearance signs.
46.44.030	Maximum lengths.
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46.44.036	Combination of units—Limitation.
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46.44.038	Width, height, length, and combinations restrictions—Special permits to exceed authorized.
46.44.041	Maximum gross weights—Wheelbase and axle factors.
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46.44.047	Excess weight—Logging trucks—Special permits—County or city permits—Fees—Discretion of arresting officer.
46.44.049	Effect of weight on highways—Study authorized.
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46.44.090	Special permits for oversize or overweight movements.
46.44.091	Special permits for oversize or overweight movements—Gross weight limit.
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46.44.173	Notice to treasurer and assessor of county where mobile home to be located.
46.44.175	Penalties—Hearing.
46.44.180	Operation of mobile home pilot vehicle without insurance unlawful—Amounts—Exception—Penalty.

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Traffic infractions—Monetary penalty schedule—JTIR 6.2.

Auto transportation companies: Chapter 81.68 RCW.

Permitting escape of load materials: RCW 46.61.655.

46.44.010 Outside width limit. The total outside width of any vehicle or load thereon shall not exceed eight and one-half feet: *Provided*, That no rear vision mirror may extend more than five inches beyond the extreme limits of the body: *Provided further*, That excluded from this calculation of width are safety appliances such as clearance lights, rub rails, flexible

fender extensions, mud flaps, and splash and spray suppressant devices, and appurtenances such as door handles, door hinges, and turning signal brackets and such other safety appliances and appurtenances as the department may determine are necessary for the safe and efficient operation of motor vehicles: *And provided further*, That no appliances or appurtenances may extend more than two inches beyond the extreme limits of the body. [1983 c 278 § 1; 1961 c 12 § 46.44.010. Prior: 1947 c 200 § 4; 1937 c 189 § 47; Rem. Supp. 1947 § 6360-47; 1923 c 181 § 4, part; RRS § 6362-8, part.]

46.44.020 Maximum height—Impaired clearance signs. It is unlawful for any vehicle unladen or with load to exceed a height of fourteen feet above the level surface upon which the vehicle stands. This height limitation does not apply to authorized emergency vehicles or repair equipment of a public utility engaged in reasonably necessary operation. The provisions of this section do not relieve the owner or operator of a vehicle or combination of vehicles from the exercise of due care in determining that sufficient vertical clearance is provided upon the public highways where the vehicle or combination of vehicles is being operated; and no liability may attach to the state or to any county, city, town, or other political subdivision by reason of any damage or injury to persons or property by reason of the existence of any structure over or across any public highway where the vertical clearance above the roadway is fourteen feet or more; or, where the vertical clearance is less than fourteen feet, if impaired clearance signs of a design approved by the state department of transportation are erected and maintained on the right side of any such public highway in accordance with the manual of uniform traffic control devices for streets and highways as adopted by the state department of transportation under chapter 47.36 RCW. If any structure over or across any public highway is not owned by the state or by a county, city, town, or other political subdivision, it is the duty of the owner thereof when billed therefor to reimburse the state department of transportation or the county, city, town, or other political subdivision having jurisdiction over the highway for the actual cost of erecting and maintaining the impaired clearance signs, but no liability may attach to the owner by reason of any damage or injury to persons or property caused by impaired vertical clearance above the roadway. [1984 c 7 § 52; 1977 c 81 § 1; 1975-'76 2nd ex.s. c 64 § 7; 1971 ex.s. c 248 § 1; 1965 c 43 § 1; 1961 c 12 § 46.44.020. Prior: 1959 c 319 § 26; 1955 c 384 § 1; 1953 c 125 § 1; 1951 c 269 § 20; 1937 c 189 § 48; RRS § 6360-48.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.030 Maximum lengths. It is unlawful for any person to operate upon the public highways of this state any vehicle other than a municipal transit vehicle having an overall length, with or without load, in excess of forty feet: *Provided*, That an auto stage or school bus shall not exceed an overall length, inclusive of front and rear

bumpers, of forty feet: *Provided further*, That the route of any auto stage in excess of thirty-five feet or school bus in excess of thirty-six feet six inches upon or across the public highways shall be limited as determined by the department of transportation for state highways, or by the local legislative authority for other public roads.

It is unlawful for any person to operate on the highways of this state any combination of vehicles that contains a vehicle of which the permanent structure is in excess of forty-eight feet.

It is unlawful for any person to operate upon the public highways of this state any combination consisting of a tractor and semitrailer that has a semitrailer length in excess of forty-eight feet or a combination consisting of a tractor and two trailers in which the combined length of the trailers exceeds sixty feet.

It is unlawful for any person to operate on the highways of this state any combination consisting of a truck and trailer with an overall length, with or without load, in excess of seventy-five feet.

These length limitations do not apply to vehicles transporting poles, pipe, machinery, or other objects of a structural nature that cannot be dismembered and operated by a public utility when required for emergency repair of public service facilities or properties, but in respect to night transportation every such vehicle and load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

The length limitations described in this section are exclusive of safety and energy conservation devices, such as mud flaps and splash and spray suppressant devices, refrigeration units or air compressors, and other devices that the department determines to be necessary for safe and efficient operation of commercial vehicles. No device excluded under this paragraph from the limitations of this section may have, by its design or use, the capability to carry cargo. [1985 c 351 § 1; 1984 c 104 § 1; 1983 c 278 § 2; 1979 ex.s. c 113 § 4; 1977 ex.s. c 64 § 1; 1975-'76 2nd ex.s. c 53 § 1; 1974 ex.s. c 76 § 2; 1971 ex.s. c 248 § 2; 1967 ex.s. c 145 § 61; 1963 ex.s. c 3 § 52; 1961 ex.s. c 21 § 36; 1961 c 12 § 46.44.030. Prior: 1959 c 319 § 25; 1957 c 273 § 14; 1951 c 269 § 22; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.44.034 Maximum lengths—Front and rear protrusions. The load, or any portion of any vehicle, operated alone upon the public highway of this state, or the load, or any portion of the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle, or the front bumper, if equipped with front bumper.

No vehicle shall be operated upon the public highways with any part of the permanent structure or load extending in excess of fifteen feet beyond the center of the last axle of such vehicle. [1961 c 12 § 46.44.034. Prior: 1957 c 273 § 15; 1951 c 269 § 24; prior: 1949 c 221 § 1,

part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

46.44.036 Combination of units—Limitation. Except as provided in RCW 46.44.037, it is unlawful for any person to operate upon the public highways of this state any combination of vehicles consisting of more than two vehicles. For the purposes of this section a truck tractor-semitrailer or pole trailer combination will be considered as two vehicles but the addition of another axle to the tractor of a truck tractor-semitrailer or pole trailer combination in such a way that it supports a proportional share of the load of the semitrailer or pole trailer shall not be deemed a separate vehicle but shall be considered a part of the truck tractor. For the purposes of this section a converter gear used in converting a semitrailer to a full trailer shall not be deemed a separate vehicle but shall be considered a part of the trailer. [1975-'76 2nd ex.s. c 64 § 8; 1961 c 12 § 46.44.036. Prior: 1955 c 384 § 2; 1951 c 269 § 23; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.037 Combination of units—Lawful operations. Notwithstanding the provisions of RCW 46.44.036 and subject to such rules and regulations governing their operation as may be adopted by the state department of transportation, operation of the following combinations is lawful:

(1) A combination consisting of a truck tractor, a semitrailer, and another semitrailer or a full trailer. In this combination a converter gear used to convert a semitrailer into a full trailer shall be considered to be a part of the full trailer and not a separate vehicle. A converter gear being pulled without load and not used to convert a semitrailer into a full trailer may be substituted in lieu of a full trailer or a semitrailer in any lawful combination;

(2) A combination consisting of three trucks or truck tractors used in driveway service where two of the vehicles are towed by the third in double saddlemount position;

(3) A combination consisting of a truck tractor carrying a freight compartment no longer than eight feet, a semitrailer, and another semitrailer or full trailer that meets the legal length requirement for a truck and trailer combination set forth in RCW 46.44.030. [1985 c 351 § 2; 1984 c 7 § 53; 1979 ex.s. c 149 § 3; 1975-'76 2nd ex.s. c 64 § 9; 1965 ex.s. c 170 § 37; 1963 ex.s. c 3 § 53; 1961 c 12 § 46.44.037. Prior: 1957 c 273 § 16; 1955 c 384 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.038 Width, height, length, and combinations restrictions—Special permits to exceed authorized.

Subject to such terms and conditions as it shall consider proper and on such highways as it shall deem suitable, and when it finds it to be in the public interest, the state department of transportation may by special permit authorize the operation of vehicles and combinations of vehicles other than school buses which exceed the restrictions set forth in RCW 46.44.010, 46.44.020, 46.44.030, and 46.44.036. The fee for such permits shall be those set forth in RCW 46.44.0941. [1983 c 3 § 120; 1967 ex.s. c 145 § 62.]

46.44.041 Maximum gross weights—Wheelbase and axle factors. No vehicle or combination of vehicles shall operate upon the public highways of this state with a gross load on any single axle in excess of twenty thousand pounds, or upon any group of axles in excess of that set forth in the following table, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each, if the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

Dis- tance in feet between the ex- tremes of any group of 2 or more consecu- tive axles	Maximum load in pounds carried on any group of 2 or more consecutive axles							
	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles
4	34,000							
5	34,000							
6	34,000							
7	34,000							
8	34,000	42,000						
9	39,000	42,500						
10	40,000	43,500						
11		44,000						
12		45,000	50,000					
13		45,500	50,500					
14		46,500	51,500					
15		47,000	52,000					
16		48,000	52,500	52,500				
17		48,500	53,500	53,500				
18		49,500	54,000	54,000				
19		50,000	54,500	54,500				
20		51,000	55,500	55,500				
21		51,500	56,000	56,000				
22		52,500	56,500	56,500				
23		53,000	57,500	57,500				
24		54,000	58,000	58,000				
25		54,500	58,500	58,500				
26		55,500	59,500	59,500				
27		56,000	60,000	60,000				
28		57,000	60,500	61,000	61,000			
29		57,500	61,500	62,000	62,000			
30		58,500	62,000	63,000	63,000			
31		59,000	62,500	64,000	64,500			
32		60,000	63,500	65,000	65,000			
33			64,000	66,000	66,000			
34			64,500	67,000	67,000			
35			65,500	68,000	68,000			
36			66,000	69,500	69,500			
37			66,500	70,500	70,500			

Dis-
tance
in feet
between
the ex-
tremes
of any
group
of 2
or more
consecu-
tive
axles

Maximum load in pounds
carried on any group of 2
or more consecutive axles

	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles
38			67,500	72,000	72,000			
39			68,000	72,500	72,500			
40			68,500	73,000	73,000			
41			69,500	73,500	73,500			
42			70,000	74,000	74,000			
43			70,500	75,000	75,000			
44			71,500	75,500	75,500			
45			72,000	76,000	76,000			
46			72,500	76,500	80,000	80,000		
47			73,500	77,000	81,000	81,000		
48			74,000	78,000	82,000	82,000		
49			74,500	78,500	83,000	83,000		
50			75,500	79,000	84,000	84,000		
51			76,000	80,000	84,500	85,000		
52			76,500	80,500	85,000	86,000		
53			77,500	81,000	86,000	87,000		
54			78,000	81,500	86,500	88,000	91,000	91,000
55			78,500	82,500	87,000	89,000	92,000	92,000
56			79,500	83,000	87,500	90,000	93,000	93,000
57			80,000	83,500	88,000	91,000	94,000	94,000
58				84,000	89,000	92,000	95,000	95,000
59				85,000	89,500	93,500	96,000	96,000
60				85,500	90,000	95,000	97,000	97,000
61				86,000	90,500	95,500	98,000	98,000
62				87,000	91,000	96,000	99,000	99,000
63				87,500	92,000	97,000	100,000	100,000
64				88,000	92,500	97,500	101,000	101,000
65				88,500	93,000	98,000	102,000	102,000
66				89,500	93,500	98,500	103,000	103,000
67				90,000	94,000	99,000	104,000	104,000
68				90,500	95,000	99,500	105,000	105,000
69				91,000	95,500	100,000	105,500	105,500
70				92,000	96,000	101,000	105,500	105,500

When inches are involved: Under six inches take lower, six inches or over take higher. The maximum load on any axle in any group of axles shall not exceed the single axle or tandem axle allowance as set forth in the table above.

The maximum axle and gross weights specified in this section are subject to the braking requirements set up for the service brakes upon any motor vehicle or combination of vehicles as provided by law.

It is unlawful to operate upon the public highways any single unit vehicle, supported upon three axles or more with a gross weight including load in excess of forty thousand pounds or any combination of vehicles having a

gross weight in excess of eighty thousand pounds without first obtaining an additional tonnage permit as provided for in RCW 46.44.095: *Provided*, That when a combination of vehicles has purchased license tonnage in excess of seventy-two thousand pounds as provided by RCW 46.16.070, such excess license tonnage may be applied to the power unit subject to limitations of RCW 46.44.042 and this section when such vehicle is operated without a trailer.

It is unlawful to operate any vehicle upon the public highways equipped with two axles spaced less than seven feet apart unless the two axles are so constructed and mounted that the difference in weight between the axles

does not exceed three thousand pounds. However, variable lift axles are exempt from this requirement. For purposes of this section, a "variable lift axle" is an axle that may be lifted from the roadway surface, whether by air, hydraulic, mechanical, or any combination of these means. The weight allowed on the axle is governed by RCW 46.44.042 and this section.

Loads of not more than eighty thousand pounds which may be legally hauled in the state bordering this state which also has a sales tax, are legal in this state when moving to a port district within four miles of the bordering state except on the interstate system. This provision does not allow the operation of a vehicle combination consisting of a truck tractor and three trailers.

Notwithstanding anything contained herein, a vehicle or combination of vehicles in operation on January 4, 1975, may operate upon the public highways of this state, including the interstate system within the meaning of section 127 of Title 23, United States Code, with an overall gross weight upon a group of two consecutive sets of dual axles which was lawful in this state under the laws, regulations and procedures in effect in this state on January 4, 1975. [1988 c 229 § 1; 1988 c 6 § 2; 1985 c 351 § 3; 1977 c 81 § 2; 1975-'76 2nd ex.s. c 64 § 22.]

Reviser's note: This section was amended by 1988 c 6 § 2 and by 1988 c 229 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.042 Maximum gross weights—Tire factor. Subject to the maximum gross weights specified in RCW 46.44.041, it is unlawful to operate any vehicle upon the public highways with a gross weight, including load, upon any tire concentrated upon the surface of the highway in excess of six hundred pounds per inch width of such tire. For the purpose of this section, the width of tire in case of solid rubber or hollow center cushion tires, so long as the use thereof may be permitted by the law, shall be measured between the flanges of the rim. For the purpose of this section, the width of tires in case of pneumatic tires shall be the maximum overall normal inflated width as stipulated by the manufacturer when inflated to the pressure specified and without load thereon. [1985 c 351 § 4; 1975-'76 2nd ex.s. c 64 § 10; 1961 c 12 § 46.44.042. Prior: 1959 c 319 § 27; 1951 c 269 § 27; prior: 1949 c 221 § 2, part; 1947 c 200 § 6, part; 1941 c 116 § 2, part; 1937 c 189 § 50, part; Rem. Supp. 1949 § 6360-50, part; 1929 c 180 § 3, part; 1927 c 309 § 8, part; 1923 c 181 § 4, part; 1921 c 96 § 20, part; RRS § 6362-8, part.]

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.047 Excess weight—Logging trucks—Special permits—County or city permits—Fees—Discretion of arresting officer. A three axle truck tractor and a two axle pole trailer combination engaged in the operation of hauling logs may exceed by not more than

six thousand eight hundred pounds the legal gross weight of the combination of vehicles when licensed, as permitted by law, for sixty-eight thousand pounds: *Provided*, That the distance between the first and last axle of the vehicles in combination shall have a total wheel-base of not less than thirty-seven feet, and the weight upon two axles spaced less than seven feet apart shall not exceed thirty-three thousand six hundred pounds.

Such additional allowances shall be permitted by a special permit to be issued by the department of transportation valid only on state primary or secondary highways authorized by the department and under such rules, regulations, terms, and conditions prescribed by the department. The fee for such special permit shall be fifty dollars for a twelve-month period beginning and ending on April 1st of each calendar year. Permits may be issued at any time, but if issued after July 1st of any year the fee shall be thirty-seven dollars and fifty cents. If issued on or after October 1st the fee shall be twenty-five dollars, and if issued on or after January 1st the fee shall be twelve dollars and fifty cents. A copy of such special permit covering the vehicle involved shall be carried in the cab of the vehicle at all times. Upon the third offense within the duration of the permit for violation of the terms and conditions of the special permit, the special permit shall be canceled. The vehicle covered by such canceled special permit shall not be eligible for a new special permit until thirty days after the cancellation of the special permit issued to said vehicle. The fee for such renewal shall be at the same rate as set forth in this section which covers the original issuance of such special permit. Each special permit shall be assigned to a three-axle truck tractor in combination with a two-axle pole trailer. When the department issues a duplicate permit to replace a lost or destroyed permit and where the department transfers a permit, a fee of five dollars shall be charged for each such duplicate issued or each such transfer.

All fees collected hereinabove shall be deposited with the state treasurer and credited to the motor vehicle fund.

Permits involving city streets or county roads or using city streets or county roads to reach or leave state highways, authorized for permit by the department may be issued by the city or county or counties involved. A fee of five dollars for such city or county permit may be assessed by the city or by the county legislative authority which shall be deposited in the city or county road fund. The special permit provided for herein shall be known as a "log tolerance permit" and shall designate the route or routes to be used, which shall first be approved by the city or county engineer involved. Authorization of additional route or routes may be made at the discretion of the city or county by amending the original permit or by issuing a new permit. Said permits shall be issued on a yearly basis expiring on March 31st of each calendar year. Any person, firm, or corporation who uses any city street or county road for the purpose of transporting logs with weights authorized by state highway log tolerance permits, to reach or leave a state highway route, without first obtaining a city or county permit when required by

the city or the county legislative authority shall be subject to the penalties prescribed by RCW 46.44.105. For the purpose of determining gross weight the actual scale weight taken by the officer shall be prima facie evidence of such total gross weight. In the event the gross weight is in excess of the weight permitted by law, the officer may, within his discretion, permit the operator to proceed with his vehicles in combination.

The chief of the state patrol, with the advice of the department, may make reasonable rules and regulations to aid in the enforcement of the provisions of this section. [1979 ex.s. c 136 § 74; 1975-'76 2nd ex.s. c 64 § 11; 1973 1st ex.s. c 150 § 2; 1971 ex.s. c 249 § 2; 1961 ex.s. c 21 § 35; 1961 c 12 § 46.44.047. Prior: 1955 c 384 § 19; 1953 c 254 § 10; 1951 c 269 § 31.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.049 Effect of weight on highways—Study authorized. The department of transportation may make and enter into agreements with the federal government or any state or group of states or agencies thereof, or any nonprofit association, on a joint or cooperative basis, to study, analyze, or test the effects of weight on highway construction. The studies or tests may be made either by designating existing highways or the construction of test strips including natural resource roads to the end that a proper solution of the many problems connected with the imposition on highways of motor vehicle weights may be determined.

The studies may include the determination of values to be assigned various highway-user groups according to their gross weight or use. [1984 c 7 § 54; 1961 c 12 § 46.44.049. Prior: 1951 c 269 § 47.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.44.050 Minimum length of wheelbase. It shall be unlawful to operate any vehicle upon public highways with a wheelbase between any two axles thereof of less than three feet, six inches when weight exceeds that allowed for one axle under RCW 46.44.042 or 46.44.041. It shall be unlawful to operate any motor vehicle upon the public highways of this state with a wheelbase between the frontmost axle and the rearmost axle of less than three feet, six inches: *Provided*, That the minimum wheelbase for mopeds is thirty-eight inches.

For the purposes of this section, wheelbase shall be measured upon a straight line from center to center of the vehicle axles designated. [1979 ex.s. c 213 § 7; 1975-'76 2nd ex.s. c 64 § 12; 1961 c 12 § 46.44.050. Prior: 1941 c 116 § 3; 1937 c 189 § 51; Rem. Supp. 1941 § 6360-51; 1929 c 180 § 3, part; 1927 c 309 § 8, part; 1923 c 181 § 4, part; RRS § 6362-8, part.]

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.060 Outside load limits for passenger vehicles. No passenger type vehicle shall be operated on any public highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof. [1961 c 12 § 46.44.060. Prior: 1937 c 189 § 52; RRS § 6360-52; 1929 c 180 § 5, part; 1927 c 309 § 10, part; RRS § 6362-10, part.]

46.44.070 Drawbar requirements—Trailer whipping or weaving—Towing flag. The drawbar or other connection between vehicles in combination shall be of sufficient strength to hold the weight of the towed vehicle on any grade where operated. No trailer shall whip, weave or oscillate or fail to follow substantially in the course of the towing vehicle. When a disabled vehicle is being towed by means of bar, chain, rope, cable or similar means and the distance between the towed vehicle and the towing vehicle exceeds fifteen feet there shall be fastened on such connection in approximately the center thereof a white flag or cloth not less than twelve inches square. [1961 c 12 § 46.44.070. Prior: 1937 c 189 § 53; RRS § 6360-53; 1929 c 180 § 5, part; 1927 c 309 § 10, part; RRS § 6362-10, part; 1923 c 181 § 4, part.]

46.44.080 Local regulations—State highway regulations. Local authorities with respect to public highways under their jurisdiction may prohibit the operation thereon of motor trucks or other vehicles or may impose limits as to the weight thereof, or any other restrictions as may be deemed necessary, whenever any such public highway by reason of rain, snow, climatic or other conditions, will be seriously damaged or destroyed unless the operation of vehicles thereon be prohibited or restricted or the permissible weights thereof reduced: *Provided*, That whenever a highway has been closed generally to vehicles or specified classes of vehicles, local authorities shall by general rule or by special permit authorize the operation thereon of school buses, emergency vehicles, and motor trucks transporting perishable commodities or commodities necessary for the health and welfare of local residents under such weight and speed restrictions as the local authorities deem necessary to protect the highway from undue damage: *Provided further*, That the governing authorities of incorporated cities and towns shall not prohibit the use of any city street designated by the transportation commission as forming a part of the route of any primary state highway through any such incorporated city or town by vehicles or any class of vehicles or impose any restrictions or reductions in permissible weights unless such restriction, limitation, or prohibition, or reduction in permissible weights be first approved in writing by the department of transportation.

The local authorities imposing any such restrictions or limitations, or prohibiting any use or reducing the permissible weights shall do so by proper ordinance or resolution and shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution in each end of the portion of any

public highway affected thereby, and no such ordinance or resolution shall be effective unless and until such signs are erected and maintained.

The department shall have the same authority as hereinabove granted to local authorities to prohibit or restrict the operation of vehicles upon state highways. The department shall give public notice of closure or restriction. The department may issue special permits for the operation of school buses and motor trucks transporting perishable commodities or commodities necessary for the health and welfare of local residents under specified weight and speed restrictions as may be necessary to protect any state highway from undue damage. [1977 ex.s. c 151 § 29; 1973 2nd ex.s. c 15 § 1; 1961 c 12 § 46.44.080. Prior: 1937 c 189 § 54; RRS § 6360-54.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

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

Highway and street closures authorized—Notice: Chapter 47.48 RCW.

46.44.090 Special permits for oversize or overweight movements. The department of transportation, pursuant to rules adopted by the transportation commission with respect to state highways and local authorities with respect to public highways under their jurisdiction may, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size, weight of vehicle, or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter upon any public highway under the jurisdiction of the authority granting such permit and for the maintenance of which such authority is responsible. [1977 ex.s. c 151 § 30; 1975-'76 2nd ex.s. c 64 § 13; 1961 c 12 § 46.44.090. Prior: 1951 c 269 § 34; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

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

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.091 Special permits for oversize or overweight movements—Gross weight limit. (1) Except as otherwise provided in subsections (3) and (4) of this section, no special permit shall be issued for movement on any state highway or route of a state highway within the limits of any city or town where the gross weight, including load, exceeds the following limits:

(a) Twenty-two thousand pounds on a single axle or on dual axles with a wheelbase between the first and second axles of less than three feet six inches;

(b) Forty-three thousand pounds on dual axles having a wheelbase between the first and second axles of not less than three feet six inches but less than seven feet;

(c) On any group of axles or in the case of a vehicle employing two single axles with a wheel base between the first and last axle of not less than seven feet but less

than ten feet, a weight in pounds determined by multiplying six thousand five hundred times the distance in feet between the center of the first axle and the center of the last axle of the group;

(d) On any group of axles with a wheel base between the first and last axle of not less than ten feet but less than thirty feet, a weight in pounds determined by multiplying two thousand two hundred times the sum of twenty and the distance in feet between the center of the first axle and the center of the last axle of the group;

(e) On any group of axles with a wheel base between the first and last axle of thirty feet or greater, a weight in pounds determined by multiplying one thousand six hundred times the sum of forty and the distance in feet between the center of the first axle and the center of the last axle of the group.

(2) The total weight of a vehicle or combination of vehicles allowable by special permit under subsection (1) of this section shall be governed by the lesser of the weights obtained by using the total number of axles as a group or any combination of axles as a group.

(3) The weight limitations pertaining to single axles may be exceeded to permit the movement of equipment operating upon single pneumatic tires having a rim width of twenty inches or more and a rim diameter of twenty-four inches or more or dual pneumatic tires having a rim width of sixteen inches or more and a rim diameter of twenty-four inches or more and specially designed vehicles manufactured and certified for special permits prior to July 1, 1975.

(4) Permits may be issued for weights in excess of the limitations contained in subsection (1) of this section on highways or sections of highways which have been designed and constructed for weights in excess of such limitations, or for any shipment duly certified as necessary by military officials, or by officials of public or private power facilities, or when in the opinion of the department of transportation the movement or action is a necessary movement or action: *Provided*, That in the judgment of the department of transportation the structures and highway surfaces on the routes involved are capable of sustaining weights in excess of such limitations and it is not reasonable for economic or operational considerations to transport such excess weights by rail or water for any substantial distance of the total mileage applied for.

(5) Permits may be issued for the operation of fire trucks on the public highways if the maximum gross weight on any single axle does not exceed twenty-four thousand pounds and the gross weight on any tandem axle does not exceed forty-three thousand pounds.

(6) Application shall be made in writing on special forms provided by the department of transportation and shall be submitted at least thirty-six hours in advance of the proposed movement. An application for a special permit for a gross weight of any combination of vehicles exceeding two hundred thousand pounds shall be submitted in writing to the department of transportation at least thirty days in advance of the proposed movement. [1989 c 52 § 1; 1977 ex.s. c 151 § 31; 1975-'76 2nd ex.s. c 64 § 14; 1975 1st ex.s. c 168 § 1; 1969 ex.s. c 281 §

30; 1961 c 12 § 46.44.091. Prior: 1959 c 319 § 28; 1953 c 254 § 12; 1951 c 269 § 35; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

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

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Effective date—1975 1st ex.s. c 168: "This 1973 [1975] amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 168 § 4.]

46.44.092 Special permits for oversize or overweight movements—Overall width limits, exceptions—Application for permit. Special permits may not be issued for movements on any state highway outside the limits of any city or town in excess of the following widths:

On two-lane highways, fourteen feet;

On multiple-lane highways where a physical barrier serving as a median divider separates opposing traffic lanes, twenty feet;

On multiple-lane highways without a physical barrier serving as a median divider, thirty-two feet.

These limits apply except under the following conditions:

(1) In the case of buildings, the limitations referred to in this section for movement on any two lane state highway other than the national system of interstate and defense highways may be exceeded under the following conditions: (a) Controlled vehicular traffic shall be maintained in one direction at all times; (b) the maximum distance of movement shall not exceed five miles; additional contiguous permits shall not be issued to exceed the five-mile limit: *Provided*, That when the department of transportation, pursuant to general rules adopted by the transportation commission, determines a hardship would result, this limitation may be exceeded upon approval of the department of transportation; (c) prior to issuing a permit a qualified transportation department employee shall make a visual inspection of the building and route involved determining that the conditions listed herein shall be complied with and that structures or overhead obstructions may be cleared or moved in order to maintain a constant and uninterrupted movement of the building; (d) special escort or other precautions may be imposed to assure movement is made under the safest possible conditions, and the Washington state patrol shall be advised when and where the movement is to be made;

(2) Permits may be issued for widths of vehicles in excess of the preceding limitations on highways or sections of highways which have been designed and constructed for width in excess of such limitations;

(3) Permits may be issued for vehicles with a total outside width, including the load, of nine feet or less when the vehicle is equipped with a mechanism designed to cover the load pursuant to RCW 46.61.655;

(4) These limitations may be rescinded when certification is made by military officials, or by officials of

public or private power facilities, or when in the opinion of the department of transportation the movement or action is a necessary movement or action: *Provided further*, That in the judgment of the department of transportation the structures and highway surfaces on the routes involved are capable of sustaining widths in excess of such limitation;

(5) These limitations shall not apply to movement during daylight hours on any two lane state highway where the gross weight, including load, does not exceed eighty thousand pounds and the overall width of load does not exceed sixteen feet: *Provided*, That the minimum and maximum speed of such movements, prescribed routes of such movements, the times of such movements, limitation upon frequency of trips (which limitation shall be not less than one per week), and conditions to assure safety of traffic may be prescribed by the department of transportation or local authority issuing such special permit.

The applicant for any special permit shall specifically describe the vehicle or vehicles and load to be operated or moved and the particular state highways for which permit to operate is requested and whether such permit is requested for a single trip or for continuous operation. [1989 c 398 § 2; 1981 c 63 § 1; 1977 ex.s. c 151 § 32; 1975-'76 2nd ex.s. c 64 § 15; 1970 ex.s. c 9 § 1; 1969 ex.s. c 281 § 60; 1965 ex.s. c 170 § 39; 1963 ex.s. c 3 § 54; 1961 c 12 § 46.44.092. Prior: 1959 c 319 § 29; 1955 c 146 § 2; 1951 c 269 § 36; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

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

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.093 Special permits for oversize or overweight movements—Discretion of issuer—Conditions. The department of transportation or the local authority is authorized to issue or withhold such special permit at its discretion, although where a mobile home is being moved, the verification of a valid license under chapter 46.70 RCW as a mobile home dealer or manufacturer, or under chapter 46.76 RCW as a transporter, shall be done by the department or local government. If the permit is issued, the department or local authority may limit the number of trips, establish seasonal or other time limitations within which the vehicle described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle or vehicles when necessary to assure against undue damage to the road foundation, surfaces, or structures or safety of traffic and may require such undertaking or other security as may be deemed necessary to compensate for injury to any roadway or road structure. [1988 c 239 § 3; 1984 c 7 § 55; 1961 c 12 § 46.44.093. Prior: 1951 c 269 § 37; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.44.0941 Special permits for oversize or overweight movements—Fees. The following fees, in addition to the regular license and tonnage fees, shall be paid for all movements under special permit made upon state highways. All funds collected, except the amount retained by authorized agents of the department as provided in RCW 46.44.096, shall be forwarded to the state treasury and shall be deposited in the motor vehicle fund:

All overlegal loads, except overweight, single trip	\$ 10.00
Continuous operation of overlegal loads having either overwidth or overheight features only, for a period not to exceed thirty days	\$ 20.00
Continuous operations of overlegal loads having overlength features only, for a period not to exceed thirty days	\$ 10.00
Continuous operation of a combination of vehicles having one trailing unit that exceeds forty-eight feet and is not more than fifty-six feet in length, for a period of one year	\$100.00
Continuous operation of a combination of vehicles having two trailing units which together exceed sixty feet and are not more than sixty-eight feet in length, for a period of one year	\$100.00
Continuous operation of a three-axle fixed load vehicle having less than 65,000 pounds gross weight, for a period not to exceed thirty days	\$ 50.00
Continuous operation of overlegal loads having nonreducible features not to exceed eighty-five feet in length and fourteen feet in width, for a period of one year	\$150.00
Continuous operation of farm implements under a permit issued as authorized by RCW 46.44.140 by:	
(1) Farmers in the course of farming activities, for any three-month period	\$ 10.00
(2) Farmers in the course of farming activities, for a period not to exceed one year ...	\$ 25.00
(3) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for any three-month period	\$ 25.00
(4) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for a period not to exceed one year	\$100.00

Overweight Fee Schedule

Weight over total registered gross weight plus additional gross weight purchased under RCW 46.44.095 or 46.44.047, or any other statute authorizing the state department of transportation to issue annual overweight permits.	Fee per mile on state highways
1- 5,999 pounds	\$.05
6,000-11,999 pounds	\$.10
12,000-17,999 pounds	\$.15
18,000-23,999 pounds	\$.25
24,000-29,999 pounds	\$.35
30,000-35,999 pounds	\$.45
36,000-41,999 pounds	\$.60
42,000-47,999 pounds	\$.75
48,000-53,999 pounds	\$.90
54,000-59,999 pounds	\$ 1.05
60,000-65,999 pounds	\$ 1.20
66,000-71,999 pounds	\$ 1.45
72,000-79,999 pounds	\$ 1.70
80,000 pounds or more	\$ 2.00

Provided: (1) The minimum fee for any overweight permit shall be \$ 10.00, (2) the fee for issuance of a duplicate permit shall be \$ 10.00, (3) when computing overweight fees that result in an amount less than even dollars the fee shall be carried to the next full dollar if fifty cents or over and shall be reduced to the next full dollar if forty-nine cents or under. [1989 c 398 § 1; 1985 c 351 § 5; 1983 c 278 § 3; 1979 ex.s. c 113 § 5; 1975-'76 2nd ex.s. c 64 § 16; 1975 1st ex.s. c 168 § 2; 1973 1st ex.s. c 1 § 3; 1971 ex.s. c 248 § 3; 1967 c 174 § 8; 1965 c 137 § 2.]

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Effective date—1975 1st ex.s. c 168: See note following RCW 46.44.091.

46.44.095 Annual additional tonnage permits—Fees. When a combination of vehicles has been lawfully licensed to a total gross weight of eighty thousand pounds and when a three or more axle single unit vehicle has been lawfully licensed to a total gross weight of forty thousand pounds pursuant to provisions of RCW 46.44-.041, a permit for additional gross weight may be issued by the department of transportation upon the payment of thirty-seven dollars and fifty cents per year for each one thousand pounds or fraction thereof of such additional gross weight: *Provided,* That the tire limits specified in RCW 46.44.042 shall apply, and the gross weight on any single axle shall not exceed twenty thousand pounds, and the gross load on any group of axles shall not exceed the limits set forth in RCW 46.44.041: *Provided further,* That within the tire limits of RCW 46-.44.042, and notwithstanding RCW 46.44.041 and 46.44.091, a permit for an additional six thousand pounds may be purchased for the rear axles of a two-axle garbage truck or eight thousand pounds for the tandem axle of a three axle garbage truck at a rate not

to exceed thirty dollars per thousand. Such additional weight in the case of garbage trucks shall not be valid or permitted on any part of the federal interstate highway system.

The annual additional tonnage permits provided for in this section shall be issued upon such terms and conditions as may be prescribed by the department pursuant to general rules adopted by the transportation commission. Such permits shall entitle the permittee to carry such additional load in an amount and upon highways or sections of highways as may be determined by the department of transportation to be capable of withstanding increased gross load without undue injury to the highway: *Provided*, That the permits shall not be valid on any highway where the use of such permits would deprive this state of federal funds for highway purposes.

For those vehicles registered under chapter 46.87 RCW, the annual additional tonnage permits provided for in this section may be issued to coincide with the registration year of the base jurisdiction. For those vehicles registered under chapter 46.16 RCW and whose registration has staggered renewal dates, the annual additional tonnage permits may be issued to coincide with the expiration date of the registration. The permits may be purchased at any time, and if they are purchased for less than a full year, the fee shall be one-twelfth of the full fee multiplied by the number of months, including any fraction thereof, covered by the permit. When the department issues a duplicate permit to replace a lost or destroyed permit and where the department transfers a permit from one vehicle to another a fee of ten dollars shall be charged for each duplicate issued or each transfer. The department of transportation shall issue permits on a temporary basis for periods not less than five days at two dollars per day for each two thousands pounds or fraction thereof.

The fees levied in RCW 46.44.0941 and this section shall not apply to any vehicles owned and operated by the state of Washington, any county within the state, or any city or town or metropolitan municipal corporation within the state, or by the federal government.

In the case of fleets prorating license fees under the provisions of chapter 46.87 RCW, the fees provided for in this section shall be computed by the department of transportation by applying the proportion of the Washington mileage of the fleet in question to the total mileage of the fleet as reported pursuant to chapter 46.87 RCW to the fees that would be required to purchase the additional weight allowance for all eligible vehicles or combinations of vehicles for which the extra weight allowance is requested.

When computing fees that result in an amount other than full dollars, the fee shall be increased to the next full dollar if fifty cents or over and shall be reduced to the next full dollar if forty-nine cents or under. The minimum fee for any prorated tonnage permit issued under this section shall be twenty-five dollars. [1989 c 398 § 3; 1988 c 55 § 1; 1983 c 68 § 2; 1979 c 158 § 159; 1977 ex.s. c 151 § 33; 1975-'76 2nd ex.s. c 64 § 17; 1974 ex.s. c 76 § 1; 1973 1st ex.s. c 150 § 3; 1969 ex.s. c 281 § 55; 1967 ex.s. c 94 § 15; 1967 c 32 § 51; 1965

ex.s. c 170 § 38; 1961 ex.s. c 7 § 15; 1961 c 12 § 46.44-.095. Prior: 1959 c 319 § 31; 1957 c 273 § 18; 1955 c 185 § 1; 1953 c 254 § 13; 1951 c 269 § 39; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

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

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.096 Special permits for oversize or overweight movements—Determining fee—To whom paid. In determining fees according to RCW 46.44.0941, mileage on state primary and secondary highways shall be determined from the planning survey records of the department of transportation, and the gross weight of the vehicle or vehicles, including load, shall be declared by the applicant. Overweight on which fees shall be paid will be gross loadings in excess of loadings authorized by law or axle loadings in excess of loadings authorized by law, whichever is the greater. Loads which are overweight and oversize shall be charged the fee for the overweight permit without additional fees being assessed for the oversize features.

Special permits issued under RCW 46.44.047, 46.44-.0941, or 46.44.095, may be obtained from offices of the department of transportation, ports of entry, or other agents appointed by the department.

The department may appoint agents for the purposes of selling special motor vehicle permits, additional tonnage permits, and log tolerance permits. Agents so appointed may retain three dollars and fifty cents for each permit sold to defray expenses incurred in handling and selling the permits. If the fee is collected by the department of transportation, the department shall certify the fee so collected to the state treasurer for deposit to the credit of the motor vehicle fund.

Fees established in RCW 46.44.0941 shall be paid to the political body issuing the permit if the entire movement is to be confined to roads, streets, or highways for which that political body is responsible. When a movement involves a combination of state highways, county roads, and/or city streets the fee shall be paid to the state department of transportation. When a movement is confined within the city limits of a city or town upon city streets, including routes of state highways on city streets, all fees shall be paid to the city or town involved. A permit will not be required from city or town authorities for a move involving a combination of city or town streets and state highways when the move through a city or town is being confined to the route of the state highway. When a move involves a combination of county roads and city streets the fee shall be paid to the county authorities, but the fee shall not be collected nor the county permit issued until valid permits are presented showing the city or town authorities approve of the move in question. When the movement involves only county roads the fees collected shall be paid to the county involved. Fees established shall be paid to the political body issuing the permit if the entire use of the vehicle

during the period covered by the permit shall be confined to the roads, streets, or highways for which that political body is responsible.

If, pursuant to RCW 46.44.090, cities or counties issue additional tonnage permits similar to those provided for issuance by the state department of transportation in RCW 46.44.095, the state department of transportation shall authorize the use of the additional tonnage permits on state highways subject to the following conditions:

(1) The owner of the vehicle covered by such permit shall establish to the satisfaction of the state department of transportation that the primary use of the vehicle is on the streets or roads of the city or county issuing the additional tonnage permit;

(2) That the fees paid for the additional tonnage are not less than those established in RCW 46.44.095;

(3) That the city or county issuing the permit shall allow the use of permits issued by the state pursuant to RCW 46.44.095 on the streets or roads under its jurisdiction;

(4) That all of the provisions of RCW 46.44.042 and 46.44.041 shall be observed.

When the department of transportation is satisfied that the above conditions have been met, the department of transportation, by suitable endorsement on the permit, shall authorize its use on such highways as the department has authorized for such permits pursuant to RCW 46.44.095, and all such use of such highways is subject to whatever rules and regulations the state department of transportation has adopted for the permits. [1989 c 398 § 4; 1984 c 7 § 56; 1975-'76 2nd ex.s. c 64 § 18; 1971 ex.s. c 248 § 4; 1969 ex.s. c 281 § 31; 1961 c 12 § 46.44.096. Prior: 1955 c 185 § 2; 1951 c 269 § 40; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—**Severability**—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.098 Increase in federal limits on sizes and weights—Increases by commission. If the congress of the United States further amends section 127, Title 23 of the United States Code, authorizing increased sizes and weights, the Washington state department of transportation may authorize the operation of vehicles and combinations of vehicles upon completed portions of the interstate highway system and other designated state highways if determined to be capable of accommodating the increased sizes and weights in excess of those prescribed in RCW 46.44.041, or as provided in RCW 46.44.010 and 46.44.037. The permitted increases shall not in any way exceed the federal limits which would jeopardize the state's allotment of federal funds. [1984 c 7 § 57; 1975-'76 2nd ex.s. c 64 § 19; 1965 c 38 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—**Severability**—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.100 Enforcement—Weighing and lightening. Any police officer is authorized to require the driver of

any vehicle or combination of vehicles to stop and submit to a weighing of the same either by means of a portable or stationary scale and may require that such vehicle be driven to the nearest public scale.

Whenever a police officer, upon weighing a vehicle and load, as above provided, determines that the weight is unlawful, such officer may, in addition to any other penalty provided, require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under this chapter: *Provided*, That in the event such vehicle is loaded with grain or other perishable commodities, the driver shall be permitted to proceed without removing any of such load, unless the gross weight of the vehicle and load exceeds by more than ten percent the limit permitted by this chapter. All materials unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

It shall be unlawful for any driver of a vehicle to fail or refuse to stop and submit the vehicle and load to a weighing, or to fail or refuse, when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section. [1971 ex.s. c 148 § 2; 1967 c 32 § 52; 1961 c 12 § 46.44.100. Prior: 1937 c 189 § 56; RRS § 6360-56.]

46.44.105 Enforcement procedures—Penalties—Rules. (1) Violation of any of the provisions of RCW 46.44.042, 46.44.047, 46.44.090, 46.44.091, 46.44.095, and 46.44.041, or failure to obtain a permit as provided by RCW 46.44.090 and 46.44.095, or misrepresentation of the size or weight of any load or failure to follow the requirements and conditions of a permit issued hereunder is a traffic infraction, and upon the first finding thereof shall be assessed a basic penalty of not less than fifty dollars; and upon a second finding thereof shall be assessed a basic penalty of not less than seventy-five dollars; and upon a third or subsequent finding shall be assessed a basic penalty of not less than one hundred dollars.

(2) In addition to the penalties imposed in subsection (1) of this section, any person violating RCW 46.44.042, 46.44.047, 46.44.090, 46.44.091, 46.44.095, or 46.44.041 shall be assessed three cents for each pound of excess weight. Upon a first violation in any calendar year, the court may suspend the penalty for five hundred pounds of excess weight for each axle on any vehicle or combination of vehicles, not to exceed a two thousand pound suspension. In no case may the basic penalty assessed in subsection (1) of this section be suspended.

(3) Whenever any vehicle or combination of vehicles is involved in two violations of RCW 46.44.042, 46.44.047, 46.44.090, 46.44.091, 46.44.095, or 46.44.041 during any twelve-month period, the court may suspend the certificate of license registration of the vehicle or combination of vehicles for not less than thirty days. Upon a third or succeeding violation in any twelve-month period, the court shall suspend the certificate of license registration for not less than thirty days. Whenever the certificate of license registration is suspended, the court

shall secure such certificate and immediately forward the same to the director with information concerning the suspension.

(4) Any person found to have violated any posted limitations of a highway or section of highway shall be assessed a monetary penalty of not less than one hundred and fifty dollars, and the court shall in addition thereto upon second violation within a twelve-month period involving the same power unit, suspend the certificate of license registration for not less than thirty days.

(5) Any police officer is authorized to require the driver of any vehicle or combination of vehicles to stop and submit to a weighing either by means of a portable or stationary scale and may require that the vehicle be driven to the nearest public scale. Whenever a police officer, upon weighing a vehicle and load, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable location and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit permitted by law.

Any vehicle whose driver or owner represents that the vehicle is disabled or otherwise unable to proceed to a weighing location shall have its load sealed or otherwise marked by any police officer. The owner or driver shall be directed that upon completion of repairs, the vehicle shall submit to weighing with the load and markings and/or seal intact and undisturbed. Failure to report for weighing, appearing for weighing with the seal broken or the markings disturbed, or removal of any cargo prior to weighing is unlawful. Any person so convicted shall be fined five hundred dollars, and in addition the certificate of license registration shall be suspended for not less than thirty days.

(6) Any other provision of law to the contrary notwithstanding, district courts having venue have concurrent jurisdiction with the superior courts for the imposition of any penalties authorized under this section.

(7) For the purpose of determining additional penalties as provided by subsection (2) of this section, "excess weight" means the poundage in excess of the maximum gross weight prescribed by RCW 46.44.042 and 46.44.041 plus the weights allowed by RCW 46.44.047, 46.44.091, and 46.44.095.

(8) The penalties provided in subsections (1) and (2) of this section shall be remitted as provided in chapter 3.62 RCW or RCW 10.82.070. For the purpose of computing the basic penalties and additional penalties to be imposed under the provisions of subsections (1) and (2) of this section the convictions shall be on the same vehicle or combination of vehicles within a twelve-month period under the same ownership.

(9) Any state patrol officer or any weight control officer who finds any person operating a vehicle or a combination of vehicles in violation of the conditions of a permit issued under RCW 46.44.047, 46.44.090, and 46.44.095 may confiscate the permit and forward it to the state department of transportation which may return it to the permittee or revoke, cancel, or suspend it without refund. The department of transportation shall keep a record of all action taken upon permits so confiscated,

and if a permit is returned to the permittee the action taken by the department of transportation shall be endorsed thereon. Any permittee whose permit is suspended or revoked may upon request receive a hearing before the department of transportation or person designated by that department. After the hearing the department of transportation may reinstate any permit or revise its previous action.

Every permit issued as provided for in this chapter shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer or authorized agent of any authority granting such a permit.

Upon the third finding within a calendar year of a violation of the requirements and conditions of a permit issued under RCW 46.44.095 as now or hereafter amended, the permit shall be canceled, and the canceled permit shall be immediately transmitted by the court or the arresting officer to the department of transportation. The vehicle covered by the canceled permit is not eligible for a new permit for a period of thirty days.

(10) For the purposes of determining gross weights the actual scale weight taken by the arresting officer is prima facie evidence of the total gross weight.

The chief of the state patrol, with the advice of the department, may adopt reasonable rules to aid in the enforcement of this section. [1985 c 351 § 6; 1984 c 258 § 327; 1984 c 7 § 58; 1979 ex.s. c 136 § 75; 1975-'76 2nd ex.s. c 64 § 23.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

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

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.110 Liability for damage to highways, bridges, etc. Any person operating any vehicle or moving any object or conveyance upon any public highway in this state or upon any bridge or elevated structure that is a part of any such public highway is liable for all damages that the public highway, bridge, or elevated structure may sustain as a result of any illegal operation of the vehicle or the moving of any such object or conveyance or as a result of the operation or moving of any vehicle, object, or conveyance weighing in excess of the legal weight limits allowed by law. This section applies to any person operating any vehicle or moving any object or contrivance in any illegal or negligent manner or without a special permit as provided by law for vehicles, objects, or contrivances that are overweight, overwidth, overheight, or overlength. Any person operating any vehicle is liable for any damage to any public highway, bridge, or elevated structure sustained as the result of any negligent operation thereof. When the operator is not the owner of the vehicle, object, or contrivance but is operating or moving it with the express or implied permission of the owner, the owner and the operator are jointly and severally liable for any such damage. Such damage to

any state highway or structure may be recovered in a civil action instituted in the name of the state of Washington by the department of transportation. Any measure of damage to any public highway determined by the department of transportation by reason of this section is prima facie the amount of damage caused thereby and is presumed to be the amount recoverable in any civil action therefor. [1984 c 7 § 59; 1961 c 12 § 46.44.110. Prior: 1937 c 189 § 57; RRS 6360-57.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.44.120 Liability of owner, others, for violations. Whenever an act or omission is declared to be unlawful in chapter 46.44 RCW, the owner or lessee of any motor vehicle involved in such act or omission is responsible therefor. Any person knowingly and intentionally participating in creating an unlawful condition of use, is also subject to the penalties provided in this chapter for such unlawful act or omission.

If the person operating the vehicle at the time of the unlawful act or omission is not the owner or lessee of the vehicle, such person is fully authorized to accept the citation and execute the promise to appear on behalf of the owner or lessee. [1980 c 104 § 2; 1971 ex.s. c 148 § 1; 1969 ex.s. c 69 § 1.]

46.44.130 Farm implements—Gross weight and size limitation exception—Penalty. The limitations of RCW 46.44.010, 46.44.020, 46.44.030, and 46.44.041 shall not apply to the movement of farm implements of less than forty-five thousand pounds gross weight, a total length of seventy feet or less, and a total outside width of fourteen feet or less when being moved while patrolled, flagged, lighted, signed, and at a time of day in accordance with rules hereby authorized to be adopted by the department of transportation and the statutes. Violation of a rule adopted by the department as authorized by this section or a term of this section is a traffic infraction. [1979 ex.s. c 136 § 76; 1975-'76 2nd ex.s. c 64 § 20; 1975 1st ex.s. c 168 § 3; 1973 1st ex.s. c 1 § 1.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Effective date—1975 1st ex.s. c 168: See note following RCW 46.44.091.

46.44.140 Farm implements—Special permits—Penalty. In addition to any other special permits authorized by law, special permits may be issued by the department of transportation for a quarterly or annual period upon such terms and conditions as it finds proper for the movement of (1) farm implements used for the cutting or threshing of mature crops; or (2) other farm implements that may be identified by rule of the department of transportation. Any farm implement moved under this section must have a gross weight less than forty-five thousand pounds and a total outside width of less than twenty feet while being moved, and such movement must be patrolled, flagged, lighted, signed, at a time of

day, and otherwise in accordance with rules hereby authorized to be adopted by the department of transportation for the control of such movements.

Applications for and permits issued under this section shall provide for a description of the farm implements to be moved, the approximate dates of movement, and the routes of movement so far as they are reasonably known to the applicant at the time of application, but the permit shall not be limited to these circumstances but shall be general in its application except as limited by the statutes and rules adopted by the department of transportation.

A copy of the governing permit shall be carried on the farm implement being moved during the period of its movement. The department shall collect a fee as provided in RCW 46.44.0941.

Violation of a term or condition under which a permit was issued, of a rule adopted by the department of transportation as authorized by this section, or of a term of this section is a traffic infraction. [1984 c 7 § 60; 1979 ex.s. c 136 § 77; 1973 1st ex.s. c 1 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.44.150 Highway improvement vehicles—Gross weight limit excesses authorized—Limitations. The state, county, or city authority having responsibility for the reconstruction or improvement of any public highway may, subject to prescribed conditions and limitations, authorize vehicles employed in such highway reconstruction or improvement to exceed the gross weight limitations contained in RCW 46.44.041 and 46.44.042 without a special permit or additional fees as prescribed by chapter 46.44 RCW, but only while operating within the boundaries of project limits as defined in the public works contract or plans. [1983 c 3 § 121; 1975 1st ex.s. c 63 § 1.]

46.44.160 Monthly or quarterly permits for additional tonnage. When vehicles for which licensed tonnage has been purchased on a monthly or quarterly basis pursuant to chapter 46.16 or 46.87 RCW, then the additional tonnage provided for in RCW 46.44.095 may be purchased on a monthly or a quarterly basis: *Provided*, That the total additional tonnage purchased under RCW 46.44.095 is not less than six thousand pounds: *Provided further*, That those vehicles registered under chapter 46.87 RCW must have a prorated percent of sixty percent or more. The fee for a monthly permit shall be one-twelfth the amount charged for a corresponding twelve-month period, and the fee for a quarterly permit shall be one-fourth the amount charged for a corresponding twelve-month permit, and shall further be reduced by one-twelfth for each full calendar month of the quarter that has elapsed at the time the quarterly permit is purchased. In addition, a fee of five dollars shall be charged for each monthly or quarterly permit issued hereunder.

The quarterly periods covered by this section shall be registration quarters consisting of three registration

months. The first quarter shall commence with registration month one. [1988 c 55 § 2; 1981 c 229 § 1; 1975-'76 2nd ex.s. c 64 § 21; 1975 1st ex.s. c 196 § 1.]

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.170 Mobile home movement special permit and decal—Certification of taxes paid—License plates—Rules. (1) Any person moving a mobile home as defined in RCW 46.04.302 upon public highways of the state must obtain a special permit from the department of transportation and local authorities pursuant to RCW 46.44.090 and 46.44.093 and shall pay the proper fee as prescribed by RCW 46.44.0941 and 46.44.096.

(2) A special permit issued as provided in subsection (1) of this section for the movement of any mobile home shall not be valid until the county treasurer of the county in which the mobile home is located shall endorse or attach thereto his certificate that all property taxes which are a lien or which are delinquent, or both, upon the mobile home being moved have been satisfied. Further, any mobile home required to have a special movement permit under this section shall display an easily recognizable decal: *Provided*, That endorsement or certification by the county treasurer and the display of said decal is not required when a mobile home is to enter the state or is being moved from a manufacturer or distributor to a retail sales outlet or directly to the purchaser's designated location or between retail and sales outlets. It shall be the responsibility of the owner of the mobile home or the agent to obtain such endorsement from the county treasurer and said decal.

(3) Nothing herein should be construed as prohibiting the issuance of vehicle license plates for a mobile home, but no such plates shall be issued unless the mobile home for which such plates are sought has been listed for property tax purposes in the county in which it is principally located and the appropriate fee for such license has been paid.

(4) The department of transportation and local authorities are authorized to adopt reasonable rules for implementing the provisions of this section. The department of transportation shall adopt rules specifying the design, reflective characteristics, annual coloration, and for the uniform implementation of the decal required by this section. [1986 c 211 § 4. Prior: 1985 c 395 § 1; 1985 c 22 § 1; 1980 c 152 § 1; 1977 ex.s. c 22 § 2.]

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

46.44.173 Notice to treasurer and assessor of county where mobile home to be located. (1) Upon validation of a special permit as provided in RCW 46.44.170, the county treasurer shall forward notice of movement of the mobile home to the treasurer's own county assessor and to the county assessor of the county in which the mobile home will be located.

(2) When a single trip special permit not requiring tax certification is issued, the department of transportation or the local authority shall notify the assessor of the county in which the mobile home is to be located. When a continuous trip special permit is used to transport a

mobile home not requiring tax certification, the transporter shall notify the assessor of the county in which the mobile home is to be located. Notification is not necessary when the destination of a mobile home is a manufacturer, distributor, retailer, or location outside the state.

(3) A notification under this section shall state the specific, residential destination of the mobile home. [1984 c 7 § 61; 1977 ex.s. c 22 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

46.44.175 Penalties—Hearing. Failure of any person or agent acting for a person who causes to be moved or moves a mobile home as defined in RCW 46.04.302 upon public highways of this state and failure to comply with any of the provisions of RCW 46.44.170 and 46.44.173 is a traffic infraction for which a penalty of not less than one hundred dollars or more than five hundred dollars shall be assessed. In addition to the above penalty, the department of transportation or local authority may withhold issuance of a special permit or suspend a continuous special permit as provided by RCW 46.44.090 and 46.44.093 for a period of not less than thirty days.

Any person who shall alter or forge the decal required by RCW 46.44.170, or who shall display a decal knowing it to have been forged or altered, shall be guilty of a gross misdemeanor.

Any person or agent who is denied a special permit or whose special permit is suspended may upon request receive a hearing before the department of transportation or the local authority having jurisdiction. The department or the local authority after such hearing may revise its previous action. [1985 c 22 § 2; 1979 ex.s. c 136 § 78; 1977 ex.s. c 22 § 4.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

46.44.180 Operation of mobile home pilot vehicle without insurance unlawful—Amounts—Exception—Penalty. (1) It is unlawful for a person, other than an employee of a dealer or other principal licensed to transport mobile homes within this state acting within the course of employment with the principal, to operate a pilot vehicle accompanying a mobile home, as defined in RCW 46.04.302, being transported on the public highways of this state, without maintaining insurance for the pilot vehicle in the minimum amounts of:

(a) One hundred thousand dollars for bodily injury to or death of one person in any one accident;

(b) Three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident; and

(c) Fifty thousand dollars for damage to or destruction of property of others in any one accident.

(2) Satisfactory evidence of the insurance shall be carried at all times by the operator of the pilot vehicle, which evidence shall be displayed upon demand by a police officer.

(3) Failure to maintain the insurance as required by this section is a gross misdemeanor. Failure to carry or disclose the evidence of the insurance is a misdemeanor. [1980 c 153 § 3.]

Chapter 46.48

TRANSPORTATION OF HAZARDOUS MATERIALS

Sections

46.48.170	State patrol authority—Rules and regulations.
46.48.175	Rules—Penalties—Responsibility for compliance.
46.48.180	State patrol study to insure uniformity of regulations.
46.48.185	Inspections.
46.48.200	Radioactive waste—Additional ports of entry.

Hazardous materials incident command agency, state patrol as: RCW 70.136.030.

46.48.170 State patrol authority—Rules and regulations. The Washington state patrol acting by and through the chief of the Washington state patrol shall have the authority to adopt and enforce the regulations promulgated by the United States department of transportation, Title 49 CFR parts 100 through 199, transportation of hazardous materials, as these regulations apply to motor carriers. "Motor carrier" means any person engaged in the transportation of passengers or property operating interstate and intrastate upon the public highways of this state, except farmers. The chief of the Washington state patrol shall confer with the emergency management council under RCW 38.52.040 and may make rules and regulations pertaining thereto, sufficient to protect persons and property from unreasonable risk of harm or damage. The chief of the Washington state patrol shall establish such additional rules not inconsistent with Title 49 CFR parts 100 through 199, transportation of hazardous materials, which for compelling reasons make necessary the reduction of risk associated with the transportation of hazardous materials. No such rules may lessen a standard of care; however, the chief of the Washington state patrol may, after conferring with the emergency management council, establish a rule imposing a more stringent standard of care. The chief of the Washington state patrol shall appoint the necessary qualified personnel to carry out the provisions of RCW 46.48.170 through *46.48.190. [1988 c 81 § 19; 1980 c 20 § 1; 1961 c 12 § 46.48.170. Prior: 1951 c 102 § 1; 1949 c 101 § 1; Rem. Supp. 1949 § 6360–63a.]

*Reviser's note: RCW 46.48.190 was repealed by 1988 c 81 § 20.

46.48.175 Rules—Penalties—Responsibility for compliance. Each violation of any rules and/or regulations made pursuant to RCW 46.48.170 or 81.80.290 pertaining to vehicle equipment on motor carriers transporting hazardous material shall be a misdemeanor.

Bail for such a violation shall be set at a minimum of one hundred dollars. The fine for such a violation shall be not less than two hundred dollars nor more than five hundred dollars. Compliance with the provisions of this chapter is the primary responsibility of the owner or lessee of the vehicle or any vehicle used in combination

that is cited in the violation. [1980 c 104 § 1; 1961 c 12 § 46.48.175. Prior: 1951 c 102 § 2.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

46.48.180 State patrol study to insure uniformity of regulations. The Washington state patrol shall make a study of the United States department of transportation regulations pertaining to Title 49 CFR, parts 100 through 199, and the laws of this state pertaining to the same subject in order that the chief of the Washington state patrol may make necessary and proper recommendations to the legislature and state departments from time to time to bring about uniformity between the laws and regulations of the federal government and this state in regard to the transportation of such materials. [1980 c 20 § 2; 1961 c 12 § 46.48.180. Prior: 1949 c 101 § 2; Rem. Supp. 1949 § 6360–63b.]

46.48.185 Inspections. The chief of the Washington state patrol shall direct the necessary qualified personnel to inspect the cargo of any motor carriers vehicle transporting hazardous material, inspect for proper securing, and inspect for the combined loading of cargo which would be inconsistent with the provisions of Title 49 CFR, parts 100 through 199. Authorized personnel inspecting loads of hazardous material shall do so in the presence of a representative of the motor carrier. Seal and locking devices may be removed as necessary to facilitate the inspection. The seals or locking devices removed shall be replaced by the Washington state patrol with a written form approved by the chief to certify seal or locking device removal for inspection of the cargo. [1980 c 20 § 3.]

46.48.200 Radioactive waste—Additional ports of entry. Any additional ports of entry for highway transportation of radioactive waste materials other than those designated by WAC 446–50–040 as filed on December 11, 1979, must be authorized by the state legislature. This section shall expire when both the Washington state legislature and at least one other eligible state enact an interstate agreement on radioactive materials transportation management. [1987 c 86 § 1.]

Chapter 46.52

ACCIDENTS—REPORTS—ABANDONED VEHICLES

Sections

46.52.010	Duty on striking unattended car or other property—Penalty.
46.52.020	Duty in case of injury to or death of person or damage to attended vehicle or other property—Penalty.
46.52.030	Accident reports.
46.52.035	Accident reports—Suspension of license or permit for failure to make report.
46.52.040	Accident reports—Report when operator disabled.
46.52.050	Coroner's reports to sheriff and state patrol.
46.52.060	Tabulation and analysis of reports—Availability for use.
46.52.065	Blood samples to state toxicologist—Analysis—Availability, admissibility of reports.

- 46.52.070 Police officer's report.
- 46.52.080 Confidentiality of reports—Information required to be disclosed—Evidence.
- 46.52.083 Confidentiality of reports—Availability of factual data to interested parties.
- 46.52.085 Confidentiality of reports—Fee for written information.
- 46.52.088 Reports—False information.
- 46.52.090 Reports of major repairs, etc.—Violations, penalties—Rules—Exceptions for older vehicles.
- 46.52.100 Record of traffic charges—Reports of court—District court venue—Driving under influence of liquor or drugs.
- 46.52.120 Case record of convictions and infractions—Cross-reference to accident reports.
- 46.52.130 Abstract of driving record—Confidentiality—Fees—Penalty.
- 46.52.190 Abandoned vehicles or hulks—Impoundment—Notification—Hearing—Liability for charges—Nonpayment penalty.

Abandoned, unauthorized vehicles generally: Chapter 46.55 RCW.

Hulk haulers' or scrap processors' licenses: Chapter 46.79 RCW.

Motor vehicle wreckers: Chapter 46.80 RCW.

Removal of certain vehicles from roadway: RCW 46.55.113, 46.55.115, 46.61.590.

46.52.010 Duty on striking unattended car or other property—Penalty. The operator of any vehicle which collided with any other vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the operator and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice, giving the name and address of the operator and of the owner of the vehicle striking such other vehicle.

The driver of any vehicle involved in an accident resulting only in damage to property fixed or placed upon or adjacent to any public highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the name and address of the operator and owner of the vehicle striking such property, or shall leave in a conspicuous place upon the property struck a written notice, giving the name and address of the operator and of the owner of the vehicle so striking the property, and such person shall further make report of such accident as in the case of other accidents upon the public highways of this state. Any person violating the provisions of this section is guilty of a misdemeanor. [1979 ex.s. c 136 § 79; 1961 c 12 § 46.52.010. Prior: 1937 c 189 § 133; RRS § 6360-133; 1927 c 309 § 50, part; RRS § 6362-50, part.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Arrest of person violating duty on striking unattended vehicle or other property: RCW 10.31.100.

46.52.020 Duty in case of injury to or death of person or damage to attended vehicle or other property—Penalty. (1) A driver of any vehicle involved in an accident resulting in the injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then

forthwith return to, and in every event remain at, the scene of such accident until he has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(2) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person or damage to other property shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to, and in any event shall remain at, the scene of such accident until he has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(3) Unless otherwise provided in subsection (7) of this section the driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person or damage to other property shall give his name, address, and vehicle license number and shall exhibit his vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this subsection be evidence of the liability of any driver for such accident.

(4) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section under said circumstances shall be guilty of a class C felony and, upon conviction, be punished pursuant to RCW 9A.20.020: *Provided*, That this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying herewith.

(5) Any driver covered by the provisions of subsection (2) of this section failing to stop or to comply with any of the requirements of subsection (3) of this section under said circumstances shall be guilty of a gross misdemeanor and, upon conviction, be punished by imprisonment for not less than thirty days nor more than one year or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment: *Provided*, That this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying herewith.

(6) The license or permit to drive or any nonresident privilege to drive of any person convicted under this section or any local ordinance consisting of substantially the same language as this section of failure to stop and give information or render aid following an accident with any vehicle driven or attended by any person shall be revoked by the department.

(7) If none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (3) of this section, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (1) and (3) of this section insofar as possible on his part to be performed, shall forthwith report such accident to the nearest office of the duly authorized police authority and submit thereto the information specified in subsection (3) of this section. [1980 c 97 § 1; 1979 ex.s. c 136 § 80; 1975-'76 2nd ex.s. c 18 § 1. Prior: 1975 1st ex.s. c 210 § 1; 1975 c 62 § 14; 1967 c 32 § 53; 1961 c 12 § 46.52.020; prior: 1937 c 189 § 134; RRS § 6360-134; 1927 c 309 § 50, part; RRS § 6362-50, part.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—1980 c 97: "This 1980 act shall take effect on July 1, 1980." [1980 c 97 § 3.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1975 c 62: See note following RCW 36.75.010.

Arrest of person violating duty in case of injury to or death of person or damage to attended vehicle: RCW 10.31.100.

46.52.030 Accident reports. (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent equal to or greater than the minimum amount established by rule adopted by the chief of the Washington state patrol in accordance with subsection (5) of this section, shall, within twenty-four hours after such accident, make a written report of such accident to the chief of police of the city or town if such accident occurred within an incorporated city or town or the county sheriff or state patrol if such accident occurred outside incorporated cities and towns. Nothing in this subsection prohibits accident reports from being filed by drivers where damage to property is less than the minimum amount.

(2) The original of such report shall be immediately forwarded by the authority receiving such report to the chief of the Washington state patrol at Olympia, Washington, and the second copy of such report to be forwarded to the department of licensing at Olympia, Washington.

(3) Any law enforcement officer who investigates an accident for which a driver's report is required under subsection (1) of this section shall submit an investigator's report as required by RCW 46.52.070.

(4) The chief of the Washington state patrol may require any driver of any vehicle involved in an accident, of which report must be made as provided in this section, to file supplemental reports whenever the original report in his opinion is insufficient, and may likewise require witnesses of any such accident to render reports. For this purpose, the chief of the Washington state patrol shall prepare and, upon request, supply to any police department, coroner, sheriff, and any other suitable agency or individual, sample forms of accident reports required hereunder, which reports shall be upon a form devised by the chief of the Washington state patrol and

shall call for sufficiently detailed information to disclose all material facts with reference to the accident to be reported thereon, including the location, the cause, the conditions then existing, the persons and vehicles involved, the insurance information required under RCW 46.30.030, personal injury or death, if any, the amounts of property damage claimed, the total number of vehicles involved, whether the vehicles were legally parked, legally standing, or moving, and whether such vehicles were occupied at the time of the accident. Every required accident report shall be made on a form prescribed by the chief of the Washington state patrol and each authority charged with the duty of receiving such reports shall provide sufficient report forms in compliance with the form devised. The report forms shall be designated so as to provide that a copy may be retained by the reporting person.

(5) The chief of the Washington state patrol shall adopt rules establishing the accident-reporting threshold for property damage accidents. Beginning October 1, 1987, the accident-reporting threshold for property damage accidents shall be five hundred dollars. The accident-reporting threshold for property damage accidents shall be revised when necessary, but not more frequently than every two years. The revisions shall only be for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the time period since the last revision. [1989 c 353 § 5; 1987 c 463 § 2; 1981 c 30 § 1; 1979 c 158 § 160; 1979 c 11 § 2. Prior: 1977 ex.s. c 369 § 2; 1977 ex.s. c 68 § 1; 1969 ex.s. c 40 § 2; 1967 c 32 § 54; 1965 ex.s. c 119 § 1; 1961 c 12 § 46.52.030; prior: 1943 c 154 § 1; 1937 c 189 § 135; RRS § 6360-135.]

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

46.52.035 Accident reports—Suspension of license or permit for failure to make report. The director may suspend the license or permit to drive and any nonresident operating privileges of any person failing to report an accident as provided in RCW 46.52.030 until such report has been filed. [1988 c 8 § 1; 1965 ex.s. c 119 § 2.]

46.52.040 Accident reports—Report when operator disabled. Whenever the driver of the vehicle involved in any accident, concerning which accident report is required, is physically incapable of making the required accident report and there is another occupant other than a passenger for hire therein, in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made such report. Upon recovery such driver shall make such report in the manner required by law. [1967 c 32 § 55; 1961 c 12 § 46.52.040. Prior: 1937 c 189 § 136; RRS § 6360-136.]

46.52.050 Coroner's reports to sheriff and state patrol. Every coroner or other official performing like functions shall on or before the tenth day of each month,

report in writing to the sheriff of the county in which he holds office and to the chief of the Washington state patrol the death of any person within his jurisdiction during the preceding calendar month as a result of an accident involving any vehicle, together with the circumstances of such accident. [1961 c 12 § 46.52.050. Prior: 1937 c 189 § 137; RRS § 6360–137.]

46.52.060 Tabulation and analysis of reports—Availability for use. It shall be the duty of the chief of the Washington state patrol to file, tabulate, and analyze all accident reports and to publish annually, immediately following the close of each fiscal year, and monthly during the course of the year, statistical information based thereon showing the number of accidents, the location, the frequency and circumstances thereof and other statistical information which may prove of assistance in determining the cause of vehicular accidents.

Such accident reports and analysis or reports thereof shall be available to the director of licensing, the department of transportation, the utilities and transportation commission, or their duly authorized representatives, for further tabulation and analysis for pertinent data relating to the regulation of highway traffic, highway construction, vehicle operators and all other purposes, and to publish information so derived as may be deemed of publication value. [1979 c 158 § 161; 1977 c 75 § 67; 1967 c 32 § 56; 1961 c 12 § 46.52.060. Prior: 1937 c 189 § 138; RRS § 6360–138.]

46.52.065 Blood samples to state toxicologist—Analysis—Availability, admissibility of reports. Every coroner or other official performing like functions shall submit to the state toxicologist a blood sample taken from all drivers and all pedestrians who are killed in any traffic accident where the death occurred within four hours after the accident. Blood samples shall be taken and submitted in the manner prescribed by the state toxicologist. The state toxicologist shall analyze these blood samples to determine the concentration of alcohol and, where feasible, the presence of drugs or other toxic substances. The reports and records of the state toxicologist relating to analyses made pursuant to this section shall be confidential: *Provided*, That the results of these analyses shall be reported to the state patrol and made available to the prosecuting attorney or law enforcement agency having jurisdiction: *Provided further*, That the results of these analyses may be admitted in evidence in any civil or criminal action where relevant and shall be made available to the parties to any such litigation on application to the court. [1977 ex.s. c 50 § 1; 1971 ex.s. c 270 § 1.]

46.52.070 Police officer's report. Any police officer of the state of Washington or of any county, city, town or other political subdivision, present at the scene of any accident or in possession of any facts concerning any accident whether by way of official investigation or otherwise shall make report thereof in the same manner as required of the parties to such accident and as fully as the facts in his possession concerning such accident will

permit. [1967 c 32 § 57; 1961 c 12 § 46.52.070. Prior: 1937 c 189 § 139; RRS § 6360–139.]

46.52.080 Confidentiality of reports—Information required to be disclosed—Evidence. All required accident reports and supplemental reports and copies thereof shall be without prejudice to the individual so reporting and shall be for the confidential use of the county prosecuting attorney and chief of police or county sheriff, as the case may be, and the director of licensing and the chief of the Washington state patrol, and other officer or commission as authorized by law, except that any such officer shall disclose the names and addresses of persons reported as involved in an accident or as witnesses thereto, the vehicle license plate numbers and descriptions of vehicles involved, and the date, time and location of an accident, to any person who may have a proper interest therein, including the driver or drivers involved, or the legal guardian thereof, the parent of a minor driver, any person injured therein, the owner of vehicles or property damaged thereby, or any authorized representative of such an interested party, or the attorney or insurer thereof. No such accident report or copy thereof shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that any officer above named for receiving accident reports shall furnish, upon demand of any person who has, or who claims to have, made such a report, or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the chief of the Washington state patrol solely to prove a compliance or a failure to comply with the requirement that such a report be made in the manner required by law: *Provided*, That the reports may be used as evidence when necessary to prosecute charges filed in connection with a violation of RCW 46.52.088. [1979 c 158 § 162; 1975 c 62 § 15; 1967 c 32 § 58; 1965 ex.s. c 119 § 3; 1961 c 12 § 46.52.080. Prior: 1937 c 189 § 140; RRS § 6360–140.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.52.083 Confidentiality of reports—Availability of factual data to interested parties. All of the factual data submitted in report form by the officers, together with the signed statements of all witnesses, except the reports signed by the drivers involved in the accident, shall be made available upon request to the interested parties named in RCW 46.52.080. [1965 ex.s. c 119 § 4.]

46.52.085 Confidentiality of reports—Fee for written information. Any information authorized for release under RCW 46.52.080 and 46.52.083 may be furnished in written form for a fee sufficient to meet, but not exceed, the costs incurred. All fees received by the Washington state patrol for such copies shall be deposited in the motor vehicle fund. [1979 c 34 § 1; 1971 ex.s. c 91 § 5; 1965 ex.s. c 119 § 5.]

46.52.088 Reports—False information. A person shall not give information in oral or written reports as

required in chapter 46.52 RCW knowing that such information is false. [1975 c 62 § 16.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.52.090 Reports of major repairs, etc.—Violations, penalties—Rules—Exceptions for older vehicles. Any person, firm, corporation, or association engaged in the business of repairs of any kind to vehicles or any person, firm, corporation, or association which may at any time engage in any kind of major repair, restoration, or substantial alteration to a vehicle required to be licensed or registered under this title shall maintain verifiable records regarding the source of used major component parts used in such repairs, restoration, or alteration. Satisfactory records include but are not limited to personal identification of the seller if such parts were acquired from other than a motor vehicle wrecker licensed under chapter 46.80 RCW, signed work orders, and bills of sale signed by the seller whose identity and address has been verified describing parts acquired, and the make, model, and vehicle identification number of a vehicle from which the following parts are removed: (1) Engines and short blocks, (2) frames, (3) transmissions and transfer cases, (4) cabs, (5) doors, (6) front or rear differentials, (7) front or rear clips, (8) quarter panels or fenders, (9) bumpers, (10) truck beds or boxes, (11) seats, and (12) hoods. Such records shall be kept for a period of four years and shall be made available for inspection by a law enforcement officer during ordinary business hours.

The acquisition of a part without a substantiating bill of sale or invoice from the parts supplier or failure to comply with any rules adopted under this section is a gross misdemeanor. Failure to obtain the vehicle identification number for those parts requiring that it be obtained is a gross misdemeanor. Failure to keep records for four years or to make such records available during normal business hours to a law enforcement officer is a gross misdemeanor.

The chief of the Washington state patrol shall adopt rules for the purpose of regulating record-keeping and parts acquisition by vehicle repairers, restorers, rebuilders, or those who perform substantial vehicle alterations. The provisions of this section do not apply to major repair, restoration, or alteration of a vehicle thirty years of age or older. [1983 c 142 § 1; 1967 c 32 § 59; 1961 c 12 § 46.52.090. Prior: 1937 c 189 § 141; RRS § 6360-141.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

46.52.100 Record of traffic charges—Reports of court—District court venue—Driving under influence of liquor or drugs. Every district court, municipal court, and clerk of superior court shall keep or cause to be kept a record of every traffic complaint, traffic citation, notice of infraction, or other legal form of traffic charge deposited with or presented to the court or a traffic violations bureau, and shall keep a record of every official action by said court or its traffic violations bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment

of acquittal, finding that a traffic infraction has been committed, dismissal of a notice of infraction, and the amount of fine, forfeiture, or penalty resulting from every said traffic complaint, citation, or notice of infraction deposited with or presented to the district court, municipal court, superior court, or traffic violations bureau.

The Monday following the conviction, forfeiture of bail, or finding that a traffic infraction was committed for violation of any provisions of this chapter or other law regulating the operating of vehicles on highways, every said magistrate of the court or clerk of the court of record in which such conviction was had, bail was forfeited, or the finding made shall prepare and immediately forward to the director of licensing at Olympia an abstract of the record of said court covering the case, which abstract must be certified by the person so required to prepare the same to be true and correct. Report need not be made of any finding involving the illegal parking or standing of a vehicle.

Said abstract must be made upon a form furnished by the director and shall include the name and address of the party charged, the number, if any, of the party's driver's or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, whether bail forfeited, whether the determination that a traffic infraction was committed was contested, and the amount of the fine, forfeiture, or penalty as the case may be.

Every court of record shall also forward a like report to the director upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

The failure of any such judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal therefrom.

The director shall keep all abstracts received hereunder at the director's office in Olympia and the same shall be open to public inspection during reasonable business hours.

Venue in all district courts shall be before one of the two nearest district judges in incorporated cities and towns nearest to the point the violation allegedly occurred: *Provided*, That in counties of class A and of the first class such cases may be tried in the county seat at the request of the defendant.

It shall be the duty of the officer, prosecuting attorney, or city attorney signing the charge or information in any case involving a charge of driving under the influence of intoxicating liquor or any drug immediately to make request to the director for an abstract of convictions and forfeitures which the director shall furnish. [1987 c 3 § 18; 1985 c 302 § 6; 1983 c 2 § 12. Prior: 1979 ex.s. c 176 § 4; 1979 ex. sess. c 136 § 81; 1979 c 158 § 163; 1967 c 32 § 60; 1961 c 12 § 46.52.100; prior: 1955 c 393 § 2; 1949 c 196 § 15; 1937 c 189 § 142; Rem. Supp. 1949 § 6360-142.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Severability—1987 c 3: See note following RCW 3.46.020.

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Effective date—**Severability**—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.52.120 Case record of convictions and infractions—Cross-reference to accident reports. (1) The director shall keep a case record on every motor vehicle driver licensed under the laws of this state, together with information on each driver, showing all the convictions and findings of traffic infractions certified by the courts, together with an index cross-reference record of each accident reported relating to such individual with a brief statement of the cause of the accident. The chief of the Washington state patrol shall furnish the index cross-reference record to the director, with reference to each driver involved in the reported accidents.

(2) The records shall be for the confidential use of the director, the chief of the Washington state patrol, the director of the Washington traffic safety commission, and for such police officers or other cognizant public officials as may be designated by law. Such case records shall not be offered as evidence in any court except in case appeal is taken from the order of the director, suspending, revoking, canceling, or refusing a vehicle driver's license or to provide proof of a person's failures to appear under RCW 46.64.020.

(3) The director shall tabulate and analyze vehicle driver's case records and suspend, revoke, cancel, or refuse a vehicle driver's license to a person when it is deemed from facts contained in the case record of such person that it is for the best interest of public safety that such person be denied the privilege of operating a motor vehicle. Whenever the director orders the vehicle driver's license of any such person suspended, revoked, or canceled, or refuses the issuance of a vehicle driver's license, such suspension, revocation, cancellation, or refusal is final and effective unless appeal from the decision of the director is taken as provided by law. [1989 c 178 § 23; 1988 c 38 § 2; 1984 c 99 § 1; 1982 c 52 § 1; 1979 ex.s. c 136 § 83; 1977 ex.s. c 356 § 1; 1967 c 32 § 62; 1961 c 12 § 46.52.120. Prior: 1937 c 189 § 144; RRS § 6360-144.]

Severability—**Effective dates**—1989 c 178: See RCW 46.25.900 and 46.25.901.

Effective date—**Severability**—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.52.130 Abstract of driving record—Confidentiality—Fees—Penalty. A certified abstract of the driving record shall be furnished only to the individual named in the abstract, an employer, the insurance carrier that has insurance in effect covering the employer or a prospective employer, the insurance carrier that has insurance in effect covering the named individual, the insurance carrier to which the named individual has applied, or an alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment. City attorneys

and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment. The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies, and covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies. A certified abstract of the full driving record maintained by the department shall be furnished to individuals and employers or prospective employers. The abstract, whenever possible, shall include an enumeration of motor vehicle accidents in which the person was driving; the total number of vehicles involved; whether the vehicles were legally parked or moving; whether the vehicles were occupied at the time of the accident; any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law; and the status of the person's driving privilege in this state. The enumeration shall include any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

The abstract provided to the insurance company shall exclude any information pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any member of the Washington state patrol, while driving official vehicles in the performance of occupational duty during an emergency situation if the chief of the officer's or fire fighter's department certifies on the accident report that the actions of the officer or fire fighter were reasonable under the circumstances as they existed at the time of the accident.

The director shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund.

Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

Any employer or prospective employer receiving the certified abstract shall use it exclusively for his own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus upon the public highways of this state and shall not divulge any information contained in it to a third party.

Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

Any violation of this section is a gross misdemeanor. [1989 c 178 § 24. Prior: 1987 1st ex.s c 9 § 2; 1987 c 397 § 2; 1987 c 181 § 1; 1986 c 74 § 1; 1985 ex.s. c 1 § 11; 1979 ex.s. c 136 § 84; 1977 ex.s. c 356 § 2; 1977 ex.s. c 140 § 1; 1973 1st ex.s. c 37 § 1; 1969 ex.s. c 40 § 3; 1967 c 174 § 2; 1967 c 32 § 63; 1963 c 169 § 65; 1961 ex.s. c 21 § 27.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Intent—1987 c 397: See note following RCW 46.61.410.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective date—1967 c 174: See note following RCW 46.29.050.

Abstract of driving record to be furnished: RCW 46.29.050.

Use of highway safety fund to defray cost of furnishing and maintaining driving records: RCW 46.68.060.

46.52.190 Abandoned vehicles or hulks—Impoundment—Notification—Hearing—Liability for charges—Nonpayment penalty.

Reviser's note: RCW 46.52.190 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Chapter 46.55

ABANDONED, UNAUTHORIZED, AND JUNK VEHICLES—TOW TRUCK OPERATORS

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- 46.55.901 Headings not part of law.
- 46.55.902 Effective date—1985 c 377.
- 46.55.910 Chapter not applicable to certain activities of department of transportation.

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46.55.010 Definitions. The definitions set forth in this section apply throughout this chapter:

(1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for ninety-six consecutive hours.

(2) "Abandoned vehicle report" means the document prescribed by the state that the towing operator forwards to the department after a vehicle has become abandoned.

(3) "Impound" means to take and hold a vehicle in legal custody. There are two types of impounds—public and private.

(a) "Public impound" means that the vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the public property upon which the vehicle was located.

(b) "Private impound" means that the vehicle has been impounded at the direction of a person having control or possession of the private property upon which the vehicle was located.

(4) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as meeting all the following requirements:

- (a) Is three years old or older;
- (b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;

- (c) Is apparently inoperable;
- (d) Is without a valid, current registration plate;
- (e) Has a fair market value equal only to the value of the scrap in it.

(5) "Master log" means the document or an electronic facsimile prescribed by the department and the Washington state patrol in which an operator records transactions involving impounded vehicles.

(6) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

(7) "Residential property" means property that has no more than four living units located on it.

(8) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing vehicles with equipment as approved by the state patrol.

(9) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

(10) "Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.

(11) "Tow truck service" means the transporting upon the public streets and highways of this state of vehicles, together with personal effects and cargo, by a tow truck of a registered operator.

(12) "Unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

Subject to removal after:

- (a) Public locations:
 - (i) Constituting an accident or a traffic hazard as defined in RCW 46.55.113 Immediately
 - (ii) On a highway and tagged as described in RCW 46.55.085 24 hours
 - (iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 Immediately
- (b) Private locations:
 - (i) On residential property Immediately
 - (ii) On private, nonresidential property, properly posted under RCW 46.55.070 Immediately
 - (iii) On private, nonresidential property, not posted 24 hours

[1989 c 111 § 1. Prior: 1987 c 330 § 739; 1987 c 311 § 1; 1985 c 377 § 1.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

TOW TRUCK OPERATORS—REGISTRATION REQUIREMENTS

46.55.020 Registration required—Penalty. A person shall not engage in or offer to engage in the activities of a registered tow truck operator without a current registration certificate from the department of licensing authorizing him to engage in such activities. Any person

engaging in or offering to engage in the activities of a registered tow truck operator without the registration certificate required by this chapter is guilty of a gross misdemeanor.

A registered operator who engages in a business practice that is prohibited under this chapter may be issued a notice of traffic infraction under chapter 46.63 RCW and is also subject to the civil penalties that may be imposed by the department under this chapter. A person found to have committed an offense that is a traffic infraction under this chapter is subject to a monetary penalty of at least two hundred fifty dollars. All traffic infractions issued under this chapter shall be under the jurisdiction of the district court in whose jurisdiction they were issued. [1989 c 111 § 2; 1985 c 377 § 2.]

46.55.030 Application—Contents, bond, insurance, fee, certificate. (1) Application for licensing as a registered tow truck operator shall be made on forms furnished by the department, shall be accompanied by an inspection certification from the Washington state patrol, shall be signed by the applicant or an agent, and shall include the following information:

- (a) The name and address of the person, firm, partnership, association, or corporation under whose name the business is to be conducted;
- (b) The names and addresses of all persons having an interest in the business, or if the owner is a corporation, the names and addresses of the officers of the corporation;
- (c) The names and addresses of all employees who serve as tow truck drivers;
- (d) Proof of minimum insurance required by subsection (3) of this section;
- (e) The vehicle license and vehicle identification numbers of all tow trucks of which the applicant is the registered owner;
- (f) Any other information the department may require; and
- (g) A certificate of approval from the Washington state patrol certifying that:
 - (i) The applicant has an established place of business and that mail is received at the address shown on the application;
 - (ii) The address of any storage locations where vehicles may be stored is correctly stated on the application;
 - (iii) The place of business has an office area that is accessible to the public without entering the storage area; and
 - (iv) The place of business has adequate and secure storage facilities, as defined in this chapter and the rules of the department, where vehicles and their contents can be properly stored and protected.

(2) Before issuing a registration certificate to an applicant the department shall require the applicant to file with the department a surety bond in the amount of five thousand dollars running to the state and executed by a surety company authorized to do business in this state. The bond shall be approved as to form by the attorney general and conditioned that the operator shall conduct his business in conformity with the provisions of this

chapter pertaining to abandoned or unauthorized vehicles, and to compensate any person, company, or the state for failure to comply with this chapter or the rules adopted hereunder, or for fraud, negligence, or misrepresentation in the handling of these vehicles. Any person injured by the tow truck operator's failure to fully perform duties imposed by this chapter and the rules adopted hereunder, or an ordinance or resolution adopted by a city, town, or county is entitled to recover actual damages, including reasonable attorney's fees against the surety and the tow truck operator. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. As a condition of authority to do business, the operator shall keep the bond in full force and effect. Failure to maintain the penalty value of the bond or cancellation of the bond by the surety automatically cancels the operator's registration.

(3) Before the department may issue a registration certificate to an applicant, the applicant shall provide proof of minimum insurance requirements of:

(a) One hundred thousand dollars for liability for bodily injury or property damage per occurrence; and

(b) Fifty thousand dollars of legal liability per occurrence, to protect against vehicle damage, including but not limited to fire and theft, from the time a vehicle comes into the custody of an operator until it is redeemed or sold.

Cancellation of or failure to maintain the insurance required by (a) and (b) of this subsection automatically cancels the operator's registration.

(4) The fee for each original registration and annual renewal is one hundred dollars per company, plus fifty dollars per truck. The department shall forward the registration fee to the state treasurer for deposit in the motor vehicle fund.

(5) The applicant must submit an inspection certificate from the state patrol before the department may issue or renew an operator's registration certificate or tow truck permits.

(6) Upon approval of the application, the department shall issue a registration certificate to the registered operator to be displayed prominently at the operator's place of business. [1989 c 111 § 3; 1987 c 311 § 2; 1985 c 377 § 3.]

46.55.035 Prohibited acts—Penalty. (1) No registered tow truck operator may:

(a) Ask for or receive any compensation, gratuity, reward, or promise thereof from a person having control or possession of private property or from an agent of the person authorized to sign an impound authorization, for or on account of the impounding of a vehicle;

(b) Be beneficially interested in a contract, agreement, or understanding that may be made by or between a person having control or possession of private property and an agent of the person authorized to sign an impound authorization;

(c) Have a financial, equitable, or ownership interest in a firm, partnership, association, or corporation whose

functions include acting as an agent or a representative of a property owner for the purpose of signing impound authorizations.

(2) This section does not prohibit the registered tow truck operator from collecting the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing of an impounded vehicle as provide by RCW 46.55.120.

(3) A violation of this section is a gross misdemeanor. [1989 c 111 § 4.]

46.55.040 Permit required—Inspections of equipment and facilities. (1) A registered operator shall apply for and keep current a tow truck permit for each tow truck of which the operator is the registered owner. Application for a tow truck permit shall be accompanied by a report from the Washington state patrol covering a physical inspection of each tow truck capable of being used by the applicant.

(2) Upon receipt of the fee provided in RCW 46.55.030(4) and a satisfactory inspection report from the state patrol, the department shall issue each tow truck an annual tow truck permit or decal. The class of the tow truck, determined according to RCW 46.55.050, shall be stamped on the permit or decal. The permit or decal shall be displayed on the passenger side of the truck's front windshield.

(3) A tow truck number from the department shall be affixed in a permanent manner to each tow truck.

(4) The Washington state patrol shall conduct annual inspections of tow truck operators' equipment and facilities during the operators' normal business hours. Un-scheduled inspections may be conducted without notice at the operator's place of business by an inspector to determine the fitness of a tow truck or facilities. At the time of the inspection, the operator shall provide a paper copy of the master log referred to in RCW 46.55.080.

(5) If at the time of the annual or subsequent inspections the equipment does not meet the requirements of this chapter, and the deficiency is a safety related deficiency, or the equipment is necessary to the truck's performance, the inspector shall cause the registered tow truck operator to remove that equipment from service as a tow truck until such time as the equipment has been satisfactorily repaired. A red tag shall be placed on the windshield of a tow truck taken out of service, and the tow truck shall not provide tow truck service until the Washington state patrol recertifies the truck and removes the tag. [1989 c 111 § 5; 1985 c 377 § 4.]

46.55.050 Classification of trucks—Marking requirements—Time and place of inspection—Penalty.

(1) Tow trucks shall be classified by towing capabilities, and shall meet or exceed all equipment standards set by the state patrol for the type of tow trucks to be used by an operator.

(2) All tow trucks shall display the firm's name, city of address, and telephone number. This information shall be painted on or permanently affixed to both sides of the vehicle in accordance with rules adopted by the department.

(3) Before a tow truck is put into tow truck service, or when the reinspection of a tow truck is necessary, the district commander of the state patrol shall designate a location and time for the inspection to be conducted. When practicable, the inspection or reinspection shall be made within three business days following the request by the operator.

(4) Failure to comply with any requirement of this section or rules adopted under it is a traffic infraction. [1987 c 330 § 740; 1985 c 377 § 5.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.55.060 Business location—Requirements. (1) The address that the tow truck operator lists on his or her application shall be the business location of the firm where its files are kept. Each separate business location requires a separate registration under this chapter. The application shall also list all locations of secure areas for vehicle storage and redemption.

(2) Before an additional lot may be used for vehicle storage, it must be inspected and approved by the state patrol. The lot must also be inspected and approved on an annual basis for continued use.

(3) Each business location must have a sign displaying the firm's name that is readable from the street.

(4) At the business locations listed where vehicles may be redeemed, the registered operator shall post in a conspicuous and accessible location:

(a) All pertinent licenses and permits to operate as a registered tow truck operator;

(b) The current towing and storage charges itemized on a form approved by the department;

(c) The vehicle redemption procedure and rights;

(d) Information supplied by the department as to where complaints regarding either equipment or service are to be directed;

(e) Information concerning the acceptance of commercially reasonable tender as defined in RCW 46.55.120(1)(b).

(5) The department shall adopt rules concerning fencing and security requirements of storage areas, which may provide for modifications or exemptions where needed to achieve compliance with local zoning laws.

(6) On any day when the registered tow truck operator holds the towing services open for business, the business office shall remain open with personnel present who are able to release impounded vehicles in accordance with this chapter and the rules adopted under it. The normal business hours of a towing service shall be from 8:00 a.m. to 5:00 p.m. on weekdays, excluding Saturdays, Sundays, and holidays.

(7) A registered tow truck operator shall maintain personnel who can be contacted twenty-four hours a day to release impounded vehicles within a reasonable time.

(8) A registered operator shall provide access to a telephone for any person redeeming a vehicle, at the time of redemption. [1989 c 111 § 6; 1987 c 311 § 3; 1985 c 377 § 6.]

46.55.063 Fees, schedules, contracts, invoices. (1) An operator shall file a fee schedule with the department. All filed fees must be adequate to cover the costs of service provided. No fees may exceed those filed with the department. At least ten days before the effective date of any change in an operator's fee schedule, the registered tow truck operator shall file the revised fee schedule with the department.

(2) Towing contracts with private property owners shall be in written form and state the hours of authorization to impound, the persons empowered to authorize the impounds, and the present charge of a private impound for the classes of tow trucks to be used in the impound, and must be retained in the files of the registered tow truck operator for three years.

(3) A fee that is charged for tow truck service must be calculated on an hourly basis, and after the first hour must be charged to the nearest quarter hour.

(4) A fee that is charged for the storage of a vehicle must be calculated on a twenty-four hour basis and must be charged to the nearest half day from the time the vehicle arrived at the secure storage area.

(5) All billing invoices that are provided to the redeemer of the vehicle must be itemized so that the individual fees are clearly discernable. [1989 c 111 § 7.]

IMPOUNDING UNAUTHORIZED VEHICLES

46.55.070 Posting requirements—Exception. (1) No person may impound, tow, or otherwise disturb any unauthorized vehicle standing on nonresidential private property or in a public parking facility for less than twenty-four hours unless a sign is posted near each entrance and on the property in a clearly conspicuous and visible location to all who park on such property that clearly indicates:

(a) The times a vehicle may be impounded as an unauthorized vehicle; and

(b) The name, telephone number, and address of the towing firm where the vehicle may be redeemed.

(2) The requirements of subsection (1) of this section do not apply to residential property. Any person having charge of such property may have an unauthorized vehicle impounded immediately upon giving written authorization.

(3) The department shall adopt rules relating to the size of the sign required by subsection (1) of this section, its lettering, placement, and the number required.

(4) This section applies to all new signs erected after July 1, 1986. All other signs must meet these requirements by July 1, 1989. [1987 c 311 § 4; 1985 c 377 § 7.]

46.55.080 Law enforcement impound, private impound—Master log—Certain associations restricted. (1) If a vehicle is in violation of the time restrictions of RCW 46.55.010(12), it may be impounded by a registered tow truck operator at the direction of a law enforcement officer or other public official with jurisdiction if the vehicle is on public property, or at the direction of the property owner or an agent if it is on

private property. A law enforcement officer may also direct the impoundment of a vehicle pursuant to a writ or court order.

(2) The person requesting a private impound or a law enforcement officer or public official requesting a public impound shall provide a signed authorization for the impound at the time and place of the impound to the registered tow truck operator before the operator may proceed with the impound. A registered tow truck operator, employee, or his or her agent may not serve as an agent of a property owner for the purposes of signing an impound authorization or, independent of the property owner, identify a vehicle for impound.

(3) In the case of a private impound, the impound authorization shall include the following statement: "A person authorizing this impound, if the impound is found in violation of chapter 46.55 RCW, may be held liable for the costs incurred by the vehicle owner."

(4) A registered tow truck operator shall record and keep in the operator's files the date and time that a vehicle is put in the operator's custody and released. The operator shall make an entry into a master log regarding transactions relating to impounded vehicles. The operator shall make this master log available, upon request, to representatives of the department or the state patrol.

(5) A person who engages in or offers to engage in the activities of a registered tow truck operator may not be associated in any way with a person or business whose main activity is authorizing the impounding of vehicles. [1989 c 111 § 8; 1987 c 311 § 5; 1985 c 377 § 8.]

46.55.085 Law enforcement impound—Abandoned vehicle. (1) A law enforcement officer discovering an apparently abandoned vehicle shall attach to the vehicle a readily visible notification sticker. The sticker shall contain the following information:

(a) The date and time the sticker was attached;

(b) The identity of the officer;

(c) A statement that if the vehicle is not removed within twenty-four hours from the time the sticker is attached, the vehicle may be taken into custody and stored at the owner's expense; and

(d) The address and telephone number where additional information may be obtained.

(2) If the vehicle has current Washington registration plates, the officer shall check the records to learn the identity of the last owner of record. The officer or his department shall make a reasonable effort to contact the owner by telephone in order to give the owner the information on the notification sticker.

(3) If the vehicle is not removed within twenty-four hours from the time the notification sticker is attached, the law enforcement officer may take custody of the vehicle and provide for the vehicle's removal to a place of safety.

(4) For the purposes of this section a place of safety includes the business location of a registered tow truck operator. [1987 c 311 § 6. Formerly RCW 46.52.170 and 46.52.180.]

46.55.090 Storage, return requirements—Personal belongings—Combination endorsement for tow truck drivers—Viewing impounded vehicle. (Effective until April 1, 1992.) (1) All vehicles impounded shall be taken to the nearest storage location that has been inspected and is listed on the application filed with the department.

(2) All vehicles shall be handled and returned in substantially the same condition as they existed before being towed.

(3) All personal belongings and contents in the vehicle shall be kept intact, and shall be returned to the vehicle's owner or agent during normal business hours upon request and presentation of a driver's license or other sufficient identification. Personal belongings shall not be sold at auction to fulfill a lien against the vehicle.

(4) All personal belongings not claimed before the auction shall be turned over to the local law enforcement agency to which the initial notification of impoundment was given. Such personal belongings shall be disposed of pursuant to chapter 63.32 or 63.40 RCW.

(5) Tow truck drivers shall have a Washington state driver's license endorsed for vehicle combinations under RCW 46.20.440 or the equivalent issued by another state.

(6) Any person who shows proof of ownership or written authorization from the impounded vehicle's registered or legal owner or the vehicle's insurer may view the vehicle without charge during normal business hours. [1987 c 311 § 7; 1985 c 377 § 9.]

46.55.090 Storage, return requirements—Personal belongings—Combination endorsement for tow truck drivers—Viewing impounded vehicle. (Effective April 1, 1992.) (1) All vehicles impounded shall be taken to the nearest storage location that has been inspected and is listed on the application filed with the department.

(2) All vehicles shall be handled and returned in substantially the same condition as they existed before being towed.

(3) All personal belongings and contents in the vehicle shall be kept intact, and shall be returned to the vehicle's owner or agent during normal business hours upon request and presentation of a driver's license or other sufficient identification. Personal belongings shall not be sold at auction to fulfill a lien against the vehicle.

(4) All personal belongings not claimed before the auction shall be turned over to the local law enforcement agency to which the initial notification of impoundment was given. Such personal belongings shall be disposed of pursuant to chapter 63.32 or 63.40 RCW.

(5) Tow truck drivers shall have a Washington state driver's license endorsed for the appropriate classification under chapter 46.25 RCW or the equivalent issued by another state.

(6) Any person who shows proof of ownership or written authorization from the impounded vehicle's registered or legal owner or the vehicle's insurer may view the vehicle without charge during normal business hours. [1989 c 178 § 25; 1987 c 311 § 7; 1985 c 377 § 9.]

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

46.55.100 Impound notice—Abandoned vehicle report—Owner information—Disposition report. (1) At the time of impoundment the registered tow truck operator providing the towing service shall give immediate notification, by telephone or radio, to a law enforcement agency having jurisdiction who shall maintain a log of such reports. A law enforcement agency shall immediately provide to a requesting operator the name and address of the legal and registered owners of the vehicle, the vehicle identification number, and any other necessary, pertinent information. The initial notice of impoundment shall be followed by a written notice within twenty-four hours. In the case of a vehicle from another state, time requirements of this subsection do not apply until the requesting law enforcement agency in this state receives the information.

(2) The operator shall immediately send an abandoned vehicle report to the department for any vehicle in the operator's possession after the ninety-six hour abandonment period. Such report need not be sent when the impoundment is pursuant to a writ, court order, or police hold. The owner notification and abandonment process shall be initiated by the registered tow truck operator immediately following notification by a court or law enforcement officer that the writ, court order, or police hold is no longer in effect.

(3) Following the submittal of an abandoned vehicle report, the department shall provide the registered tow truck operator with owner information within seventy-two hours.

(4) Within fifteen days of the sale of an abandoned vehicle at public auction, the towing operator shall send a copy of the abandoned vehicle report showing the disposition of the abandoned vehicle to the crime information center of the Washington state patrol.

(5) If the operator sends an abandoned vehicle report to the department and the department finds no owner information, an operator may proceed with an inspection of the vehicle to determine whether owner identification is within the vehicle.

(6) If the operator finds no owner identification, the operator shall immediately notify the appropriate law enforcement agency, which shall search the vehicle for the vehicle identification number and check the necessary records to determine the vehicle's owners. [1989 c 111 § 9; 1987 c 311 § 8; 1985 c 377 § 10.]

46.55.110 Notice to legal and registered owners. (1) When an unauthorized vehicle is impounded, the impounding towing operator shall notify the legal and registered owners of the impoundment of the unauthorized vehicle. The notification shall be sent by first-class mail within twenty-four hours after the impoundment to the last known registered and legal owners of the vehicle, as provided by the law enforcement agency, and shall inform the owners of the identity of the person or agency authorizing the impound. The notification shall include the name of the impounding tow firm, its address, and

telephone number. The notice shall also include the location, time of the impound, and by whose authority the vehicle was impounded. The notice shall also include the written notice of the right of redemption and opportunity for a hearing to contest the validity of the impoundment pursuant to RCW 46.55.120.

(2) In the case of an abandoned vehicle, within twenty-four hours after receiving information on the vehicle owners from the department through the abandoned vehicle report, the tow truck operator shall send by certified mail, with return receipt requested, a notice of custody and sale to the legal and registered owners.

(3) No notices need be sent to the legal or registered owners of an impounded vehicle if the vehicle has been redeemed. [1989 c 111 § 10; 1987 c 311 § 9; 1985 c 377 § 11.]

46.55.113 Removal by police officer, when. A police officer may take custody of a vehicle and provide for its prompt removal to a place of safety under any of the following circumstances:

(1) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

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

(3) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable, or too intoxicated, to decide upon steps to be taken to protect his or her property;

(4) Whenever the driver of a vehicle is arrested and taken into custody by a police officer, and the driver, because of intoxication or otherwise, is mentally incapable of deciding upon steps to be taken to safeguard his or her property;

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

(6) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property.

Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator. [1987 c 311 § 10. Formerly RCW 46.61.565.]

46.55.115 State patrol—Removal of vehicles directly or by towing operators—Lien for costs of removal and storage—Appeal. The Washington state patrol, under its authority to remove vehicles from the highway, may remove the vehicles directly, through towing operators appointed by the state patrol and called

on a rotational or other basis, through contracts with towing operators, or by a combination of these methods. When removal is to be accomplished through a towing operator on a noncontractual basis, the state patrol may appoint any towing operator for this purpose upon the application of the operator. Each appointment shall be contingent upon the submission of an application to the state patrol and the making of subsequent reports in such form and frequency and compliance with such standards of equipment, performance, pricing, and practices as may be required by rule of the state patrol.

An appointment may be rescinded by the state patrol upon evidence that the appointed towing operator is not complying with the laws or rules relating to the removal and storage of vehicles from the highway. The costs of removal and storage of vehicles under this section shall be paid by the owner or driver of the vehicle and shall be a lien upon the vehicle until paid, unless the removal is determined to be invalid.

Rules promulgated under this section shall be binding only upon those towing operators appointed by the state patrol for the purpose of performing towing services at the request of the Washington state patrol. Any person aggrieved by a decision of the state patrol made under this section may appeal the decision under chapter 34.05 RCW. [1987 c 330 § 744; 1979 ex.s. c 178 § 22; 1977 ex.s. c 167 § 5. Formerly RCW 46.61.567.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1979 ex.s. c 178: See note following RCW 46.61.590.

REDEMPTION RIGHTS AND HEARING PROCEDURES

46.55.120 Redemption of vehicles—Sale of unredeemed vehicles—Impoundment in violation of chapter.

(1) Vehicles impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle, or one who has purchased a vehicle from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle.

(b) The vehicle shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards, or personal checks drawn on in-state banks if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days

from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2) (a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section. If the hearing request is not received by the district court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(3) (a) The district court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle shall bear no impoundment, towing, or

storage fees, and any bond or other security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment for reasonable damages for loss of the use of the vehicle during the time the same was impounded, for not less than fifty dollars per day, against the person or agency authorizing the impound. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO: -----
 YOU ARE HEREBY NOTIFIED JUDGMENT
 was entered against you in the ----- Court
 located at ----- in the sum of \$-----,
 in an action entitled -----, Case No.
 YOU ARE FURTHER NOTIFIED that attorneys
 fees and costs will be awarded against you under
 RCW --- if the judgment is not paid within 15
 days of the date of this notice.
 DATED this --- day of ---, 19 ----
 Signature -----
 Typed name and address
 of party mailing notice

(4) Any impounded abandoned vehicle not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(2) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle may be redeemed at any time before the start of the auction upon payment of towing and storage fees. [1989 c 111 § 11; 1987 c 311 § 12; 1985 c 377 § 12.]

46.55.130 Notice requirements—Public auction—Accumulation of storage charges. (1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(2) to the registered and legal owners, the vehicle remains unclaimed and has not been listed as a stolen vehicle, then the registered tow truck operator having custody of the vehicle shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the vehicle is located not less than three days and no more than ten days before the date of the auction. The notice shall contain a description of the vehicle including the make, model, year, and license number and a notification that a three-hour public viewing period will be available before the auction. The auction shall be held during daylight hours of a normal business day.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid;

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The successful bidder shall apply for title within fifteen days;

(g) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes in detail where the auction will be held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

(h) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record as determined by the department within one year from the date of the auction, the surplus moneys shall be remitted to such owner;

(i) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within thirty days sell the vehicle to a licensed vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report—affidavit of sale, or the operator shall apply for title to the vehicle.

(3) In no case may an operator hold a vehicle for longer than ninety days without holding an auction on the vehicle, except for vehicles that are under a police or judicial hold.

(4) (a) In no case may the accumulation of storage charges exceed fifteen days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(2).

(b) The failure of the registered tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a

failure to comply with these time limits if correct information is available. [1989 c 111 § 12; 1987 c 311 § 13; 1985 c 377 § 13.]

46.55.140 Operator's lien, deficiency claim, liability.

(1) A registered tow truck operator who has a valid and signed impoundment authorization has a lien upon the impounded vehicle for services provided in the towing and storage of the vehicle, unless the impoundment is determined to have been invalid. The lien does not apply to personal property in or upon the vehicle that is not permanently attached to or is not an integral part of the vehicle. The registered tow truck operator also has a deficiency claim against the registered owner of the vehicle for services provided in the towing and storage of the vehicle not to exceed the sum of three hundred dollars less the amount bid at auction, and for vehicles of over ten thousand pounds gross vehicle weight, the operator has a deficiency claim of one thousand dollars less the amount bid at auction, unless the impound is determined to be invalid. In no case may the cost of the auction or a buyer's fee be added to the amount charged for the vehicle at the auction, the vehicle's lien, or the overage due. A registered owner who has completed and filed with the department the seller's report as provided for by RCW 46.12.101 is relieved of liability under this section.

(2) Any person who tows, removes, or otherwise disturbs any vehicle parked, stalled, or otherwise left on privately owned or controlled property, and any person owning or controlling the private property, or either of them, are liable to the owner or operator of a vehicle, or each of them, for consequential and incidental damages arising from any interference with the ownership or use of the vehicle which does not comply with the requirements of this chapter. [1989 c 111 § 13; 1987 c 311 § 14; 1985 c 377 § 14.]

RECORDS, INSPECTIONS, AND ENFORCEMENT

46.55.150 Vehicle transaction file. The registered tow truck operator shall keep a transaction file on each vehicle. The transaction file shall contain as a minimum those of the following items that are required at the time the vehicle is redeemed or becomes abandoned and is sold at a public auction:

(1) A signed impoundment authorization as required by RCW 46.55.080;

(2) A record of the twenty-four hour written impound notice to a law enforcement agency;

(3) A copy of the impoundment notification to registered and legal owners, sent within twenty-four hours of impoundment, that advises the owners of the address of the impounding firm, a twenty-four hour telephone number, and the name of the person or agency under whose authority the vehicle was impounded;

(4) A copy of the abandoned vehicle report that was sent to and returned by the department;

(5) A copy and proof of mailing of the notice of custody and sale sent by the registered tow truck operator

to the owners advising them they have fifteen days to redeem the vehicle before it is sold at public auction;

(6) A copy of the published notice of public auction;

(7) A copy of the affidavit of sale showing the sales date, purchaser, amount of the lien, and sale price;

(8) A record of the two highest bid offers on the vehicle, with the names, addresses, and telephone numbers of the two bidders;

(9) A copy of the notice of opportunity for hearing given to those who redeem vehicles;

(10) An itemized invoice of charges against the vehicle.

The transaction file shall be kept for a minimum of three years. [1989 c 111 § 14; 1987 c 311 § 15; 1985 c 377 § 15.]

46.55.160 Availability of records, equipment, and facilities for audit and inspection. Records, equipment, and facilities of a registered tow truck operator shall be available during normal business hours for audit or inspection by the department of licensing, the Washington state patrol, or any law enforcement agency having jurisdiction. [1985 c 377 § 16.]

46.55.170 Complaints, where forwarded. (1) All law enforcement agencies or local licensing agencies that receive complaints involving registered tow truck operators shall forward the complaints, along with any supporting documents including all results from local investigations, to the department.

(2) Complaints involving deficiencies of equipment shall be forwarded by the department to the state patrol. [1987 c 330 § 741; 1985 c 377 § 17.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.55.180 Presiding officer at licensing hearing. The director or the chief of the state patrol may use a hearing officer or administrative law judge for presiding over a hearing regarding licensing provisions under this chapter or rules adopted under it. [1989 c 111 § 15; 1987 c 330 § 742; 1985 c 377 § 18.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.55.190 Rules. The director, in cooperation with the chief of the Washington state patrol, shall adopt rules that carry out the provisions and intent of this chapter. [1985 c 377 § 19.]

46.55.200 Penalties for certain acts or omissions. A registered tow truck operator's license may be denied, suspended, or revoked, or the licensee may be ordered to pay a monetary penalty of a civil nature, not to exceed one thousand dollars per violation, or the licensee may be subjected to any combination of license and monetary penalty, whenever the director has reason to believe the licensee has committed, or is at the time committing, a violation of this chapter or rules adopted under it or any other statute or rule relating to the title or disposition of vehicles or vehicle hulks, including but not limited to:

(1) Towing any abandoned vehicle without first obtaining and having in the operator's possession at all times while transporting it, appropriate evidence of ownership or an impound authorization properly executed by the private person or public official having control over the property on which the unauthorized vehicle was found;

(2) Forging the signature of the registered or legal owner on a certificate of title, or forging the signature of any authorized person on documents pertaining to unauthorized or abandoned vehicles or automobile hulks;

(3) Failing to comply with the statutes and rules relating to the processing and sale of abandoned vehicles;

(4) Failing to accept bids on any abandoned vehicle offered at public sale;

(5) Failing to transmit to the state surplus funds derived from the sale of an abandoned vehicle;

(6) Selling, disposing of, or having in his possession, without notifying law enforcement officials, a vehicle that he knows or has reason to know has been stolen or illegally appropriated without the consent of the owner;

(7) Failing to comply with the statutes and rules relating to the transfer of ownership of vehicles or other procedures after public sale; or

(8) Failing to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after the assessment becomes final.

All orders by the director made under this chapter are subject to the Administrative Procedure Act, chapter 34.05 RCW. [1989 c 111 § 16; 1985 c 377 § 20.]

46.55.210 Cease and desist order. Whenever it appears to the director that any registered tow truck operator or a person offering towing services has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule adopted hereunder, the director may issue an order directing the operator or person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order pending a hearing. The temporary order shall remain in effect until ten days after the hearing is held and shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of notice. [1987 c 311 § 17; 1985 c 377 § 21.]

46.55.220 Refusal to issue license, grounds for. If an application for a license to conduct business as a registered tow truck operator is filed by any person whose license has previously been canceled for cause by the department, or if the department is of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license has previously been canceled for cause, the department, after a hearing, of which the applicant has been given twenty days' notice in writing and at which the applicant may appear in person or by counsel and present testimony, may refuse to issue such a person a license to conduct business as a

registered tow truck operator. [1987 c 311 § 18; 1985 c 377 § 22.]

JUNK VEHICLE DISPOSITION

46.55.230 Junk vehicles—Certification, notification, removal, sale. (1) Notwithstanding any other provision of law, any law enforcement officer having jurisdiction or any person authorized by the director may inspect and certify that a vehicle meets the requirements of a junk vehicle. The person making the certification shall record the make and vehicle identification number or license number of the vehicle if available, and shall also describe in detail the damage or missing equipment to verify that the value of the junk vehicle is equivalent only to the value of the scrap in it.

(2) The law enforcement officer or department representative shall provide information on the vehicle's registered and legal owner to the landowner.

(3) Upon receiving information on the vehicle's registered and legal owner, the landowner shall obtain a junk vehicle notification form from the department. The landowner shall send by certified mail, notification to the registered and legal owners shown on the records of the department. The notification shall describe the redemption procedure and the right to contest the sale of a junk vehicle in a district court hearing.

(4) If the vehicle remains unclaimed more than fifteen days after the landowner has mailed notification to the registered and legal owner, the landowner may sign an affidavit of sale to be used as a title document.

(5) If no information on the vehicle's registered and legal owner is found in the records of the department, the landowner shall place a legal notice of custody and sale in a newspaper of general circulation in the county. The newspaper notice shall include (a) the description of the vehicle; (b) the address of the location of the junk vehicle; (c) the date by which the registered or legal owner must redeem the vehicle; and (d) a telephone number where the landowner can be reached. If the vehicle remains unclaimed more than twenty days after publication of the notice, the landowner may sign an affidavit of sale to be used as a title document.

(6) The landowner of the property upon which the junk vehicle is located is entitled to recover from the vehicle's registered owner any costs incurred in the removal of the junk vehicle.

(7) For the purposes of this section, the term "landowner" includes a legal owner of private property, a person with possession or control of private property, or a public official having jurisdiction over public property. [1987 c 311 § 19; 1985 c 377 § 23.]

LOCAL REGULATION

46.55.240 Local ordinances—Requirements. (1) A city, town, or county that adopts an ordinance or resolution concerning unauthorized, abandoned, or impounded vehicles shall include the applicable provisions of this chapter.

(a) A city, town, or county may, by ordinance, authorize other impound situations that may arise locally upon the public right-of-way or other publicly owned or controlled property.

(b) A city, town, or county ordinance shall contain language that establishes a written form of authorization to impound, which may include a law enforcement notice of infraction or citation, clearly denoting the agency's authorization to impound.

(c) A city, town, or county may, by ordinance, provide for release of an impounded vehicle by means of a promissory note in lieu of immediate payment, if at the time of redemption the legal or registered owner requests a hearing on the validity of the impoundment. If the municipal ordinance directs the release of an impounded vehicle before the payment of the impoundment charges, the municipality is responsible for the payment of those charges to the registered tow truck operator within thirty days of the hearing date.

(d) The hearing specified in RCW 46.55.120(2) and in this section may be conducted by an administrative hearings officer instead of in the district court. A decision made by an administrative hearing officer may be appealed to the district court for final judgment.

(2) A city, town, or county may adopt an ordinance establishing procedures for the abatement and removal as public nuisances of unauthorized junk vehicles or parts thereof from private property. Costs of removal may be assessed against the registered owner of the vehicle if the identity of the owner can be determined, unless the owner in the transfer of ownership of the vehicle has complied with RCW 46.12.101, or the costs may be assessed against the owner of the property on which the vehicle is stored.

(3) Ordinances pertaining to public nuisances shall contain:

(a) A provision requiring notice to the last registered owner of record and the property owner of record that a hearing may be requested and that if no hearing is requested, the vehicle will be removed;

(b) A provision requiring that if a request for a hearing is received, a notice giving the time, location, and date of the hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record unless the vehicle is in such condition that identification numbers are not available to determine ownership;

(c) A provision that the ordinance shall not apply to (i) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (ii) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with

the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130;

(d) A provision that the owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with his reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he has not subsequently acquiesced in its presence, then the local agency shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the owner;

(e) A provision that after notice has been given of the intent of the city, town, or county to dispose of the vehicle and after a hearing, if requested, has been held, the vehicle or part thereof shall be removed at the request of a law enforcement officer with notice to the Washington state patrol and the department of licensing that the vehicle has been wrecked. The city, town, or county may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or may transfer such vehicle or parts to another governmental body provided such disposal shall be only as scrap.

(4) A registered disposer under contract to a city or county for the impounding of vehicles shall comply with any administrative regulations adopted by the city or county on the handling and disposing of vehicles. [1989 c 111 § 17; 1987 c 311 § 20; 1985 c 377 § 24.]

MISCELLANEOUS

46.55.900 Severability—1985 c 377. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 377 § 26.]

46.55.901 Headings not part of law. Headings and captions used in this act are not any part of the law. [1985 c 377 § 27.]

46.55.902 Effective date—1985 c 377. This act shall take effect on January 1, 1986. [1985 c 377 § 31.]

46.55.910 Chapter not applicable to certain activities of department of transportation. This chapter does not apply to the state department of transportation to the extent that it may remove vehicles that are traffic hazards from bridges and the mountain passes without prior authorization. If such a vehicle is removed, the department shall immediately notify the appropriate local law enforcement agency, and the vehicle shall be processed in accordance with RCW 46.55.110. [1989 c 111 § 18.]

**Chapter 46.61
RULES OF THE ROAD**

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OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

46.61.005 Provisions of chapter refer to vehicles upon the highways—Exceptions. The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(1) Where a different place is specifically referred to in a given section.

(2) The provisions of RCW 46.52.010 through 46.52.090 and 46.61.500 through 46.61.520 shall apply upon highways and elsewhere throughout the state. [1965 ex.s. c 155 § 1.]

Reviser's note: RCW 46.52.010 through 46.52.090 relate to accident reports. Chapter 119, Laws of 1965 ex. sess. being "AN ACT Relating to motor vehicle accident reports" amended RCW 46.52.030 and 46.52.080 and expressly added to chapter 46.52 RCW three new sections which are codified (in the order of their appearance in chapter 119) as RCW 46.52.035, 46.52.083, and 46.52.085.

46.61.015 Obedience to police officers, flagmen, or fire fighters. No person shall wilfully fail or refuse to comply with any lawful order or direction of any duly authorized flagman or any police officer or fire fighter invested by law with authority to direct, control, or regulate traffic. [1975 c 62 § 17; 1965 ex.s. c 155 § 3.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.020 Refusal to give information to or cooperate with officer. It is unlawful for any person while operating or in charge of any vehicle to refuse when requested by a police officer to give his name and address and the name and address of the owner of such vehicle, or for such person to give a false name and address, and it is likewise unlawful for any such person to refuse or neglect to stop when signaled to stop by any police officer or to refuse upon demand of such police officer to produce his certificate of license registration of such vehicle, his insurance identification card, or his vehicle driver's license or to refuse to permit such officer to take any such license, card, or certificate for the purpose of examination thereof or to refuse to permit the examination of any equipment of such vehicle or the weighing of such vehicle or to refuse or neglect to produce the certificate of license registration of such vehicle, insurance card, or his vehicle driver's license when requested by any court. Any police officer shall on request produce

evidence of his authorization as such. [1989 c 353 § 6; 1967 c 32 § 65; 1961 c 12 § 46.56.190. Prior: 1937 c 189 § 126; RRS § 6360-126; 1927 c 309 § 38; RRS § 6362-38. Formerly RCW 46.56.190.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

46.61.021 Duty to obey law enforcement officer—Authority of officer. (1) Any person requested or signaled to stop by a law enforcement officer for a traffic infraction has a duty to stop.

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

(3) Any person requested to identify himself to a law enforcement officer pursuant to an investigation of a traffic infraction has a duty to identify himself, give his current address, and sign an acknowledgement of receipt of the notice of infraction. [1989 c 353 § 7; 1979 ex.s. c 136 § 4.]

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.61.022 Failure to obey officer—Penalty. Any person who wilfully fails to stop when requested or signaled to do so by a person reasonably identifiable as a law enforcement officer or to comply with RCW 46.61.021(3), is guilty of a misdemeanor. [1979 ex.s. c 136 § 5.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.61.024 Attempting to elude pursuing police vehicle—License revocation. Any driver of a motor vehicle who wilfully fails or refuses to immediately bring his vehicle to a stop and who drives his vehicle in a manner indicating a wanton or wilful disregard for the lives or property of others while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and his vehicle shall be appropriately marked showing it to be an official police vehicle.

The license or permit to drive or any nonresident driving privilege of a person convicted of a violation of this section shall be revoked by the department of licensing. [1983 c 80 § 1; 1982 1st ex.s. c 47 § 25; 1979 ex.s. c 75 § 1.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

46.61.025 Persons riding animals or driving animal-drawn vehicles. Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter except those provisions of this chapter which by their very nature can have no application. [1965 ex.s. c 155 § 4.]

46.61.030 Persons working on highway right of way—Exceptions. Unless specifically made applicable, the provisions of this chapter except those contained in RCW 46.61.500 through 46.61.520 shall not apply to persons, motor vehicles and other equipment while engaged in work within the right of way of any highway but shall apply to such persons and vehicles when traveling to or from such work. [1969 c 76 § 1; 1965 ex.s. c 155 § 5.]

46.61.035 Authorized emergency vehicles. (1) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(2) The driver of an authorized emergency vehicle may:

(a) Park or stand, irrespective of the provisions of this chapter;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the maximum speed limits so long as he does not endanger life or property;

(d) Disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of visual signals meeting the requirements of RCW 46.37.190, except that: (a) An authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle; (b) authorized emergency vehicles shall use audible signals when necessary to warn others of the emergency nature of the situation but in no case shall they be required to use audible signals while parked or standing.

(4) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others. [1969 c 23 § 1; 1965 ex.s. c 155 § 6.]

TRAFFIC SIGNS, SIGNALS, AND MARKINGS

46.61.050 Obedience to and required traffic control devices. (1) The driver of any vehicle, every bicyclist, and every pedestrian shall obey the instructions of any official traffic control device applicable thereto placed in

accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exception granted the driver of an authorized emergency vehicle in this chapter.

(2) No provision of this chapter for which official traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible or visible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic control devices are required, such section shall be effective even though no devices are erected or in place.

(3) Whenever official traffic control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(4) Any official traffic control device placed pursuant to the provisions of this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter, unless the contrary shall be established by competent evidence. [1975 c 62 § 18; 1965 ex.s. c 155 § 7.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.055 Traffic control signal legend. Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication

(a) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(b) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(c) Unless otherwise directed by a pedestrian control signal, as provided in RCW 46.61.060 as now or hereafter amended, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow indication

(a) Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(b) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian control signal as provided in RCW 46.61.060 as now or hereafter amended, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(3) Steady red indication

(a) Vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown: *Provided*, That such traffic may, after stopping cautiously proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by competent authority prohibits such movement; but vehicular traffic making such turns shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(b) Unless otherwise directed by a pedestrian control signal as provided in RCW 46.61.060 as now or hereafter amended, pedestrians facing a steady circular red signal alone shall not enter the roadway.

(c) Vehicular traffic facing a steady red arrow indication may not enter the intersection to make the movement indicated by such arrow, and unless entering the intersection to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line, but if none, before entering a crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to make the movement indicated by such arrow is shown: *Provided*, That such traffic may, after stopping cautiously proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way street or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by competent authority prohibits such movement; but vehicular traffic making such turns shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(d) Unless otherwise directed by a pedestrian signal, pedestrians facing a steady red arrow signal indication shall not enter the roadway.

(4) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable

except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal. [1975 c 62 § 19; 1965 ex.s. c 155 § 8.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.060 Pedestrian control signals. Whenever special pedestrian control signals exhibiting the words "Walk" or "Don't Walk" are in place such signals shall indicate as follows:

(1) **WALK**—Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles.

(2) **STEADY DON'T WALK** or **FLASHING DON'T WALK**—No pedestrian shall start to cross the roadway in the direction of either such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the don't walk signal is showing.

(3) Pedestrian control signals having the "Wait" legend in use on August 6, 1965, shall be deemed authorized signals and shall indicate the same as the "Don't Walk" legend. Whenever such pedestrian control signals are replaced the legend "Wait" shall be replaced by the legend "Don't Walk". [1975 c 62 § 20; 1965 ex.s. c 155 § 9.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.065 Flashing signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(a) **FLASHING RED (STOP SIGNAL).** When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) **FLASHING YELLOW (CAUTION SIGNAL).** When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in RCW 46.61.340. [1975 c 62 § 21; 1965 ex.s. c 155 § 10.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.070 Lane-direction-control signals. When lane-direction-control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown,

but shall not enter or travel in any lane over which a red signal is shown. [1965 ex.s. c 155 § 11.]

46.61.072 Special traffic control signals—Legend. Whenever special traffic control signals exhibit a downward green arrow, a yellow X, or a red X indication, such signal indication shall have the following meaning:

(1) A steady downward green arrow means that a driver is permitted to drive in the lane over which the arrow signal is located.

(2) A steady yellow X or flashing red X means that a driver should prepare to vacate, in a safe manner, the lane over which the signal is located because a lane control change is being made, and to avoid occupying that lane when a steady red X is displayed.

(3) A flashing yellow X means that a driver is permitted to use a lane over which the signal is located for a left turn, using proper caution.

(4) A steady red X means that a driver shall not drive in the lane over which the signal is located, and that this indication shall modify accordingly the meaning of all other traffic controls present. The driver shall obey all other traffic controls and follow normal safe driving practices. [1975 c 62 § 49.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.075 Display of unauthorized signs, signals, or markings. (1) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(4) Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice. [1965 ex.s. c 155 § 12.]

46.61.080 Interference with official traffic-control devices or railroad signs or signals. No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof. [1965 ex.s. c 155 § 13.]

Interference with traffic-control signals or railroad signs or signals:
RCW 47.36.130.

46.61.085 Traffic control signals or devices upon city streets forming part of state highways—Approval by

department of transportation. No traffic control signal or device may be erected or maintained upon any city street designated as forming a part of the route of a primary state highway or secondary state highway unless first approved by the state department of transportation. [1984 c 7 § 62; 1965 ex.s. c 155 § 14.]

Severability—1984 c 7: See note following RCW 47.01.141.

Local authorities to provide stop signs at intersections with increased speed highways: RCW 46.61.435.

DRIVING ON RIGHT SIDE OF ROADWAY— OVERTAKING AND PASSING—USE OF ROADWAY

46.61.100 Keep right except when passing, etc. (1) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(c) Upon a roadway divided into three marked lanes and providing for two-way movement traffic under the rules applicable thereon; or

(d) Upon a street or highway restricted to one-way traffic.

(2) Upon all roadways having two or more lanes for traffic moving in the same direction, all vehicles shall be driven in the right-hand lane then available for traffic, except (a) when overtaking and passing another vehicle proceeding in the same direction, (b) when traveling at a speed greater than the traffic flow, (c) when moving left to allow traffic to merge, or (d) when preparing for a left turn at an intersection, exit, or into a private road or driveway when such left turn is legally permitted. On any such roadway, a motor truck shall be driven only in the right-hand lane except under the conditions enumerated in (a) through (d) of this subsection.

(3) It is a traffic infraction to drive continuously in the left lane of a multilane roadway when it impedes the flow of other traffic.

(4) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, a vehicle shall not be driven to the left of the center line of the roadway except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection (1)(b) of this section. However, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway. [1986 c 93 § 2; 1972 ex.s. c 33 § 1; 1969 ex.s. c 281 § 46; 1967 ex.s. c 145 § 58; 1965 ex.s. c 155 § 15.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Legislative intent—1986 c 93: "It is the intent of the legislature, in this 1985 [1986] amendment of RCW 46.61.100, that the left-hand lane on any state highway with two or more lanes in the same direction be used primarily as a passing lane." [1986 c 93 § 1.]

Information on proper use of left-hand lane: RCW 28A.08.080, 46.20.095, 46.82.430, 47.36.260.

46.61.105 Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible. [1975 c 62 § 22; 1965 ex.s. c 155 § 16.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.110 Overtaking a vehicle on the left. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. [1965 ex.s. c 155 § 17.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.115 When overtaking on the right is permitted. (1) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(a) When the vehicle overtaken is making or about to make a left turn;

(b) Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.

(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement shall not be made by driving off the roadway. [1975 c 62 § 23; 1965 ex.s. c 155 § 18.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.120 Limitations on overtaking on the left. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by the provisions of RCW 46.61.100 through 46.61.160 and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit

such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching vehicle. [1965 ex.s. c 155 § 19.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.125 Further limitations on driving to left of center of roadway. (1) No vehicle shall be driven on the left side of the roadway under the following conditions:

(a) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing;

(c) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct or tunnel.

(2) The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in RCW 46.61.100(1)(b), nor to the driver of a vehicle turning left into or from an alley, private road or driveway. [1972 ex.s. c 33 § 2; 1965 ex.s. c 155 § 20.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.130 No-passing zones. (1) The state department of transportation and the local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones. When such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1) of this section, no driver may at any time drive on the left side of the roadway within the no-passing zone or on the left side of any pavement striping designed to mark the no-passing zone throughout its length.

(3) This section does not apply under the conditions described in RCW 46.61.100(1)(b), nor to the driver of a vehicle turning left into or from an alley, private road, or driveway. [1984 c 7 § 63; 1972 ex.s. c 33 § 3; 1965 ex.s. c 155 § 21.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1984 c 7: See note following RCW 47.01.141.

46.61.135 One-way roadways and rotary traffic islands. (1) The state department of transportation and the local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which

vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic control devices.

(2) Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or such times as shall be indicated by official traffic control devices.

(3) A vehicle passing around a rotary traffic island shall be driven only to the right of such island. [1984 c 7 § 64; 1975 c 62 § 24; 1965 ex.s. c 155 § 22.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.140 Driving on roadways laned for traffic. Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(3) Official traffic-control devices may be erected directing slow moving or other specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device.

(4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device. [1965 ex.s. c 155 § 23.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.145 Following too closely. (1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(2) The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another motor truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or

motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions. [1965 ex.s. c 155 § 24.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.150 Driving on divided highways. Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section or by a median island not less than eighteen inches wide formed either by solid yellow pavement markings or by a yellow crosshatching between two solid yellow lines so installed as to control vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, or median island, except through an opening in such physical barrier or dividing section or space or median island, or at a crossover or intersection established by public authority. [1972 ex.s. c 33 § 4; 1965 ex.s. c 155 § 25.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.155 Restricted access. No person shall drive a vehicle onto or from any limited access roadway except at such entrances and exits as are established by public authority. [1965 ex.s. c 155 § 26.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.160 Restrictions on use of limited-access highway—Use by bicyclists. The department of transportation may by order, and local authorities may by ordinance or resolution, with respect to any limited access highway under their respective jurisdictions prohibit the use of any such highway by funeral processions, or by parades, pedestrians, bicycles or other nonmotorized traffic, or by any person operating a motor-driven cycle. Bicyclists may use the right shoulder of limited-access highways except where prohibited. The department of transportation may by order, and local authorities may by ordinance or resolution, with respect to any limited-access highway under their respective jurisdictions prohibit the use of the shoulders of any such highway by bicycles within urban areas or upon other sections of the highway where such use is deemed to be unsafe.

The department of transportation or the local authority adopting any such prohibitory regulation shall erect and maintain official traffic control devices on the limited access roadway on which such regulations are applicable, and when so erected no person may disobey the restrictions stated on such devices. [1982 c 55 § 5; 1975 c 62 § 25; 1965 ex.s. c 155 § 27.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.165 Reservation of portion of highway for use by public transportation vehicles, etc. The state department of transportation and the local authorities are authorized to reserve all or any portion of any highway under their respective jurisdictions, including any designated lane or ramp, for the exclusive or preferential use of public transportation vehicles or private motor vehicles carrying no fewer than a specified number of passengers when such limitation will increase the efficient utilization of the highway or will aid in the conservation of energy resources. Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all times or at specified times of day or on specified days. [1984 c 7 § 65; 1974 ex.s. c 133 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

RIGHT OF WAY

46.61.180 Vehicle approaching intersection. (1) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(2) The right of way rule declared in subsection (1) of this section is modified at arterial highways and otherwise as stated in this chapter. [1975 c 62 § 26; 1965 ex.s. c 155 § 28.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.185 Vehicle turning left. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. [1965 ex.s. c 155 § 29.]

46.61.190 Vehicle entering stop or yield intersection. (1) Preferential right of way may be indicated by stop signs or yield signs as authorized in RCW 47.36.110.

(2) Except when directed to proceed by a duly authorized flagman, or a police officer, or a fire fighter vested by law with authority to direct, control, or regulate traffic, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway, and after having stopped shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

(3) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and if required for

safety to stop, shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway, and then after slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways: *Provided*, That if such a driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield right of way. [1975 c 62 § 27; 1965 ex.s. c 155 § 30.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

Stop signs, "Yield" signs—Duties of persons using highway: RCW 47.36.110.

46.61.195 Arterial highways designated—Stopping on entering. All state highways are hereby declared to be arterial highways as respects all other public highways or private ways, except that the state department of transportation has the authority to designate any county road or city street as an arterial having preference over the traffic on the state highway if traffic conditions will be improved by such action.

Those city streets designated by the state department of transportation as forming a part of the routes of state highways through incorporated cities and towns are declared to be arterial highways as respects all other city streets or private ways.

The governing authorities of incorporated cities and towns may designate any street as an arterial having preference over the traffic on a state highway if the change is first approved in writing by the state department of transportation. The local authorities making such a change in arterial designation shall do so by proper ordinance or resolution and shall erect or cause to be erected and maintained standard stop signs, or "Yield" signs, to accomplish this change in arterial designation.

The operator of any vehicle entering upon any arterial highway from any other public highway or private way shall come to a complete stop before entering the arterial highway when stop signs are erected as provided by law. [1984 c 7 § 66; 1963 ex.s. c 3 § 48; 1961 c 12 § 46.60.330. Prior: 1955 c 146 § 5; 1947 c 200 § 14; 1937 c 189 § 105; Rem. Supp. 1947 § 6360–105. Formerly RCW 46.60.330.]

Severability—1984 c 7: See note following RCW 47.01.141.

City streets subject to increased speed, designation as arterials: RCW 46.61.435.

Stop signs, "Yield" signs—Duties of persons using highway: RCW 47.36.110.

46.61.200 Stop intersections other than arterial may be designated. In addition to the points of intersection of any public highway with any arterial public highway

that is constituted by law or by any proper authorities of this state or any city or town of this state, the state department of transportation with respect to state highways, and the proper authorities with respect to any other public highways, have the power to determine and designate any particular intersection, or any particular highways, roads, or streets or portions thereof, at any intersection with which vehicles shall be required to stop before entering such intersection. Upon the determination and designation of such points at which vehicles will be required to come to a stop before entering the intersection, the proper authorities so determining and designating shall cause to be posted and maintained proper signs of the standard design adopted by the state department of transportation indicating that the intersection has been so determined and designated and that vehicles entering it are required to stop. It is unlawful for any person operating any vehicle when entering any intersection determined, designated, and bearing the required sign to fail and neglect to bring the vehicle to a complete stop before entering the intersection. [1984 c 7 § 67; 1961 c 12 § 46.60.340. Prior: 1937 c 189 § 106; RRS § 6360–106; 1927 c 284 § 1; RRS § 6362–41a. Formerly RCW 46.60.340.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.61.202 Stopping when traffic obstructed. No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains notwithstanding any traffic control signal indications to proceed. [1975 c 62 § 48.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.205 Vehicle entering highway from private road or driveway. The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right of way to all vehicles approaching on said highway. [1965 ex.s. c 155 § 31.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.210 Operation of vehicles on approach of authorized emergency vehicles. (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of RCW 46.37.190, or of a police vehicle properly and lawfully making use of an audible signal only the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(2) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to

drive with due regard for the safety of all persons using the highway. [1965 ex.s. c 155 § 32.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.215 Highway construction and maintenance.

(1) The driver of a vehicle shall yield the right of way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by official traffic control devices.

(2) The driver of a vehicle shall yield the right of way to any authorized vehicle obviously and actually engaged in work upon a highway whenever such vehicle displays flashing lights meeting the requirements of RCW 46.37-.300. [1975 c 62 § 40.]

Severability—1975 c 62: See note following RCW 36.75.010.

PEDESTRIANS' RIGHTS AND DUTIES

46.61.230 Pedestrians subject to traffic regulations.

Pedestrians shall be subject to traffic-control signals at intersections as provided in RCW 46.61.060, and at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter. [1965 ex.s. c 155 § 33.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.235 Pedestrians' right of way in crosswalks.

(1) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(2) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(3) Subsection (1) above shall not apply under the conditions stated in RCW 46.61.240 subsection (2).

(4) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. [1965 ex.s. c 155 § 34.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.240 Crossing at other than crosswalks. (1) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(2) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(4) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

(5) No pedestrian shall cross a roadway at an unmarked crosswalk where an official sign prohibits such crossing. [1965 ex.s. c 155 § 35.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.245 Drivers to exercise care. Notwithstanding the foregoing provisions of this chapter every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway. [1965 ex.s. c 155 § 36.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Blind pedestrians: Chapter 70.84 RCW.

46.61.250 Pedestrians on roadways. (1) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(2) Where sidewalks are not provided any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction and upon meeting an oncoming vehicle shall step clear of the roadway. [1965 ex.s. c 155 § 37.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.255 Pedestrians soliciting rides or business. (1)

No person shall stand in or on a public roadway or alongside thereof at any place where a motor vehicle cannot safely stop off the main traveled portion thereof for the purpose of soliciting a ride for himself or for another from the occupant of any vehicle.

(2) It shall be unlawful for any person to solicit a ride for himself or another from within the right of way of any limited access facility except in such areas where permission to do so is given and posted by the highway authority of the state, county, city or town having jurisdiction over the highway.

(3) The provisions of subsections (1) and (2) above shall not be construed to prevent a person upon a public highway from soliciting, or a driver of a vehicle from giving a ride where an emergency actually exists, nor to prevent a person from signaling or requesting transportation from a passenger carrier for the purpose of becoming a passenger thereon for hire.

(4) No person shall stand in a roadway for the purpose of soliciting employment or business from the occupant of any vehicle.

(5) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

(6) (a) Except as provided in (b) of this subsection, the state preempts the field of the regulation of hitchhiking in any form, and no county, city, or town shall take any action in conflict with the provisions of this section.

(b) A county, city, or town may regulate or prohibit hitchhiking in an area in which it has determined that prostitution is occurring and that regulating or prohibiting hitchhiking will help to reduce prostitution in the area. [1989 c 288 § 1; 1972 ex.s. c 38 § 1; 1965 ex.s. c 155 § 38.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.260 Driving through safety zone prohibited. No vehicle shall at any time be driven through or within a safety zone. [1965 ex.s. c 155 § 39.]

46.61.261 Pedestrians' right of way on sidewalk. The driver of a vehicle shall yield the right of way to any pedestrian on a sidewalk. [1975 c 62 § 41.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.264 Pedestrians yield to emergency vehicles. (1) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of RCW 46.37.380 subsection (4) and visual signals meeting the requirements of RCW 46.37.190, or of a police vehicle meeting the requirements of RCW 46.61.035 subsection (3), every pedestrian shall yield the right of way to the authorized emergency vehicle.

(2) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian. [1975 c 62 § 42.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.266 Pedestrians under the influence of alcohol or drugs. A law enforcement officer may offer to transport a pedestrian who appears to be under the influence of alcohol or any drug and who is walking along or within the right of way of a public roadway, unless the pedestrian is to be taken into protective custody under RCW 70.96A.120.

The law enforcement officer offering to transport an intoxicated pedestrian under this section shall:

(1) Transport the intoxicated pedestrian to a safe place; or

(2) Release the intoxicated pedestrian to a competent person.

The law enforcement officer shall take no action if the pedestrian refuses this assistance. No suit or action may

be commenced or prosecuted against the law enforcement officer, law enforcement agency, the state of Washington, or any political subdivision of the state for any act resulting from the refusal of the pedestrian to accept this assistance. [1987 c 11 § 1; 1975 c 62 § 43.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.269 Passing beyond bridge or grade crossing barrier prohibited. (1) No pedestrian shall enter or remain upon any bridge or approach thereto beyond a bridge signal gate, or barrier indicating a bridge is closed to through traffic, after a bridge operation signal indication has been given.

(2) No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed. [1975 c 62 § 44.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

46.61.290 Required position and method of turning at intersections. The driver of a vehicle intending to turn shall do so as follows:

(1) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) Left turns. The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the vehicle. Whenever practicable the left turn shall be made to the left of the center of the intersection and so as to leave the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction as the vehicle on the roadway being entered.

(3) Two-way left turn lanes.

(a) The department of transportation and local authorities in their respective jurisdictions may designate a two-way left turn lane on a roadway. A two-way left turn lane is near the center of the roadway set aside for use by vehicles making left turns in either direction from or into the roadway.

(b) Two-way left turn lanes shall be designated by distinctive uniform roadway markings. The department of transportation shall determine and prescribe standards and specifications governing type, length, width, and positioning of the distinctive permanent markings. The standards and specifications developed shall be filed with the code reviser in accordance with the procedures set forth in the administrative procedure act, chapter 34.05 RCW. On and after July 1, 1971, permanent markings designating a two-way left turn lane shall conform to such standards and specifications.

(c) Upon a roadway where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from either direction, no vehicles

may turn left from any other lane. A vehicle shall not be driven in this center lane for the purpose of overtaking or passing another vehicle proceeding in the same direction. A signal, either electric or manual, for indicating a left turn movement, shall be made at least one hundred feet before the actual left turn movement is made.

(4) The department of transportation and local authorities in their respective jurisdictions may cause official traffic-control devices to be placed and thereby require and direct that a different course from that specified in this section be traveled by turning vehicles, and when the devices are so placed no driver of a vehicle may turn a vehicle other than as directed and required by the devices. [1984 c 12 § 1; 1984 c 7 § 68; 1975 c 62 § 28; 1969 ex.s. c 281 § 61; 1965 ex.s. c 155 § 40.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Reviser's note: This section was amended by 1984 c 12 § 1 and by 1984 c 7 § 68, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.295 "U" turns. (1) The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with other traffic.

(2) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet. [1975 c 62 § 29; 1965 ex.s. c 155 § 41.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.300 Starting parked vehicle. No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety. [1965 ex.s. c 155 § 42.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.305 Turning, stopping, moving right or left—Signals required—Improper use prohibited. (1) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.

(2) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(4) The signals provided for in RCW 46.61.310 subsection (2), shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the

rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section. [1975 c 62 § 30; 1965 ex.s. c 155 § 43.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.310 Signals by hand and arm or signal lamps.

(1) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (2) hereof.

(2) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter measurements shall apply to any single vehicle, also to any combination of vehicles. [1965 ex.s. c 155 § 44.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.315 Method of giving hand and arm signals.

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(1) Left turn. Hand and arm extended horizontally.

(2) Right turn. Hand and arm extended upward.

(3) Stop or decrease speed. Hand and arm extended downward. [1965 ex.s. c 155 § 45.]

SPECIAL STOPS REQUIRED

46.61.340 Obedience to signal indicating approach of train. (1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(c) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(2) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. [1965 ex.s. c 155 § 46.]

46.61.345 All vehicles must stop at certain railroad grade crossings. The state department of transportation and local authorities within their respective jurisdictions are authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs

at those crossings. When such stop signs are erected the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of the railroad and shall proceed only upon exercising due care. [1984 c 7 § 69; 1965 ex.s. c 155 § 47.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.61.350 Certain vehicles must stop at all railroad grade crossings—Exceptions. (1) The driver of any motor vehicle carrying passengers for hire, other than a passenger car, or of any school bus or private carrier bus carrying any school child or other passenger, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver shall not shift gears while crossing the track or tracks.

(2) This section shall not apply at:

(a) Any railroad grade crossing at which traffic is controlled by a police officer or a duly authorized flagman;

(b) Any railroad grade crossing at which traffic is regulated by a traffic control signal;

(c) Any railroad grade crossing protected by crossing gates or an alternately flashing light signal intended to give warning of the approach of a railroad train;

(d) Any railroad grade crossing at which an official traffic control device as designated by the utilities and transportation commission pursuant to RCW 81.53.060 gives notice that the stopping requirement imposed by this section does not apply. [1977 c 78 § 1; 1975 c 62 § 31; 1970 ex.s. c 100 § 7; 1965 ex.s. c 155 § 48.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.355 Moving heavy equipment at railroad grade crossings—Notice of intended crossing. (1) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of any such intended crossing shall be given to the station agent of such railroad located nearest the intended crossing sufficiently in advance to allow such railroad a reasonable time to prescribe proper protection for such crossing.

(3) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(4) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction. [1975 c 62 § 32; 1965 ex.s. c 155 § 49.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.365 Emerging from alley, driveway, or building. The driver of a vehicle within a business or residence district emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right of way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right of way to all vehicles approaching on said roadway. [1965 ex.s. c 155 § 51.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.370 Overtaking and passing school bus. (1) The driver of a vehicle upon overtaking or meeting from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus a visual signal as specified in RCW 46.37.190 and said driver shall not proceed until such school bus resumes motion or is signaled by the school bus driver to proceed or the visual signals are no longer activated.

(2) Every school bus shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight inches in height, and in addition shall be equipped with visual signals meeting the requirements of RCW 46.37.190 which shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children, except:

(a) When school children do not have to cross a highway and the bus is stopped completely off the main traveled portion of the roadway; or

(b) When the bus is stopped at an intersection or place where traffic is controlled by a traffic officer or official traffic control signal; or

(c) When the bus is stopped at school for the purpose of receiving or discharging school children and school children are not required to cross the roadway.

(3) The driver of a vehicle upon a highway divided into separate roadways as provided in RCW 46.61.150, need not stop upon meeting or passing a school bus which is on a separate roadway or when upon a limited

access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway. [1965 ex.s. c 155 § 52.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.375 Overtaking or meeting private carrier bus—Signs. (1) The driver of a vehicle upon overtaking or meeting from either direction any private carrier bus which has stopped on the highway for the purpose of receiving or discharging any passenger shall stop the vehicle before reaching such private carrier bus when there is in operation on said bus a visual signal as specified in RCW 46.37.190 and said driver shall not proceed until such bus resumes motion or is signaled by the bus driver to proceed or the visual signals are no longer activated.

(2) Every private carrier bus shall bear upon the front and rear thereof plainly visible signs containing the words "PRIVATE CARRIER BUS" in letters not less than eight inches in height, and in addition shall be equipped with visual signals meeting the requirements of RCW 46.37.190 which shall be actuated by the driver of said private carrier bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging passengers, except:

(a) When the passengers boarding or alighting do not have to cross a highway and the bus is stopped completely off the main traveled portion of the roadway; or

(b) When the bus is stopped at an intersection or place where traffic is controlled by a traffic officer or official traffic control signal.

(3) The driver of a vehicle upon a highway divided into separate roadways as provided in RCW 46.61.150, need not stop upon meeting or passing a private carrier bus which is on a separate roadway or when upon a limited access highway and the private carrier bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway. [1970 ex.s. c 100 § 8.]

46.61.380 Rules for design, marking, and mode of operating school buses. The state superintendent of public instruction, by and with the advice of the state department of transportation and the chief of the Washington state patrol, shall adopt and enforce rules not inconsistent with the law of this state to govern the design, marking, and mode of operation of all school buses owned and operated by any school district or privately owned and operated under contract or otherwise with any school district in this state for the transportation of school children. Those rules shall by reference be made a part of any such contract or other agreement with the school district. Every school district, its officers and employees, and every person employed under contract or otherwise by a school district is subject to such rules. It is unlawful for any officer or employee of any school district or for any person operating any school bus under contract with any school district to violate any of the provisions of such rules. [1984 c 7 § 70; 1961 c 12

§ 46.48.150. Prior: 1937 c 189 § 131; RRS § 6360-131. Formerly RCW 46.48.150.]

Severability—1984 c 7: See note following RCW 47.01.141.

Design and markings of school buses: RCW 46.37.190.

46.61.385 School patrol—Appointment—Authority—Finance—Insurance. The superintendent of public instruction, through the superintendent of schools of any school district, or other officer or board performing like functions with respect to the schools of any other educational administrative district, may cause to be appointed voluntary adult recruits as supervisors and, from the student body of any public or private school or institution of learning, students, who shall be known as members of the "school patrol" and who shall serve without compensation and at the pleasure of the authority making the appointment.

The members of such school patrol shall wear an appropriate designation or insignia identifying them as members of the school patrol when in performance of their duties, and they may display "stop" or other proper traffic directional signs or signals at school crossings or other points where school children are crossing or about to cross a public highway, but members of the school patrol and their supervisors shall be subordinate to and obey the orders of any peace officer present and having jurisdiction.

School districts, at their discretion, may hire sufficient numbers of adults to serve as supervisors. Such adults shall be subordinate to and obey the orders of any peace officer present and having jurisdiction.

Any school district having a school patrol may purchase uniforms and other appropriate insignia, traffic signs and other appropriate materials, all to be used by members of such school patrol while in performance of their duties, and may pay for the same out of the general fund of the district.

It shall be unlawful for the operator of any vehicle to fail to stop his vehicle when directed to do so by a school patrol sign or signal displayed by a member of the school patrol engaged in the performance of his duty and wearing or displaying appropriate insignia, and it shall further be unlawful for the operator of a vehicle to disregard any other reasonable directions of a member of the school patrol when acting in performance of his duties as such.

School districts may expend funds from the general fund of the district to pay premiums for life and accident policies covering the members of the school patrol in their district while engaged in the performance of their school patrol duties.

Members of the school patrol shall be considered as employees for the purposes of RCW 28A.58.425, as now or hereafter amended. [1974 ex.s. c 47 § 1; 1961 c 12 § 46.48.160. Prior: 1953 c 278 § 1; 1937 c 189 § 130; RRS § 6360-130; 1927 c 309 § 42; RRS § 6362-42. Formerly RCW 46.48.160.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

SPEED RESTRICTIONS

46.61.400 Basic rule and maximum limits. (1) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(2) Except when a special hazard exists that requires lower speed for compliance with subsection (1) of this section, the limits specified in this section or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits.

(a) Twenty-five miles per hour on city and town streets;

(b) Fifty miles per hour on county roads;

(c) Sixty miles per hour on state highways.

The maximum speed limits set forth in this section may be altered as authorized in RCW 46.61.405, 46.61.410, and 46.61.415.

(3) The driver of every vehicle shall, consistent with the requirements of subsection (1) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions. [1965 ex.s. c 155 § 54; 1963 c 16 § 1. Formerly RCW 46.48.011.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Saving of existing orders, etc., establishing speed limits—1963 c 16: "This act shall not repeal or invalidate existing orders and resolutions of the state highway commission or existing resolutions and ordinances of local authorities establishing speed limits within their respective jurisdictions." [1963 c 16 § 7. Formerly RCW 46.48.016.] "This act" [1963 c 16], as amended, is codified as RCW 46.61.400 through 46.61.415, 46.61.425, and 46.61.440.

46.61.405 Decreases by secretary of transportation. Whenever the secretary of transportation shall determine upon the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is greater than is reasonable or safe with respect to a state highway under the conditions found to exist at any intersection or upon any other part of the state highway system or at state ferry terminals, or that a general reduction of any maximum speed set forth in RCW 46.61.400 is necessary in order to comply with a national maximum speed limit, the secretary may determine and declare a reasonable and safe lower maximum limit or a lower maximum limit which will comply with a national maximum speed limit, for any state highway, the entire state highway system, or any portion thereof, which shall be effective when appropriate signs giving notice thereof are erected. The secretary may also fix and regulate the

speed of vehicles on any state highway within the maximum speed limit allowed by this chapter for special occasions including, but not limited to, local parades and other special events. Any such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon the said signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective (a) when posted upon appropriate fixed or variable signs or (b) if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of RCW 46.61.410, as now or hereafter amended. [1987 c 397 § 3; 1977 ex.s. c 151 § 34; 1974 ex.s. c 103 § 1; 1970 ex.s. c 100 § 2; 1967 c 25 § 1; 1963 c 16 § 2. Formerly RCW 46.48.012.]

Intent—1987 c 397: See note following RCW 46.61.410.

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

46.61.410 Increases by secretary of transportation—Maximum speed limit for trucks—Auto stages—Signs and notices. (1) (a) Subject to subsection (2) of this section the secretary may increase the maximum speed limit on any highway or portion thereof to not more than seventy miles per hour in accordance with the design speed thereof (taking into account all safety elements included therein), or whenever the secretary determines upon the basis of an engineering and traffic investigation that such greater speed is reasonable and safe under the circumstances existing on such part of the highway.

(b) If the federal government increases the national maximum speed limit to at least sixty-five miles per hour on any part of the highway system, the secretary of transportation shall forthwith increase to that same speed the maximum speed limit on any such highway or portion thereof then posted at fifty-five miles per hour to a maximum of sixty-five miles per hour, subject to subsection (2) of this section, if such limit had been established for that highway or portion thereof in order to comply with the former national maximum speed limit. However, if an engineering and traffic investigation conducted by the department clearly indicates that a speed limit above fifty-five miles an hour would be unsafe for that highway or a portion thereof, the secretary of transportation shall not increase the speed limit for that highway or portion thereof above the safe speed indicated by the investigation. The speed limit on interstate route number 5 between Everett and Olympia may not be increased above fifty-five miles per hour under this subsection (b).

(c) The greater maximum limit established under (a) or (b) of this subsection shall be effective when appropriate signs giving notice thereof are erected, or if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage

speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of this section.

(d) Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon said signs or in the case of auto stages, as indicated in said written notice; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs or if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of this section.

(2) The maximum speed limit for vehicles over ten thousand pounds gross weight and vehicles in combination except auto stages shall not exceed sixty miles per hour and may be established at a lower limit by the secretary as provided in RCW 46.61.405.

(3) The word "trucks" used by the department on signs giving notice of maximum speed limits means vehicles over ten thousand pounds gross weight and all vehicles in combination except auto stages.

(4) Whenever the secretary establishes maximum speed limits for auto stages lower than the maximum limits for automobiles, the secretary shall cause to be mailed notice thereof to each auto transportation company holding a certificate of public convenience and necessity issued by the Washington utilities and transportation commission. The notice shall be mailed to the chief place of business within the state of Washington of each auto transportation company or if none then its chief place of business without the state of Washington. [1987 c 397 § 4; 1977 ex.s. c 151 § 35; 1974 ex.s. c 103 § 2; 1970 ex.s. c 100 § 1; 1969 ex.s. c 12 § 1; 1965 ex.s. c 155 § 55; 1963 c 16 § 3. Formerly RCW 46.48.013.]

Intent—1987 c 397: "It is the intent of the legislature to increase the speed limit to sixty-five miles per hour on those portions of the rural interstate highway system where the increase would be safe and reasonable and is allowed by federal law. It is also the intent of the legislature that the sixty-five miles per hour speed limit be strictly enforced." [1987 c 397 § 1.]

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

46.61.415 When local authorities may alter maximum limits. (1) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under RCW 46.61.400 or 46.61.440 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which

(a) Decreases the limit at intersections; or

(b) Increases the limit but not to more than sixty miles per hour; or

(c) Decreases the limit but not to less than twenty miles per hour.

(2) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under RCW 46.61.400(2) but shall not exceed sixty miles per hour.

(3) The secretary of transportation is authorized to establish speed limits on county roads and city and town streets as shall be necessary to conform with any federal requirements which are a prescribed condition for the allocation of federal funds to the state.

(4) Any altered limit established as hereinbefore authorized shall be effective when appropriate signs giving notice thereof are erected. Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon such signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs.

(5) Any alteration of maximum limits on state highways within incorporated cities or towns by local authorities shall not be effective until such alteration has been approved by the secretary of transportation. [1977 ex.s. c 151 § 36; 1974 ex.s. c 103 § 3; 1963 c 16 § 4. Formerly RCW 46.48.014.]

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

46.61.425 Minimum speed regulation—**Passing slow moving vehicle.** (1) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law: *Provided*, That a person following a vehicle driving at less than the legal maximum speed and desiring to pass such vehicle may exceed the speed limit, subject to the provisions of RCW 46.61.120 on highways having only one lane of traffic in each direction, at only such a speed and for only such a distance as is necessary to complete the pass with a reasonable margin of safety.

(2) Whenever the secretary of transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway unreasonably impede the normal movement of traffic, the secretary or such local authority may determine and declare a minimum speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected. No person shall drive a vehicle slower than such minimum speed limit except when necessary for safe operation or in compliance with law. [1977 ex.s. c 151 § 37; 1969 c 135 § 1; 1967 c 25 § 2; 1963 c 16 § 6. Formerly RCW 46.48.015.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

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

46.61.427 Slow moving vehicle to pull off roadway. On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow moving vehicle, behind which five or more vehicles are formed in a line, shall turn off the roadway wherever sufficient area for a safe turn-out exists, in order to permit the vehicles following to proceed. As used in this section a slow moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. [1973 c 88 § 1.]

46.61.428 Slow-moving vehicle permitted to drive on improved shoulders, when. (1) The state department of transportation and local authorities are authorized to determine those portions of any two-lane highways under their respective jurisdictions on which drivers of slow-moving vehicles may safely drive onto improved shoulders for the purpose of allowing overtaking vehicles to pass and may by appropriate signs indicate the beginning and end of such zones.

(2) Where signs are in place to define a driving-on-shoulder zone as set forth in subsection (1) of this section, the driver of a slow-moving vehicle may drive onto and along the shoulder within the zone but only for the purpose of allowing overtaking vehicles to pass and then shall return to the roadway.

(3) Signs erected to define a driving-on-shoulder zone take precedence over pavement markings for the purpose of allowing the movements described in subsection (2) of this section. [1984 c 7 § 71; 1977 ex.s. c 39 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.61.430 Authority of secretary of transportation to fix speed limits on limited access facilities exclusive—Local regulations. Notwithstanding any law to the contrary or inconsistent herewith, the secretary of transportation shall have the power and the duty to fix and regulate the speed of vehicles within the maximum speed limit allowed by law for state highways, designated as limited access facilities, regardless of whether a portion of said highway is within the corporate limits of a city or town. No governing body or authority of such city or town or other political subdivision may have the power to pass or enforce any ordinance, rule, or regulation requiring a different rate of speed, and all such ordinances, rules, and regulations contrary to or inconsistent therewith now in force are void and of no effect. [1977 ex.s. c 151 § 38; 1974 ex.s. c 103 § 4; 1961 c 12 § 46.48.041. Prior: 1955 c 177 § 5. Formerly RCW 46.48.041.]

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

46.61.435 Local authorities to provide "stop" or "yield" signs at intersections with increased speed highways—Designated as arterials. The governing body or authority of any such city or town or political subdivision shall place and maintain upon each and every highway intersecting a highway where an increased speed is permitted, as provided in this chapter, appropriate stop or yield signs, sufficient to be read at any time by any

person upon approaching and entering the highway upon which such increased speed is permitted and such city street or such portion thereof as is subject to the increased speed shall be an arterial highway. [1975 c 62 § 33; 1961 c 12 § 46.48.046. Prior: 1951 c 28 § 4; prior: 1937 c 189 § 66, part; RRS § 6360–66, part; 1927 c 309 § 5, part; 1921 c 96 § 41, part; 1919 c 59 § 13, part; 1917 c 155 § 20, part; 1915 c 142 § 34, part; RRS § 6362–5, part. Formerly RCW 46.48.046.]

Severability—1975 c 62: See note following RCW 36.75.010.

Designation of city streets as arterials, stopping on entering: RCW 46.61.195.

Traffic control signals or devices upon city streets forming part of state highways: RCW 46.61.085.

46.61.440 Maximum speed limit when passing school or playground crosswalks. Subject to RCW 46.61.400(1), and except in those instances where a lower maximum lawful speed is provided by this chapter or otherwise, it shall be unlawful for the operator of any vehicle to operate the same at a speed in excess of twenty miles per hour when operating any vehicle upon a highway either inside or outside an incorporated city or town when passing any marked school or playground crosswalk when such marked crosswalk is fully posted with standard school speed limit signs or standard playground speed limit signs. The speed zone at the crosswalk shall extend three hundred feet in either direction from the marked crosswalk. [1975 c 62 § 34; 1963 c 16 § 5; 1961 c 12 § 46.48.023. Prior: 1951 c 28 § 9; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360–64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362–3, part; 1909 c 249 § 279, part; Rem. & Bal. § 2531, part. Formerly RCW 46.48.023.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.445 Due care required. Compliance with speed requirements of this chapter under the circumstances hereinabove set forth shall not relieve the operator of any vehicle from the further exercise of due care and caution as further circumstances shall require. [1961 c 12 § 46.48.025. Prior: 1951 c 28 § 11; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360–64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362–3, part; 1909 c 249 § 279, part; Rem. & Bal. 2531, part. Formerly RCW 46.48.025.]

Duty to use due care: RCW 46.61.400(1).

46.61.450 Maximum speed, weight, or size in traversing bridges, elevated structures, tunnels, underpasses—Posting limits. It shall be unlawful for any person to operate a vehicle or any combination of vehicles over any bridge or other elevated structure or through any tunnel or underpass constituting a part of any public highway at a rate of speed or with a gross weight or of a size which is greater at any time than the maximum speed or maximum weight or size which can

be maintained or carried with safety over any such bridge or structure or through any such tunnel or underpass when such bridge, structure, tunnel, or underpass is sign posted as hereinafter provided. The secretary of transportation, if it be a bridge, structure, tunnel, or underpass upon a state highway, or the governing body or authorities of any county, city, or town, if it be upon roads or streets under their jurisdiction, may restrict the speed which may be maintained or the gross weight or size which may be operated upon or over any such bridge or elevated structure or through any such tunnel or underpass with safety thereto. The secretary or the governing body or authorities of any county, city, or town having jurisdiction shall determine and declare the maximum speed or maximum gross weight or size which such bridge, elevated structure, tunnel, or underpass can withstand or accommodate and shall cause suitable signs stating such maximum speed or maximum gross weight, or size, or either, to be erected and maintained on the right hand side of such highway, road, or street and at a distance of not less than one hundred feet from each end of such bridge, structure, tunnel, or underpass and on the approach thereto: *Provided*, That in the event that any such bridge, elevated structure, tunnel, or underpass is upon a city street designated by the transportation commission as forming a part of the route of any state highway through any such incorporated city or town the determination of any maximum speed or maximum gross weight or size which such bridge, elevated structure, tunnel, or underpass can withstand or accommodate shall not be enforceable at any speed, weight, or size less than the maximum allowed by law, unless with the approval in writing of the secretary. Upon the trial of any person charged with a violation of this section, proof of either violation of maximum speed or maximum weight, or size, or either, and the distance and location of such signs as are required, shall constitute conclusive evidence of the maximum speed or maximum weight, or size, or either, which can be maintained or carried with safety over such bridge or elevated structure or through such tunnel or underpass. [1977 ex.s. c 151 § 39; 1961 c 12 § 46.48.080. Prior: 1937 c 189 § 70; RRS § 6360-70. Formerly RCW 46.48.080.]

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

46.61.455 Vehicles with solid or hollow cushion tires. It shall be unlawful to operate any vehicle equipped or partly equipped with solid rubber tires or hollow center cushion tires, or to operate any combination of vehicles any part of which is equipped or partly equipped with solid rubber tires or hollow center cushion tires, so long as solid rubber tires or hollow center cushion tires may be used under the provisions of this title, upon any public highway of this state at a greater rate of speed than ten miles per hour. [1961 c 12 § 46.48.110. Prior: 1947 c 200 § 11; 1937 c 189 § 73; Rem. Supp. 1947 § 6360-73. Formerly RCW 46.48.110.]

46.61.460 Special speed limitation on motor-driven cycle. No person shall operate any motor-driven cycle at

any time mentioned in RCW 46.37.020 at a speed greater than thirty-five miles per hour unless such motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of three hundred feet ahead. [1965 ex.s. c 155 § 57.]

46.61.465 Exceeding speed limit evidence of reckless driving. The unlawful operation of a vehicle in excess of the maximum lawful speeds provided in this chapter at the point of operation and under the circumstances described shall be prima facie evidence of the operation of a motor vehicle in a reckless manner by the operator thereof. [1961 c 12 § 46.48.026. Prior: 1951 c 28 § 12; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360-64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362-3, part; 1909 c 249 § 279, part; Rem. & Bal. § 2531, part. Formerly RCW 46.48.026.]

46.61.470 Speed traps defined, certain types permitted—Measured courses, speed measuring devices, timing from aircraft. (1) No evidence as to the speed of any vehicle operated upon a public highway by any person arrested for violation of any of the laws of this state regarding speed or of any orders, rules, or regulations of any city or town or other political subdivision relating thereto shall be admitted in evidence in any court at a subsequent trial of such person in case such evidence relates to or is based upon the maintenance or use of a speed trap except as provided in subsection (2) of this section. A "speed trap," within the meaning of this section, is a particular section of or distance on any public highway, the length of which has been or is measured off or otherwise designated or determined, and the limits of which are within the vision of any officer or officers who calculate the speed of a vehicle passing through such speed trap by using the lapsed time during which such vehicle travels between the entrance and exit of such speed trap.

(2) Evidence shall be admissible against any person arrested or issued a notice of a traffic infraction for violation of any of the laws of this state or of any orders, rules, or regulations of any city or town or other political subdivision regarding speed if the same is determined by a particular section of or distance on a public highway, the length of which has been accurately measured off or otherwise designated or determined and either: (a) The limits of which are controlled by a mechanical, electrical, or other device capable of measuring or recording the speed of a vehicle passing within such limits; or (b) a timing device is operated from an aircraft, which timing device when used to measure the elapsed time of a vehicle passing over such a particular section of or distance upon a public highway indicates the speed of a vehicle.

(3) The exceptions of subsection (2) of this section are limited to devices or observations with a maximum error of not to exceed five percent using the lapsed time during which such vehicle travels between such limits, and such limits shall not be closer than one-fourth mile.

[1981 c 105 § 1; 1961 c 12 § 46.48.120. Prior: 1937 c 189 § 74; RRS § 6360-74; 1927 c 309 § 7; RRS § 6362-7. Formerly RCW 46.48.120.]

46.61.475 Charging violations of speed regulations.

(1) In every charge of violation of any speed regulation in this chapter the complaint, also the summons or notice to appear, shall specify the approximate speed at which the defendant is alleged to have driven, also the maximum speed applicable within the district or at the location. [1965 ex.s. c 155 § 58.]

RECKLESS DRIVING, DRIVING WHILE INTOXICATED, VEHICULAR HOMICIDE AND ASSAULT

46.61.500 Reckless driving—Penalty. (1) Any person who drives any vehicle in wilful or wanton disregard for the safety of persons or property is guilty of reckless driving. Violation of the provisions of this section is a misdemeanor.

(2) The license or permit to drive or any nonresident privilege of any person convicted of reckless driving shall be suspended by the department for not less than thirty days. [1979 ex.s. c 136 § 85; 1967 c 32 § 67; 1965 ex.s. c 155 § 59.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Arrest of person involved in reckless driving: RCW 10.31.100.

Embracing another while driving as reckless driving: RCW 46.61.665.

Excess speed as prima facie evidence of reckless driving: RCW 46.61.465.

Racing of vehicles on public highways, reckless driving: RCW 46.61.530.

Revocation of license, reckless driving: RCW 46.20.285.

46.61.502 Driving while under influence of intoxicating liquor or drug—What constitutes. A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state while:

(1) The person has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW 46.61.506; or

(2) The person has 0.10 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood made under RCW 46.61.506; or

(3) The person is under the influence of or affected by intoxicating liquor or any drug; or

(4) The person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. [1987 c 373 § 2; 1986 c 153 § 2; 1979 ex.s. c 176 § 1.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Legislative finding, purpose—1987 c 373: "The legislature finds the existing statutes that establish the criteria for determining when a

person is guilty of driving a motor vehicle under the influence of intoxicating liquor or drugs are constitutional and do not require any additional criteria to ensure their legality. The purpose of this act is to provide an additional method of defining the crime of driving while intoxicated. This act is not an acknowledgement that the existing breath alcohol standard is legally improper or invalid." [1987 c 373 § 1.]

Severability—1987 c 373: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 373 § 8.]

Severability—1979 ex.s. c 176: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 176 § 8.]

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

Use of vessel in negligent manner or while under influence of alcohol or drugs prohibited: RCW 88.02.095.

46.61.504 Actual physical control of motor vehicle while under influence of intoxicating liquor or drug—

What constitutes—Defenses. A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state while:

(1) The person has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW 46.61.506; or

(2) The person has 0.10 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood made under RCW 46.61.506; or

(3) The person is under the influence of or affected by intoxicating liquor or any drug; or

(4) The person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway. [1987 c 373 § 3; 1986 c 153 § 3; 1979 ex.s. c 176 § 2.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

46.61.506 Persons under influence of intoxicating liquor or drug—Evidence—Tests—Information concerning tests.

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the amount of alcohol in the person's blood or breath at the time alleged as shown by analysis of his blood or breath is less than 0.10 percent by weight of alcohol in his blood or 0.10 grams of alcohol per two hundred ten liters of the person's breath, it is evidence that may be considered with other competent evidence in determining whether

the person was under the influence of intoxicating liquor or any drug.

(2) The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

(5) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(6) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. [1987 c 373 § 4; 1986 c 153 § 4; 1979 ex.s. c 176 § 5; 1975 1st ex.s. c 287 § 1; 1969 c 1 § 3 (Initiative Measure No. 242, approved November 5, 1968).]

Rules of court: *Evidence of Breathalyzer, BAC Verifier, simulator solution tests—CrRLJ 6.13.*

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.

Arrest of driver under influence of intoxicating liquor or drugs: RCW 10.31.100.

46.61.508 Liability of medical personnel withdrawing blood. No physician, registered nurse, qualified technician, or hospital, or duly licensed clinical laboratory employing or utilizing services of such physician, registered nurse, or qualified technician, shall incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of RCW 46.20.308, as now or

hereafter amended: *Provided*, That nothing in this section shall relieve any physician, registered nurse, qualified technician, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care. [1977 ex.s. c 143 § 1.]

46.61.515 Driving or being in physical control of motor vehicle while under the influence of intoxicating liquor or drugs—Penalties—Alcohol or drug problem, treatment—Suspension or revocation of license—Appeal.

(1) Every person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished by imprisonment for not less than twenty-four consecutive hours nor more than one year, and by a fine of not less than two hundred fifty dollars and not more than one thousand dollars. Unless the judge finds the person to be indigent, two hundred fifty dollars of the fine shall not be suspended or deferred. Twenty-four consecutive hours of the jail sentence shall not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being. Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. The court may impose conditions of probation that may include nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The convicted person shall, in addition, be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a program approved by the department of social and health services, as determined by the court. A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the department of social and health services or a qualified probation department approved by the department of social and health services. A copy of the report shall be forwarded to the department of licensing. Based on the diagnostic evaluation, the court shall determine whether the convicted person shall be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a program approved by the department of social and health services. Standards for approval for alcohol treatment programs shall be prescribed by rule under the administrative procedure act, chapter 34.05 RCW. The courts shall periodically review the costs of alcohol information schools and treatment programs within their jurisdictions.

(2) On a second or subsequent conviction for driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs within a five-year period a person shall be punished by imprisonment for not less than seven days nor more than one year and by a fine of not less than five hundred dollars and not more than two thousand dollars. District courts and courts organized under chapter 35.20 RCW are authorized to impose such fine. Unless the judge finds

the person to be indigent, five hundred dollars of the fine shall not be suspended or deferred. The jail sentence shall not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being. Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. If, at the time of a second or subsequent conviction, the driver is without a license or permit because of a previous suspension or revocation, the minimum mandatory sentence shall be ninety days in jail and a two hundred dollar fine. The penalty so imposed shall not be suspended or deferred. The person shall, in addition, be required to complete a diagnostic evaluation by an alcoholism agency approved by the department of social and health services or a qualified probation department approved by the department of social and health services. The report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem requiring treatment, the person shall complete treatment at an approved alcoholism treatment facility or approved drug treatment center.

In addition to any nonsuspendable and nondeferrable jail sentence required by this subsection, the court shall sentence a person to a term of imprisonment not exceeding one hundred eighty days and shall suspend but shall not defer the sentence for a period not exceeding two years. The suspension of the sentence may be conditioned upon nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of suspension during the suspension period.

(3) The license or permit to drive or any nonresident privilege of any person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs shall:

(a) On the first conviction under either offense, be suspended by the department until the person reaches age nineteen or for ninety days, whichever is longer. The department of licensing shall determine the person's eligibility for licensing based upon the reports provided by the designated alcoholism agency or probation department and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified;

(b) On a second conviction under either offense within a five-year period, be revoked by the department for one year. The department of licensing shall determine the person's eligibility for licensing based upon the reports provided by the designated alcoholism agency or probation department and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified;

(c) On a third or subsequent conviction of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs, vehicular homicide, or vehicular assault, or any combination

thereof within a five-year period, be revoked by the department for two years.

(4) In any case provided for in this section, where a driver's license is to be revoked or suspended, the revocation or suspension shall be stayed and shall not take effect until after the determination of any appeal from the conviction which may lawfully be taken, but in case the conviction is sustained on appeal the revocation or suspension takes effect as of the date that the conviction becomes effective for other purposes. [1985 c 352 § 1; 1984 c 258 § 328; 1983 c 165 § 21; 1983 c 150 § 1; 1982 1st ex.s. c 47 § 27; 1979 ex.s. c 176 § 6; 1977 ex.s. c 3 § 3; 1975 1st ex.s. c 287 § 2; 1974 ex.s. c 130 § 1; 1971 ex.s. c 284 § 1; 1967 c 32 § 68; 1965 ex.s. c 155 § 62.]

Effective date—1985 c 352 § 1: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately except for section 1 of this act, which shall take effect July 1, 1985." [1985 c 352 § 23.]

Severability—1985 c 352: See note following RCW 10.05.010.

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

Intent—1984 c 258: See note following RCW 3.46.120.

Legislative finding, intent—**Effective dates**—**Severability**—1983 c 165: See notes following RCW 46.20.308.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

Cities and towns, penalties for driving while intoxicated: RCW 35.21.165.

Counties, penalties for driving while intoxicated: RCW 36.32.127.

Operating railroad, steamboat, vehicle, etc., while intoxicated: RCW 9.91.020.

Revocation of license for driving under the influence of intoxicating liquor or drugs: RCW 46.20.285.

46.61.5151 Sentence under RCW 46.61.515—**Intermittent fulfillment of**—**Restrictions.** A sentencing court may allow persons convicted of violating RCW 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in RCW 46.61.515 (1) or (2) in nonconsecutive or intermittent time periods. However, the first twenty-four hours of any sentence under RCW 46.61.515(1) and the first forty-eight hours of any sentence under RCW 46.61.515(2) shall be served consecutively unless suspended or deferred as otherwise provided by law. [1983 c 165 § 33.]

Legislative finding, intent—**Effective dates**—**Severability**—1983 c 165: See notes following RCW 46.20.308.

46.61.516 Qualified probation department defined. A qualified probation department means a probation department for a district or municipal court that has a sufficient number of qualified alcohol assessment officers who meet the requirements of a qualified alcoholism counselor as provided by rule of the department of social and health services, except that the required hours of supervised work experience in an alcoholism agency may be satisfied by completing an equivalent number of hours of supervised work doing alcohol assessments within a probation department. [1983 c 150 § 2.]

46.61.517 Refusal of alcohol test—Admissibility as evidence. The refusal of a person to submit to a test of the alcoholic content of the person's blood or breath under RCW 46.20.308 is admissible into evidence at a subsequent criminal trial. [1987 c 373 § 5; 1986 c 64 § 2; 1985 c 352 § 21; 1983 c 165 § 27.]

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Severability—1985 c 352: See note following RCW 10.05.010.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.519 Alcoholic beverages—Drinking or open container in vehicle on highway—Exceptions. (Effective until April 1, 1992.) (1) It is a traffic infraction to drink any alcoholic beverage in a motor vehicle when the vehicle is upon a highway.

(2) It is a traffic infraction for a person to have in his possession while in a motor vehicle upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage if the container has been opened or a seal broken or the contents partially removed.

(3) It is a traffic infraction for the registered owner of a motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage which has been opened or a seal broken or the contents partially removed, unless the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(4) This section does not apply to a public conveyance that has been commercially chartered for group use or to the living quarters of a motor home or camper or, except as otherwise provided by RCW 66.44.250 or local law, to any passenger for compensation in a for-hire vehicle licensed under city, county, or state law, or to a privately-owned vehicle operated by a person possessing a valid operator's license with a special endorsement issued under RCW 46.20.440 in the course of his usual employment transporting passengers at the employer's direction: *Provided*, That nothing in this subsection shall be construed to authorize possession or consumption of an alcoholic beverage by the operator of any vehicle while upon a highway. [1984 c 274 § 1; 1983 c 165 § 28.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.519 Alcoholic beverages—Drinking or open container in vehicle on highway—Exceptions. (Effective April 1, 1992.) (1) It is a traffic infraction to drink any alcoholic beverage in a motor vehicle when the vehicle is upon a highway.

(2) It is a traffic infraction for a person to have in his possession while in a motor vehicle upon a highway, a bottle, can, or other receptacle containing an alcoholic

beverage if the container has been opened or a seal broken or the contents partially removed.

(3) It is a traffic infraction for the registered owner of a motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage which has been opened or a seal broken or the contents partially removed, unless the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(4) This section does not apply to a public conveyance that has been commercially chartered for group use or to the living quarters of a motor home or camper or, except as otherwise provided by RCW 66.44.250 or local law, to any passenger for compensation in a for-hire vehicle licensed under city, county, or state law, or to a privately-owned vehicle operated by a person possessing a valid operator's license endorsed for the appropriate classification under chapter 46.25 RCW in the course of his usual employment transporting passengers at the employer's direction: *Provided*, That nothing in this subsection shall be construed to authorize possession or consumption of an alcoholic beverage by the operator of any vehicle while upon a highway. [1989 c 178 § 26; 1984 c 274 § 1; 1983 c 165 § 28.]

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.5191 Local ordinances not prohibited. Nothing in RCW 46.61.519 or RCW 46.61.5191 prohibits any city or town from enacting a local ordinance that proscribes the acts proscribed by those sections and that provides penalties equal to or greater than the penalties provided in those sections. [1984 c 274 § 2.]

46.61.5195 Disguising alcoholic beverage container. (1) It is a traffic infraction to incorrectly label the original container of an alcoholic beverage and to then violate RCW 46.61.519.

(2) It is a traffic infraction to place an alcoholic beverage in a container specifically labeled by the manufacturer of the container as containing a nonalcoholic beverage and to then violate RCW 46.61.519. [1984 c 274 § 3.]

46.61.520 Vehicular homicide—Penalty. (1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner or with disregard for the safety of others, the person so operating such vehicle is guilty of vehicular homicide.

(2) Vehicular homicide is a class B felony punishable under chapter 9A.20 RCW. [1983 c 164 § 1; 1975 1st ex.s. c 287 § 3; 1973 2nd ex.s. c 38 § 2; 1970 ex.s. c 49 § 5; 1965 ex.s. c 155 § 63; 1961 c 12 § 46.56.040. Prior: 1937 c 189 § 120; RRS § 6360-120. Formerly RCW 46.56.040.]

Severability—1973 2nd ex.s. c 38: See note following RCW 69.50.101.

Severability—1970 ex.s. c 49: See note following RCW 9.69.100.

Suspension or revocation of license upon conviction of vehicular homicide or assault resulting from operation of motor vehicle: RCW 46.20.285, 46.20.291.

46.61.522 Vehicular assault—Penalty. (1) A person is guilty of vehicular assault if he operates or drives any vehicle:

(a) In a reckless manner, and this conduct is the proximate cause of serious bodily injury to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, and this conduct is the proximate cause of serious bodily injury to another.

(2) "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

(3) Vehicular assault is a class C felony punishable under chapter 9A.20 RCW. [1983 c 164 § 2.]

46.61.525 Operating motor vehicle in a negligent manner—Penalty—Exception. It shall be unlawful for any person to operate a motor vehicle in a negligent manner. For the purpose of this section to "operate in a negligent manner" shall be construed to mean the operation of a vehicle in such a manner as to endanger or be likely to endanger any persons or property: *Provided however*, That any person operating a motor vehicle on private property with the consent of the owner in a manner consistent with the owner's consent shall not be guilty of negligent driving.

The offense of operating a vehicle in a negligent manner shall be considered to be a lesser offense than, but included in, the offense of operating a vehicle in a reckless manner, and any person charged with operating a vehicle in a reckless manner may be convicted of the lesser offense of operating a vehicle in a negligent manner. Any person violating the provisions of this section will be guilty of a misdemeanor: *Provided*, That the director may not revoke any license under this section, and such offense is not punishable by imprisonment or by a fine exceeding two hundred fifty dollars. [1979 ex.s. c 136 § 86; 1967 c 32 § 69; 1961 c 12 § 46.56.030. Prior: 1939 c 154 § 1; RRS § 6360-118 1/2. Formerly RCW 46.56.030.]

Rules of court: *Negligent driving cases—CrRLJ 3.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Arrest of person involved in negligent driving: RCW 10.31.100.

Use of vessel in negligent manner or while under influence of alcohol or drugs prohibited: RCW 88.02.095.

46.61.530 Racing of vehicles on highways—Reckless driving—Exception. No person or persons may race any motor vehicle or motor vehicles upon any public highway of this state. Any person or persons who wilfully compare or contest relative speeds by operation of one or more motor vehicles shall be guilty of racing, which shall constitute reckless driving under RCW 46.61.500, whether or not such speed is in excess of the maximum speed prescribed by law: *Provided however*, That any comparison or contest of the accuracy with which motor vehicles may be operated in terms of relative speeds not in excess of the posted maximum speed does not constitute racing. [1979 ex.s. c 136 § 87; 1961 c 12 § 46.48.050. Prior: 1937 c 189 § 67; RRS § 6360-67; 1921 c 96 § 32; 1915 c 142 § 25; RRS § 6344. Formerly RCW 46.48.050.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Arrest of person involved in racing of vehicles: RCW 10.31.100.

46.61.535 Advertising of unlawful speed attained—Reckless driving. It shall be unlawful for any manufacturer, dealer, distributor, or any person, firm, or corporation to publish or advertise or offer for publication or advertisement, or to consent or cause to be published or advertised, the time consumed or speed attained by a vehicle between given points or over given or designated distances upon any public highways of this state when such published or advertised time consumed or speed attained shall indicate an average rate of speed between given points or over a given or designated distance in excess of the maximum rate of speed allowed between such points or at a rate of speed which would constitute reckless driving between such points. Violation of any of the provisions of this section shall be prima facie evidence of reckless driving and shall subject such person, firm, or corporation to the penalties in such cases provided. [1979 ex.s. c 136 § 88; 1961 c 12 § 46.48.060. Prior: 1937 c 189 § 68; RRS § 6360-68. Formerly RCW 46.48.060.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.61.540 "Drugs," what included. The word "drugs", as used in RCW 46.61.500 through 46.61.535, shall include but not be limited to those drugs and substances regulated by chapters 69.41 and 69.50 RCW. [1975 1st ex.s. c 287 § 5.]

STOPPING, STANDING, AND PARKING

46.61.560 Stopping, standing, or parking outside business or residence districts. (1) Outside of incorporated cities and towns no person may stop, park, or leave standing any vehicle, whether attended or unattended, upon the roadway.

(2) Subsection (1) of this section and RCW 46.61.570 and 46.61.575 do not apply to the driver of any vehicle that is disabled in such manner and to such extent that

it is impossible to avoid stopping and temporarily leaving the vehicle in such position. The driver shall nonetheless arrange for the prompt removal of the vehicle as required by RCW 46.61.590.

(3) Subsection (1) of this section does not apply to the driver of a public transit vehicle who temporarily stops the vehicle upon the roadway for the purpose of and while actually engaged in receiving or discharging passengers at a marked transit vehicle stop zone approved by the state department of transportation or a county upon highways under their respective jurisdictions. [1984 c 7 § 72; 1979 ex.s. c 178 § 20; 1977 c 24 § 2; 1965 ex.s. c 155 § 64.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1979 ex.s. c 178: See note following RCW 46.61.590.

Unattended motor vehicles: RCW 46.61.600.

46.61.570 Stopping, standing, or parking prohibited in specified places—Reserving portion of highway prohibited. (1) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall:

(a) Stop, stand, or park a vehicle:

(i) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(ii) On a sidewalk or street planting strip;

(iii) Within an intersection;

(iv) On a crosswalk;

(v) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless official signs or markings indicate a different no-parking area opposite the ends of a safety zone;

(vi) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(vii) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(viii) On any railroad tracks;

(ix) In the area between roadways of a divided highway including crossovers; or

(x) At any place where official signs prohibit stopping.

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(i) In front of a public or private driveway or within five feet of the end of the curb radius leading thereto;

(ii) Within fifteen feet of a fire hydrant;

(iii) Within twenty feet of a crosswalk;

(iv) Within thirty feet upon the approach to any flashing signal, stop sign, yield sign, or traffic control signal located at the side of a roadway;

(v) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly signposted; or

(vi) At any place where official signs prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:

(i) Within fifty feet of the nearest rail of a railroad crossing; or

(ii) At any place where official signs prohibit parking.

(2) Parking or standing shall be permitted in the manner provided by law at all other places except a time limit may be imposed or parking restricted at other places but such limitation and restriction shall be by city ordinance or county resolution or order of the secretary of transportation upon highways under their respective jurisdictions.

(3) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as is unlawful.

(4) It shall be unlawful for any person to reserve or attempt to reserve any portion of a highway for the purpose of stopping, standing, or parking to the exclusion of any other like person, nor shall any person be granted such right. [1977 ex.s. c 151 § 40; 1975 c 62 § 35; 1965 ex.s. c 155 § 66.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

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

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.575 Additional parking regulations. (1) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.

(2) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder, or with its left-hand wheels within twelve inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.

(3) Local authorities may by ordinance or resolution permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the secretary of transportation has determined by order that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(4) The secretary with respect to highways under his or her jurisdiction may place official traffic control devices prohibiting, limiting, or restricting the stopping, standing, or parking of vehicles on any highway where the secretary has determined by order, such stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement

of traffic thereon. No person shall stop, stand, or park any vehicle in violation of the restrictions indicated by such devices. [1977 ex.s. c 151 § 41; 1975 c 62 § 36; 1965 ex.s. c 155 § 67.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

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

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.577 Regulations governing parking facilities. The secretary of transportation may adopt regulations governing the use and control of park and ride lots and other parking facilities operated by the department of transportation, including time limits for the parking of vehicles. [1981 c 185 § 1.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.581 Indication of parking space for disabled persons—Failure, penalty. A parking space or stall for a disabled person shall be indicated by a vertical sign, between thirty-six and eighty-four inches off the ground, with the international symbol of access, whose colors are white on a blue background, described under RCW 70.92.120 and the notice "State disabled parking permit required."

Failure of the person owning or controlling the property where required parking spaces are located to erect and maintain the sign is a class 4 civil infraction under chapter 7.80 RCW for each parking space that should be so designated. [1988 c 74 § 1; 1984 c 154 § 4.]

Intent—Application—Severability—1984 c 154: See notes following RCW 46.16.381.

46.61.582 Free parking by disabled persons. Any person who meets the criteria for special parking privileges under RCW 46.16.381 shall be allowed free of charge to park a vehicle being used to transport that person for unlimited periods of time in parking zones or areas including zones or areas with parking meters which are otherwise restricted as to the length of time parking is permitted. This section does not apply to those zones or areas in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. The person shall obtain and display a special card, decal, or license plate under RCW 46.16.381 to be eligible for the privileges under this section. [1984 c 154 § 5.]

Intent—Application—Severability—1984 c 154: See notes following RCW 46.16.381.

46.61.583 Special plate, card, or decal issued by another jurisdiction. A special license plate, card, or decal issued by another state or country that indicates an occupant of the vehicle is disabled, entitles the vehicle on or in which it is displayed and being used to transport the disabled person to the same overtime parking privileges granted under this chapter to a vehicle with a similar special license plate, card, or decal issued by this state. [1984 c 51 § 2.]

46.61.585 Winter recreational parking areas—Special permit required. Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall park a vehicle in an area designated by an official sign that it is a winter recreational parking area unless such vehicle displays, in accordance with regulations adopted by the parks and recreation commission, a special winter recreational area parking permit. [1975 1st ex.s. c 209 § 5.]

Severability—1975 1st ex.s. c 209: See note following RCW 43.51.290.

Winter recreational parking areas: RCW 43.51.290 through 43.51.340.

46.61.587 Winter recreational parking areas—Penalty. Any violation of RCW 43.51.320 or 46.61.585 or any rule promulgated by the parks and recreation commission to enforce the provisions thereof shall be punished by a fine of not more than twenty-five dollars. [1984 c 258 § 329; 1977 c 57 § 1; 1975 1st ex.s. c 209 § 6.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

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

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1975 1st ex.s. c 209: See note following RCW 43.51.290.

46.61.590 Unattended motor vehicle—Removal from highway. It is unlawful for the operator of a vehicle to leave the vehicle unattended within the limits of any highway unless the operator of the vehicle arranges for the prompt removal of the vehicle. [1979 ex.s. c 178 § 1.]

Severability—1979 ex.s. c 178: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 178 § 23.]

MISCELLANEOUS RULES

46.61.600 Unattended motor vehicle. (1) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key and effectively setting the brake thereon and, when standing upon any perceptible grade, turning the front wheels to the curb or side of the highway.

(2) The most recent driver of a motor vehicle which the driver has left standing unattended, who learns that the vehicle has become set in motion and has struck another vehicle or property, or has caused injury to any person, shall comply with the requirements of:

(a) RCW 46.52.010 if his vehicle strikes an unattended vehicle or property adjacent to a public highway; or

(b) RCW 46.52.020 if his vehicle causes damage to an attended vehicle or other property or injury to any person.

(3) Any person failing to comply with subsection (2)(b) of this section shall be subject to the sanctions set

forth in RCW 46.52.020. [1980 c 97 § 2; 1965 ex.s. c 155 § 68.]

Effective date—1980 c 97: See note following RCW 46.52.020.

46.61.605 Limitations on backing. (1) The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(2) The driver of a vehicle shall not back the same upon any shoulder or roadway of any limited access highway. [1965 ex.s. c 155 § 69.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.606 Driving on sidewalk prohibited—Exception. No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway. [1975 c 62 § 45.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.608 Operating motorcycles on roadways laned for traffic. (1) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(2) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(3) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(4) Motorcycles shall not be operated more than two abreast in a single lane.

(5) Subsections (2) and (3) of this section shall not apply to police officers in the performance of their official duties. [1975 c 62 § 46.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.610 Riding on motorcycles. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator: *Provided, however,* That the motorcycle must contain foot pegs, of a type approved by the equipment commission, for each person such motorcycle is designed to carry. [1975 c 62 § 37; 1967 c 232 § 5; 1965 ex.s. c 155 § 70.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

Equipment regulations for motorcycles: RCW 46.37.530, 46.37.535.

Mopeds: RCW 46.16.630, 46.61.710, 46.61.720.

46.61.611 Riding on motorcycles—Maximum height for handlebars. No person shall operate on a public highway a motorcycle in which the handlebars or grips are more than fifteen inches higher than the seat or saddle for the operator. [1967 c 232 § 6.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.612 Riding on motorcycles—Both feet not to be on same side. No person shall ride a motorcycle in a position where both feet are placed on the same side of the motorcycle. [1967 c 232 § 7.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.613 Riding on motorcycles—Temporary suspension of restrictions for parades or public demonstrations. The provisions of RCW 46.37.530 and 46.61-.610 through 46.61.612 may be temporarily suspended by the chief of the Washington state patrol, or his designee, with respect to the operation of motorcycles within their respective jurisdictions in connection with a parade or public demonstration. [1967 c 232 § 8.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.614 Riding on motorcycles—Clinging to other vehicles. No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on a roadway. [1975 c 62 § 47.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.615 Obstructions to driver's view or driving mechanism. (1) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle. [1965 ex.s. c 155 § 71.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.620 Opening and closing vehicle doors. No person shall open the door of a motor vehicle on the side adjacent to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle adjacent to moving traffic for a period of time longer than necessary to load or unload passengers. [1965 ex.s. c 155 § 72.]

46.61.625 Riding in trailers. No person or persons shall occupy any trailer while it is being moved upon a public highway, except a person occupying a proper position for steering a trailer designed to be steered from a rear-end position. [1965 ex.s. c 155 § 73.]

46.61.630 Coasting prohibited. (1) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.

(2) The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged. [1965 ex.s. c 155 § 74.]

46.61.635 Following fire apparatus prohibited. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or stop such vehicle within five hundred feet of any fire apparatus stopped in answer to a fire alarm. [1975 c 62 § 38; 1965 ex.s. c 155 § 75.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.640 Crossing fire hose. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command. [1965 ex.s. c 155 § 76.]

46.61.645 Throwing or depositing glass, etc., on highway prohibited—Removal. (1) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such highway.

(2) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(3) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle. [1965 ex.s. c 155 § 77.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.655 Permitting escape of load materials. (1) No vehicle shall be driven or moved on any public highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction. Any person operating a vehicle from which any glass or objects have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon such public highway shall immediately cause the public highway to be cleaned of all such glass or objects and shall pay any costs therefor.

(2) No person may operate on any public highway any vehicle with any load unless the load and such covering as required thereon be [by] subsection (3) of this section is securely fastened to prevent the covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

(3) Any vehicle operating on a paved public highway with a load of dirt, sand, or gravel susceptible to being dropped, spilled, leaked, or otherwise escaping therefrom

shall be covered so as to prevent spillage. Covering of such loads is not required if six inches of freeboard is maintained within the bed.

(4) Any vehicle with deposits of mud, rocks, or other debris on the vehicle's body, fenders, frame, undercarriage, wheels, or tires shall be cleaned of such material before the operation of the vehicle on a paved public highway.

(5) The legislative transportation committee shall monitor the effects of subsections (2) through (4) of this section after June 11, 1986, until January 1, 1987, to determine if modifications to this section are necessary.

(6) The *commission on equipment may make necessary rules to carry into effect the provisions of this section, applying such provisions to specific conditions and loads and prescribing means, methods, and practices to effectuate such provisions.

(7) Nothing in this section may be construed to prohibit a public maintenance vehicle from dropping sand on a highway to enhance traction, or sprinkling water or other substances to clean or maintain a highway. [1986 c 89 § 1; 1971 ex.s. c 307 § 22; 1965 ex.s. c 52 § 1; 1961 c 12 § 46.56.135. Prior: 1947 c 200 § 3, part; 1937 c 189 § 44, part; Rem. Supp. 1947 § 6360-44, part. Formerly RCW 46.56.135.]

**Reviser's note: The powers and duties of the commission on equipment were transferred to the Washington state patrol by 1987 c 330 § 706. See RCW 46.37.005.*

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1971 ex.s. c 307: See RCW 70.93.900.

46.61.660 Carrying persons or animals on outside part of vehicle. It shall be unlawful for any person to transport any living animal on the running board, fenders, hood, or other outside part of any vehicle unless suitable harness, cage or enclosure be provided and so attached as to protect such animal from falling or being thrown therefrom. It shall be unlawful for any person to transport any persons upon the running board, fenders, hood or other outside part of any vehicle, except that this provision shall not apply to authorized emergency vehicles. [1961 c 12 § 46.56.070. Prior: 1937 c 189 § 115; RRS § 6360-115. Formerly RCW 46.56.070.]

46.61.665 Embracing another while driving. It shall be unlawful for any person to operate a motor vehicle upon the highways of this state when such person has in his or her embrace another person which prevents the free and unhampered operation of such vehicle. Operation of a motor vehicle in violation of this section is prima facie evidence of reckless driving. [1979 ex.s. c 136 § 89; 1961 c 12 § 46.56.100. Prior: 1937 c 189 § 117; RRS § 6360-117; 1927 c 309 § 49; RRS § 6362-49. Formerly RCW 46.56.100.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.61.670 Driving with wheels off roadway. It shall be unlawful to operate or drive any vehicle or combination of vehicles over or along any pavement or gravel or crushed rock surface on a public highway with one wheel

or all of the wheels off the roadway thereof, except as permitted by RCW 46.61.428 or for the purpose of stopping off such roadway, or having stopped thereat, for proceeding back onto the pavement, gravel or crushed rock surface thereof. [1977 ex.s. c 39 § 2; 1961 c 12 § 46.56.130. Prior: 1937 c 189 § 96; RRS § 6360-96. Formerly RCW 46.56.130.]

46.61.675 Causing or permitting vehicle to be unlawfully operated. It shall be unlawful for the owner, or any other person, in employing or otherwise directing the operator of any vehicle to require or knowingly to permit the operation of such vehicle upon any public highway in any manner contrary to the law. [1961 c 12 § 46.56.200. Prior: 1937 c 189 § 148; RRS § 6360-148. Formerly RCW 46.56.200.]

46.61.680 Lowering passenger motor vehicle below legal clearance—Penalty. It is unlawful to operate any passenger motor vehicle which has been modified from the original design so that any portion of such passenger vehicle other than the wheels has less clearance from the surface of a level roadway than the clearance between the roadway and the lowermost portion of any rim of any wheel the tire on which is in contact with such roadway.

Violation of the provisions of this section is a traffic infraction. [1979 ex.s. c 136 § 90; 1961 c 151 § 1. Formerly RCW 46.56.220.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.61.685 Leaving children unattended in standing vehicle with motor running—Penalty. It shall be unlawful for any person, while operating or in charge of a vehicle, to park or wilfully allow such vehicle to stand upon a public highway or in a public place with its motor running, leaving a minor child or children under the age of sixteen years unattended therein.

Any person violating the provisions of this section shall be guilty of a misdemeanor. Upon a second or subsequent conviction for a violation of the provisions of this section, the court shall, in addition to such fine or imprisonment as provided by law, revoke the operator's license of such person. [1961 c 151 § 2. Formerly RCW 46.56.230.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Leaving children unattended in parked automobile while entering tavern, etc.: RCW 9.91.060.

46.61.687 Child passenger restraint required—Conditions—Penalty for violation—Dismissal—Noncompliance not negligence. (1) After December 31, 1983, the parent or legal guardian of a child less than five years old, when the parent or legal guardian is operating anywhere in the state his or her own motor vehicle registered under chapter 46.16 RCW, in which the child is a passenger, shall have the child properly secured in a manner approved by the state patrol. Even though a separate child passenger restraint device is

considered the ideal method of protection, a properly adjusted and fastened, federally approved seat belt is deemed sufficient to meet the requirements of this section for children one through four years of age.

(2) During the period from January 1, 1984, to July 1, 1984, a person violating subsection (1) of this section may be issued a written warning of the violation. After July 1, 1984, a person violating subsection (1) of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint system within seven days to the jurisdiction issuing the notice, the jurisdiction shall dismiss the notice of traffic infraction. If the person fails to present proof of acquisition within the time required, he or she is subject to a penalty assessment of not less than thirty dollars.

(3) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian; nor shall failure to use a child restraint system be admissible as evidence of negligence in any civil action. [1987 c 330 § 745; 1983 c 215 § 2.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1983 c 215: See note following RCW 46.37.505. *Standards for child passenger restraint systems: RCW 46.37.505.*

46.61.688 Safety belts, use required—Penalties—Exemptions. (1) For the purposes of this section, the term "motor vehicle" includes:

(a) "Buses," meaning motor vehicles with motive power, except trailers, designed to carry more than ten passengers;

(b) "Multipurpose passenger vehicles," meaning motor vehicles with motive power, except trailers, designed to carry ten persons or less that are constructed either on a truck chassis or with special features for occasional off-road operation;

(c) "Passenger cars," meaning motor vehicles with motive power, except multipurpose passenger vehicles, motorcycles, or trailers, designed for carrying ten passengers or less; and

(d) "Trucks," meaning motor vehicles with motive power, except trailers, designed primarily for the transportation of property.

(2) This section only applies to motor vehicles that meet the manual seat belt safety standards as set forth in federal motor vehicle safety standard 208. This section does not apply to a vehicle occupant for whom no safety belt is available when all designated seating positions as required by federal motor vehicle safety standard 208 are occupied.

(3) Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

(4) No person may operate a motor vehicle unless all passengers under the age of sixteen years are either wearing a safety belt assembly or are securely fastened into an approved child restraint device.

(5) During the period from June 11, 1986, to January 1, 1987, a person violating this section may be issued a written warning of the violation. After January 1, 1987, a person violating this section shall be issued a notice of traffic infraction under chapter 46.63 RCW. A finding that a person has committed a traffic infraction under this section shall be contained in the driver's abstract but shall not be available to insurance companies or employers.

(6) Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in any civil action.

(7) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of Title 46 RCW or an equivalent local ordinance or some other offense.

(8) This section does not apply to an operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.

(9) The *commission on equipment may adopt rules exempting operators or occupants of farm vehicles, construction equipment, and vehicles that are required to make frequent stops from the requirement of wearing safety belts. [1986 c 152 § 1.]

***Reviser's note:** The powers and duties of the commission on equipment were transferred to the Washington state patrol by 1987 c 330 § 706. See RCW 46.37.005.

Study of effectiveness—1986 c 152: "The traffic safety commission shall undertake a study of the effectiveness of section 1 of this act and shall report its finding to the legislative transportation committee by January 1, 1989." [1986 c 152 § 3.]

Physicians—Immunity from liability regarding safety belts: RCW 4.24.235.

Seat belts and shoulder harnesses, required equipment: RCW 46.37.510.

46.61.690 Violations relating to toll facilities. Any person who uses a toll bridge, toll tunnel, toll road, or toll ferry, and the approaches thereto, operated by the state of Washington, the department of transportation, or any political subdivision or municipal corporation empowered to operate toll facilities, at the entrance to which appropriate signs have been erected to notify both pedestrian and vehicular traffic that it is entering a toll facility or its approaches and is subject to the payment of tolls at the designated station for collecting tolls, commits a traffic infraction if:

(1) Such person refuses to pay, evades, or attempts to evade the payment of such tolls, or uses or attempts to use any spurious or counterfeit tickets, coupons, or tokens for payment of any such tolls, or

(2) Such person turns, or attempts to turn, the vehicle around in the bridge, tunnel, loading terminal, approach, or toll plaza where signs have been erected forbidding such turns, or

(3) Such person refuses to move a vehicle through the toll gates after having come within the area where signs have been erected notifying traffic that it is entering the area where toll is collectible or where vehicles may not

turn around and where vehicles are required to pass through the toll gates for the purpose of collecting tolls. [1983 c 247 § 1; 1979 ex.s. c 136 § 91; 1961 c 259 § 1. Formerly RCW 46.56.240.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1961 c 259: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 259 § 2.]

46.61.700 Parent or guardian shall not authorize or permit violation by a child or ward. The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter. [1965 ex.s. c 155 § 78.]

Reviser's note: This section was enacted just before sections about the operation of bicycles and play vehicles and was accordingly so codified in 1965. Other sections enacted later have been codified under the numbers remaining between RCW 46.61.700 and 46.61.750. The section appears in the Uniform Vehicle Code (1962) as part of the first section of Article XII—Operation of Bicycles and Play Vehicles.

Captions used herein, not part of the law: RCW 46.61.990.

Unlawful to allow unauthorized child or ward to drive: RCW 46.20.343.

46.61.710 Mopeds—General requirements and operation. (1) No person shall operate a moped upon the highways of this state unless the moped has been assigned a moped registration number and displays a moped permit in accordance with the provisions of RCW 46.16.630.

(2) Notwithstanding any other provision of law, a moped may not be operated on a bicycle path or trail, bikeway, equestrian trail, or hiking or recreational trail.

(3) Operation of a moped on a fully controlled limited access highway or on a sidewalk is unlawful.

(4) Removal of any muffling device or pollution control device from a moped is unlawful. [1979 ex.s. c 213 § 8.]

46.61.720 Mopeds—Safety standards. Mopeds shall comply with those federal motor vehicle safety standards established under the national traffic vehicle safety act of 1966 (15 U.S.C. Sec. 1381, et. seq.) which are applicable to a motor-driven cycle, as that term is defined in such federal standards. [1979 ex.s. c 213 § 9.]

Mopeds

drivers' licenses, motorcycle endorsement, moped exemption: RCW 46.20.500.

registration: RCW 46.16.630.

46.61.730 Wheelchair conveyances. (1) No person may operate a wheelchair conveyance on any public roadway with a posted speed limit in excess of thirty-five miles per hour.

(2) No person other than a wheelchair-bound person may operate a wheelchair conveyance on a public roadway.

(3) Every wheelchair-bound person operating a wheelchair conveyance upon a roadway is granted all the rights and is subject to all the duties applicable to the

driver of a vehicle by this chapter, except those provisions that by their nature can have no application.

(4) A violation of this section is a traffic infraction. [1983 c 200 § 5.]

Severability—1983 c 200: See note following RCW 46.04.710.

Wheelchair conveyances

definitions: RCW 46.04.710.

licensing: RCW 46.16.640.

operator's license: RCW 46.20.550.

safety standards: RCW 46.37.610.

OPERATION OF BICYCLES AND PLAY VEHICLES

46.61.750 Effect of regulations—Penalty. (1) It is a traffic infraction for any person to do any act forbidden or fail to perform any act required in RCW 46.61.750 through 46.61.780.

(2) These regulations applicable to bicycles apply whenever a bicycle is operated upon any highway or upon any bicycle path, subject to those exceptions stated herein. [1982 c 55 § 6; 1979 ex.s. c 136 § 92; 1965 ex.s. c 155 § 79.]

Rules of court: *Monetary penalty schedule—JTIR 6.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

"Bicycle" defined: RCW 46.04.071.

46.61.755 Traffic laws apply to persons riding bicycles. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in RCW 46.61.750 through 46.61.780 and except as to those provisions of this chapter which by their nature can have no application. [1965 ex.s. c 155 § 80.]

Rules of court: *Monetary penalty schedule—JTIR 6.2.*

46.61.758 Hand signals. All hand signals required of persons operating bicycles shall be given in the following manner:

(1) Left turn. Left hand and arm extended horizontally beyond the side of the bicycle;

(2) Right turn. Left hand and arm extended upward beyond the side of the bicycle, or right hand and arm extended horizontally to the right side of the bicycle;

(3) Stop or decrease speed. Left hand and arm extended downward beyond the side of the bicycle.

The hand signals required by this section shall be given before initiation of a turn. [1982 c 55 § 8.]

46.61.760 Riding on bicycles. (1) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(2) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. [1965 ex.s. c 155 § 81.]

Rules of court: *Monetary penalty schedule—JTIR 6.2.*

46.61.765 Clinging to vehicles. No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway. [1965 ex.s. c 155 § 82.]

Rules of court: *Monetary penalty schedule—JTIR 6.2.*

46.61.770 Riding on roadways and bicycle paths. (1) Every person operating a bicycle upon a roadway at a rate of speed less than the normal flow of traffic at the particular time and place shall ride as near to the right side of the right through lane as is safe except as may be appropriate while preparing to make or while making turning movements, or while overtaking and passing another bicycle or vehicle proceeding in the same direction. A person operating a bicycle upon a roadway or highway other than a limited-access highway, which roadway or highway carries traffic in one direction only and has two or more marked traffic lanes, may ride as near to the left side of the left through lane as is safe. A person operating a bicycle upon a roadway may use the shoulder of the roadway or any specially designated bicycle lane if such exists.

(2) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. [1982 c 55 § 7; 1974 ex.s. c 141 § 14; 1965 ex.s. c 155 § 83.]

Rules of court: *Monetary penalty schedule—JTIR 6.2.*

Use of bicycles on limited-access highways: RCW 46.61.160.

46.61.775 Carrying articles. No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handle bars. [1965 ex.s. c 155 § 84.]

Rules of court: *Monetary penalty schedule—JTIR 6.2.*

46.61.780 Lamps and other equipment on bicycles.

(1) Every bicycle when in use during the hours of darkness as defined in RCW 46.37.020 shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the state patrol which shall be visible from all distances from one hundred feet to six hundred feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

(2) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement. [1987 c 330 § 746; 1975 c 62 § 39; 1965 ex.s. c 155 § 85.]

Rules of court: *Monetary penalty schedule—JTIR 6.2.*

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.990 Recodification of sections—Organization of chapter—Construction. Sections 1 through 52 and 54 through 86 of this amendatory act are added to

chapter 12, Laws of 1961 and shall constitute a new chapter in Title 46 of the Revised Code of Washington and sections 54, 55 and 63 as herein amended and RCW 46.48.012, 46.48.014, 46.48.015, 46.48.016, 46.48.023, 46.48.025, 46.48.026, 46.48.041, 46.48.046, 46.48.050, 46.48.060, 46.48.080, 46.48.110, 46.48.120, 46.48.150, 46.48.160, 46.48.340, 46.56.030, 46.56.070, 46.56.100, 46.56.130, 46.56.135, 46.56.190, 46.56.200, 46.56.210, 46.56.220, 46.56.230, 46.56.240, 46.60.260, 46.60.270, 46.60.330, 46.60.340 shall be recodified as and be a part of said chapter. The sections of the new chapter shall be organized under the following captions: "OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS", "TRAFFIC SIGNS, SIGNALS AND MARKINGS", "DRIVING ON RIGHT SIDE OF ROADWAY—OVERTAKING AND PASSING—USE OF ROADWAY", "RIGHT OF WAY", "PEDESTRIANS' RIGHTS AND DUTIES", "TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING", "SPECIAL STOPS REQUIRED", "SPEED RESTRICTIONS", "RECKLESS DRIVING, DRIVING WHILE INTOXICATED AND NEGLIGENT HOMICIDE BY VEHICLE", "STOPPING, STANDING AND PARKING", "MISCELLANEOUS RULES", and "OPERATION OF BICYCLES AND PLAY VEHICLES". Such captions shall not constitute any part of the law. [1965 ex.s. c 155 § 92.]

46.61.991 Severability—1965 ex.s. c 155. If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 155 § 93.]

Chapter 46.63

DISPOSITION OF TRAFFIC INFRACTIONS

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46.63.130	Issue of process by court of limited jurisdiction.
46.63.140	Presumption regarding stopped, standing, or parked vehicles.
46.63.151	Costs and attorney fees.

Traffic infraction cases involving juveniles under age sixteen: RCW 13.40.250.

46.63.010 Legislative intent. It is the legislative intent in the adoption of this chapter in decriminalizing certain traffic offenses to promote the public safety and welfare on public highways and to facilitate the implementation of a uniform and expeditious system for the disposition of traffic infractions. [1979 ex.s. c 136 § 1.]

Effective date—1979 ex.s. c 136: "The provisions of chapter 136, Laws of 1979 ex. sess. and this 1980 act shall take effect on January 1, 1981, and shall apply to violations of the traffic laws committed on or after January 1, 1981." [1980 c 128 § 9; 1979 ex.s. c 136 § 111.]

Severability—1979 ex.s. c 136: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 136 § 110.]

46.63.020 Violations as traffic infractions—Exceptions. Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(8) relating to unauthorized acquisition of a special decal, license plate, or card for disabled persons' parking;

(10) RCW 46.20.021 relating to driving without a valid driver's license;

(11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(12) RCW 46.20.342 relating to driving with a suspended or revoked license;

(13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;

(14) RCW 46.20.416 relating to driving while in a suspended or revoked status;

(15) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;

(16) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(17) RCW 46.25.170 relating to commercial driver's licenses;

(18) Chapter 46.29 RCW relating to financial responsibility;

(19) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(20) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(21) RCW 46.48.175 relating to the transportation of dangerous articles;

(22) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(23) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(24) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(25) RCW 46.52.100 relating to driving under the influence of liquor or drugs;

(26) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(27) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(28) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(29) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;

(30) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(31) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(32) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(33) RCW 46.61.500 relating to reckless driving;

(34) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(36) RCW 46.61.522 relating to vehicular assault;

(37) RCW 46.61.525 relating to negligent driving;

(38) RCW 46.61.530 relating to racing of vehicles on highways;

(39) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(40) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(41) RCW 46.64.020 relating to nonappearance after a written promise;

(42) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(43) Chapter 46.65 RCW relating to habitual traffic offenders;

(44) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

(45) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

(46) Chapter 46.80 RCW relating to motor vehicle wreckers;

(47) Chapter 46.82 RCW relating to driver's training schools;

(48) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(49) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20. Prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

Reviser's note: This section was amended by 1989 c 111 § 20, 1989 c 178 § 27, and by 1989 c 353 § 8, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Severability—1987 c 388: See note following RCW 46.16.710.

Effective dates—1987 c 244: See note following RCW 46.12.020.

Severability—Effective date—1985 c 377: See RCW 46.55.900 and 46.55.902.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 19 § 7.]

Effective date—1980 c 148: See note following RCW 46.10.090.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Allowing unauthorized persons to drive: RCW 46.20.344.

46.63.030 Notice of traffic infraction—Issuance.

(1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed; or

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction. [1987 c 66 § 2; 1980 c 128 § 10; 1979 ex.s. c 136 § 3.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.040 Jurisdiction of courts—Jurisdiction of college and university governing bodies. (1) All violations of state law, local law, ordinance, regulation, or resolution designated as traffic infractions in RCW 46.63.020 may be heard and determined by a district court, except as otherwise provided in this section.

(2) Any municipal court has the authority to hear and determine traffic infractions pursuant to this chapter.

(3) Any city or town with a municipal court may contract with the county to have traffic infractions committed within the city or town adjudicated by a district court.

(4) District court commissioners have the authority to hear and determine traffic infractions pursuant to this chapter.

(5) The boards of regents of the state universities, and the boards of trustees of the regional universities and of The Evergreen State College have the authority to hear and determine traffic infractions under RCW 28B.10-.560. [1984 c 258 § 137; 1983 c 221 § 2; 1979 ex.s. c 136 § 6.]

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

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.050 Training of judicial officers. All judges and court commissioners adjudicating traffic infractions shall complete such training requirements as are promulgated by the supreme court. [1979 ex.s. c 136 § 7.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.060 Notice of traffic infraction—Determination final unless contested—Form. (1) A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this chapter.

(2) The form for the notice of traffic infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that a traffic infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction; that the penalty for a traffic infraction may include sanctions against the person's driver's license including suspension, revocation, or denial; that the penalty for a traffic infraction related to standing, stopping, or parking may include nonrenewal of the vehicle license;

(c) A statement of the specific traffic infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the traffic infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days or the person's driver's license will not be renewed by the department until any penalties imposed pursuant to this chapter have been satisfied;

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in the refusal of the department to renew the person's driver's license, or in the case of a standing, stopping, or parking violation the vehicle license, until any penalties imposed pursuant to this chapter have been satisfied;

(j) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;

(k) A statement that failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail. [1984 c 224 § 2; 1982 1st ex.s. c 14 § 2; 1980 c 128 § 1; 1979 ex.s. c 136 § 8.]

Severability—Effective date—1984 c 224: See notes following RCW 46.16.216.

Effective date—1982 1st ex.s. c 14: "This act shall take effect on July 1, 1984, and shall apply to violations of traffic laws committed on or after July 1, 1984." [1982 1st ex.s. c 14 § 7.]

Severability—1982 1st ex.s. c 14: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 14 § 6.]

Effective date—1980 c 128: "Sections 1 through 8 and 10 through 16 of this act shall take effect on January 1, 1981, and shall apply to violations of the traffic laws committed on or after January 1, 1981. Section 9 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1980 c 128 § 18.]

Severability—1980 c 128: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 128 § 17.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.070 Response to notice—Contesting determination—Hearing—Failure to respond or appear. (1) Any person who receives a notice of traffic infraction

shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department in accordance with RCW 46.20.270.

(3) If the person determined to have committed the infraction wishes to contest the determination the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5) (a) If any person issued a notice of traffic infraction:

(i) Fails to respond to the notice of traffic infraction as provided in subsection (2) of this section; or

(ii) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by this chapter and shall notify the department in accordance with RCW 46.20.270, of the failure to respond to the notice of infraction or to appear at a requested hearing.

(b) The department may not renew the driver's license, or in the case of a standing, stopping, or parking violation the vehicle license, of any person for whom the court has entered an order pursuant to (a) of this subsection until any penalties imposed pursuant to this chapter have been satisfied. For purposes of driver's license nonrenewal only, the lessee of a vehicle shall be considered to be the person to whom a notice of a standing, stopping, or parking violation has been issued for such violations of the vehicle incurred while the vehicle was leased or rented under a bona fide commercial lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner, if the lease agreement contains a provision prohibiting anyone other than the lessee from operating the vehicle. Such a lessor shall, upon the request of the municipality issuing the notice of

infraction, supply the municipality with the name and driver's license number of the person leasing the vehicle at the time of the infraction. [1984 c 224 § 3; 1982 1st ex.s. c 14 § 3; 1980 c 128 § 2; 1979 ex.s. c 136 § 9.]

Severability—Effective date—1984 c 224: See notes following RCW 46.16.216.

Effective date—Severability—1982 1st ex.s. c 14: See notes following RCW 46.63.060.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.080 Hearings—Rules of procedure—Counsel. (1) Procedures for the conduct of all hearings provided for in this chapter may be established by rule of the supreme court.

(2) Any person subject to proceedings under this chapter may be represented by counsel.

(3) The attorney representing the state, county, city, or town may appear in any proceedings under this chapter but need not appear, notwithstanding any statute or rule of court to the contrary. [1981 c 19 § 2; 1979 ex.s. c 136 § 10.]

Severability—1981 c 19: See note following RCW 46.63.020.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.090 Hearings—Contesting determination that infraction committed—Appeal. (1) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

(2) The court may consider the notice of traffic infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in court.

(3) The burden of proof is upon the state to establish the commission of the infraction by a preponderance of the evidence.

(4) After consideration of the evidence and argument the court shall determine whether the infraction was committed. Where it has not been established that the infraction was committed an order dismissing the notice shall be entered in the court's records. Where it has been established that the infraction was committed an appropriate order shall be entered in the court's records. A record of the court's determination and order shall be furnished to the department in accordance with RCW 46.20.270 as now or hereafter amended.

(5) An appeal from the court's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure. [1980 c 128 § 3; 1979 ex.s. c 136 § 11.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.100 Hearings—Explanation of mitigating circumstances. (1) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(2) After the court has heard the explanation of the circumstances surrounding the commission of the infraction an appropriate order shall be entered in the court's records. A record of the court's determination and order shall be furnished to the department in accordance with RCW 46.20.270 as now or hereafter amended.

(3) There may be no appeal from the court's determination or order. [1979 ex.s. c 136 § 12.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.110 Monetary penalties. (1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(3) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(4) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(5) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment the court shall notify the department of the failure to pay the penalty, and the department may not renew the person's driver's license until the penalty has been paid and the penalty provided in subsection (3) of this section has been paid. [1986 c 213 § 2; 1984 c 258 § 330. Prior: 1982 1st ex.s. c 14 § 4; 1982 1st ex.s. c 12 § 1; 1982 c 10 § 13; prior:

1981 c 330 § 7; 1981 c 19 § 6; 1980 c 128 § 4; 1979 ex.s. c 136 § 13.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

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

Intent—1984 c 258: See note following RCW 3.46.120.

Effective date—Severability—1982 1st ex.s. c 14: See notes following RCW 46.63.060.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 330: See note following RCW 3.62.060.

Severability—1981 c 19: See note following RCW 46.63.020.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.120 Order of court—Civil nature—Waiver, reduction, suspension of penalty—Community

service. (1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

(2) The court may include in the order the imposition of any penalty authorized by the provisions of this chapter for the commission of an infraction. The court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the infraction. At the person's request the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour. [1979 ex.s. c 136 § 14.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.130 Issue of process by court of limited jurisdiction. Notwithstanding any other provisions of law governing service of process in civil cases, a court of limited jurisdiction having jurisdiction over an alleged traffic infraction may issue process anywhere within the state. [1980 c 128 § 5.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

46.63.140 Presumption regarding stopped, standing, or parked vehicles. (1) In any traffic infraction case involving a violation of this title or equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to the stopping, standing, or parking of a vehicle, proof that the particular vehicle described in the notice of traffic infraction was stopping, standing, or parking in violation of any such provision of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where, and for the time during which, the violation occurred.

(2) The foregoing stated presumption shall apply only when the procedure prescribed in RCW 46.63.030(3) has been followed. [1980 c 128 § 11.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

46.63.151 Costs and attorney fees. Each party to a traffic infraction case is responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in a traffic infraction case. [1981 c 19 § 4.]

Severability—1981 c 19: See note following RCW 46.63.020.

Chapter 46.64 ENFORCEMENT

Sections

46.64.010	Traffic citations—Record of—Cancellation prohibited—Penalty—Citation audit.
46.64.015	Citation and notice to appear in court—Issuance—Contents—Written promise—Arrest—Detention.
46.64.018	Arrest without warrant for certain traffic offenses.
46.64.020	Nonappearance after written promise—Penalty—Response by mail, when—Arrest, when.
46.64.025	Nonappearance after written promise—Notice to department.
46.64.030	Procedure governing arrest and prosecution.
46.64.035	Posting of security or bail by nonresident—Penalty.
46.64.040	Nonresident's use of highways—Resident leaving state—Secretary of state as attorney in fact.
46.64.048	Attempting, aiding, abetting, coercing, committing violations, punishable.
46.64.050	General penalty.
46.64.060	Stopping motor vehicles for driver's license check, vehicle inspection and test—Purpose.
46.64.070	Stopping motor vehicles for driver's license check, vehicle inspection and test—Authorized—Powers additional.

Impoundment of vehicle for driver's license violations—Release, when—Court hearing: RCW 46.20.435.

46.64.010 Traffic citations—Record of—Cancellation prohibited—Penalty—Citation audit. Every traffic enforcement agency in this state shall provide in appropriate form traffic citations containing notices to appear which shall be issued in books with citations in quadruplicate and meeting the requirements of this section.

The chief administrative officer of every such traffic enforcement agency shall be responsible for the issuance of such books and shall maintain a record of every such book and each citation contained therein issued to individual members of the traffic enforcement agency and shall require and retain a receipt for every book so issued.

Every traffic enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a copy of such traffic citation with a court having competent jurisdiction over the alleged offense or with its traffic violations bureau.

Upon the deposit of the original or a copy of such traffic citation with a court having competent jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, said original or copy of such traffic citation may be disposed of only by trial in said court or other official action by a judge of said court, including forfeiture of the bail or by the deposit of sufficient bail with or payment of a fine to said traffic violations bureau by the person to whom such traffic citation has been issued by the traffic enforcement officer.

It shall be unlawful and official misconduct for any traffic enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required herein.

The chief administrative officer of every traffic enforcement agency shall require the return to him of a copy of every traffic citation issued by an officer under his supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original or copy of the traffic citation was deposited.

Any person who cancels or solicits the cancellation of any traffic citation, in any manner other than as provided in this section, shall be guilty of a misdemeanor.

Every record of traffic citations required in this section shall be audited monthly by the appropriate fiscal officer of the government agency to which the traffic enforcement agency is responsible. [1961 c 12 § 46.64-.010. Prior: 1949 c 196 § 16; 1937 c 189 § 145; Rem. Supp. 1949 § 6360-145.]

46.64.015 Citation and notice to appear in court—Issuance—Contents—Written promise—Arrest—Detention. Whenever any person is arrested for any violation of the traffic laws or regulations which is punishable as a misdemeanor or by imposition of a fine, the arresting officer may serve upon him or her a traffic citation and notice to appear in court. Such citation and notice shall conform to the requirements of RCW 46.64.010, and in addition, shall include spaces for the name and address of the person arrested, the license number of the vehicle involved, the driver's license number of such person, if any, the offense or violation charged, the time and place where such person shall appear in court, and a place where the person arrested may sign. Such spaces shall be filled with the appropriate information by the arresting officer. The arrested person, in order to secure release, and when permitted by the arresting officer, must give his or her written promise to appear in court as required by the citation and notice by signing in the appropriate place the written citation and notice served by the arresting officer, and if the arrested person is a nonresident of the state, shall also post a

bond, cash security, or bail as required under RCW 46.64.035. An officer may not serve or issue any traffic citation or notice for any offense or violation except either when the offense or violation is committed in his or her presence or when a person may be arrested pursuant to RCW 10.31.100, as now or hereafter amended. The detention arising from an arrest under this section may not be for a period of time longer than is reasonably necessary to issue and serve a citation and notice, except that the time limitation does not apply under any of the following circumstances:

(1) Where the arrested person refuses to sign a written promise to appear in court as required by the citation and notice provisions of this section;

(2) Where the arresting officer has probable cause to believe that the arrested person has committed any of the offenses enumerated in RCW 10.31.100(3), as now or hereafter amended;

(3) When the arrested person is a nonresident and is being detained for a hearing under RCW 46.64.035. [1987 c 345 § 2; 1985 c 303 § 11; 1979 ex.s. c 28 § 2; 1975-'76 2nd ex.s. c 95 § 2; 1975 c 56 § 1; 1967 c 32 § 70; 1961 c 12 § 46.64.015. Prior: 1951 c 175 § 1.]

46.64.018 Arrest without warrant for certain traffic offenses. See RCW 10.31.100.

46.64.020 Nonappearance after written promise—Penalty—Response by mail, when—Arrest, when.

(1) The legislature finds that:

(a) Traffic laws are necessary for the safe and expeditious flow of motor vehicle traffic.

(b) For traffic laws to be effective, they must be judiciously and fairly enforced. This enforcement includes the issuance of notices of infraction and citations and the assessment of fines and penalties.

(c) The adjudication of notices of infraction through a written and signed promise to respond as provided in this title is an integral and important part of the traffic law system.

(d) Approximately twenty percent of all people issued notices of infraction violate their written and signed promise to respond and obtain notices of failure to appear on their driving records. Through their actions, these people are destroying the effectiveness of the traffic law system and undermining the department of licensing regulatory control of drivers' licenses.

(e) Notices of failure to appear accumulated on a person's driving record shall be considered if they were issued after July 25, 1987.

(2) Any person violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of traffic infraction, as provided in this title, is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested or the disposition of the notice of infraction: *Provided*, That a written promise to appear in court or a written promise to respond to a notice of traffic infraction may be complied with by an appearance by counsel: *Provided further*, That a person

charged under RCW 46.20.021 with driving with an expired driver's license may respond by mailing to the court within fifteen days of the violation, a copy of the person's currently valid driver's license. Any person who has been issued a notice of infraction pursuant to RCW 46.63.030(3) and who fails to respond as provided in this title is guilty of a misdemeanor regardless of the disposition of the notice of infraction.

(3) Any person who drives a motor vehicle within the state and has accumulated two or more notices of failure to appear on his or her driving record maintained by the department of licensing in any five-year period as a result of noncompliance with the traffic infraction laws in any jurisdiction or court within Washington, or in any jurisdiction or court within other states which are signatories with Washington in a nonresident violator compact or reciprocal agreement under chapter 46.23 RCW, shall be guilty of failure to comply, a gross misdemeanor. A person is not subject to this subsection for failure to pay a fine for any pedestrian, bicycling, or parking offense.

Probable cause for arrest under this subsection is established by the officer obtaining, orally or in writing, information from the department of licensing that two or more notices of failure to appear are on the person's driving record.

Venue for prosecution shall be in the court with jurisdiction in the area of apprehension. [1988 c 38 § 1; 1987 c 345 § 1; 1986 c 213 § 1; 1980 c 128 § 8; 1961 c 12 § 46.64.020. Prior: 1937 c 189 § 146; RRS § 6360-146.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

46.64.025 Nonappearance after written promise—Notice to department. Whenever any person has for a period of fifteen or more days violated his written promise to appear in court, the court in which the defendant so promised to appear shall forthwith give notice of such fact to the department of licensing. Whenever thereafter the case in which such promise was given is adjudicated the court hearing the case shall file with the department a certificate showing that the case has been adjudicated. [1979 c 158 § 175; 1967 c 32 § 71; 1965 ex.s. c 121 § 23.]

Severability—1965 ex.s. c 121: See RCW 46.20.910.

Purpose—Construction—1965 ex.s. c 121: See note following RCW 46.20.021.

46.64.030 Procedure governing arrest and prosecution. The provisions of this title with regard to the apprehension and arrest of persons violating this title shall govern all police officers in making arrests without a warrant for violations of this title for offenses either committed in their presence or believed to have been committed based on probable cause pursuant to RCW 10.31.100, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for other like offenses. [1979 ex.s. c 28 § 3; 1975 c 56 § 2;

1967 c 32 § 72; 1961 c 12 § 46.64.030. Prior: 1937 c 189 § 147; RRS § 6360-147.]

46.64.035 Posting of security or bail by nonresident—Penalty. Any nonresident of the state of Washington who is issued a notice of infraction or a citation for a traffic offense may be required to post either a bond or cash security in the amount of the infraction penalty or to post bail. The court shall by January 1, 1990, accept, in lieu of bond or cash security, valid major credit cards issued by a bank or other financial institution or automobile club card guaranteed by an insurance company licensed to conduct business in the state. If payment is made by credit card the court is authorized to impose, in addition to any penalty or fine, an amount equal to the charge to the court for accepting such cards. If the person cannot post the bond, cash security, or bail, he or she shall be taken to a magistrate or judge for a hearing at the first possible working time of the court. If the person refuses to comply with this section, he or she shall be guilty of a misdemeanor. This section does not apply to residents of states that have entered into a reciprocal agreement as outlined in RCW 46.23.020. [1987 c 345 § 3.]

46.64.040 Nonresident's use of highways—Resident leaving state—Secretary of state as attorney in fact. The acceptance by a nonresident of the rights and privileges conferred by law in the use of the public highways of this state, as evidenced by his operation of a vehicle thereon, or the operation thereon of his vehicle with his consent, express or implied, shall be deemed equivalent to and construed to be an appointment by such nonresident of the secretary of state of the state of Washington to be his true and lawful attorney upon whom may be served all lawful summons and processes against him growing out of any accident, collision, or liability in which such nonresident may be involved while operating a vehicle upon the public highways, or while his vehicle is being operated thereon with his consent, express or implied, and such operation and acceptance shall be a signification of his agreement that any summons or process against him which is so served shall be of the same legal force and validity as if served on him personally within the state of Washington. Likewise each resident of this state who, while operating a motor vehicle on the public highways of this state, is involved in any accident, collision or liability and thereafter within three years departs from this state appoints the secretary of state of the state of Washington as his lawful attorney for service of summons as provided in this section for nonresidents. Service of such summons or process shall be made by leaving two copies thereof with a fee of twenty-five dollars with the secretary of state of the state of Washington, or at his office, and such service shall be sufficient and valid personal service upon said resident or nonresident: *Provided*, That notice of such service and a copy of the summons or process is forthwith sent by registered mail with return receipt requested, by plaintiff to the defendant at the last known

address of the said defendant, and the plaintiff's affidavit of compliance herewith are appended to the process, together with the affidavit of the plaintiff's attorney that he has with due diligence attempted to serve personal process upon the defendant at all addresses known to him of defendant and further listing in his affidavit the addresses at which he attempted to have process served. However, if process is forwarded by registered mail and defendant's endorsed receipt is received and entered as a part of the return of process then the foregoing affidavit of plaintiff's attorney need only show that the defendant received personal delivery by mail: *Provided further*, That personal service outside of this state in accordance with the provisions of law relating to personal service of summons outside of this state shall relieve the plaintiff from mailing a copy of the summons or process by registered mail as hereinbefore provided. The secretary of state shall forthwith send one of such copies by mail, postage prepaid, addressed to the defendant at his address, if known to the secretary of state. The court in which the action is brought may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. The fee of twenty-five dollars paid by the plaintiff to the secretary of state shall be taxed as part of his costs if he prevails in the action. The secretary of state shall keep a record of all such summons and processes, which shall show the day of service. [1982 c 35 § 197; 1973 c 91 § 1; 1971 ex.s. c 69 § 1; 1961 c 12 § 46.64.040. Prior: 1959 c 121 § 1; 1957 c 75 § 1; 1937 c 189 § 129; RRS § 6360-129.]

Rules of court: Cf. CR 12(a).

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Deposit of fees in secretary of state's revolving fund: RCW 43.07.130.

46.64.048 Attempting, aiding, abetting, coercing, committing violations, punishable. Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared by this title to be a crime, whether individually or in connection with one or more other persons or as principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcefully, or wilfully induces, causes, coerces, requires, permits or directs others to violate any provisions of this title is likewise guilty of such offense. [1961 c 12 § 46.56.210. Prior: 1937 c 189 § 149; RRS § 6360-149. Formerly RCW 46.61.695.]

46.64.050 General penalty. It is a traffic infraction for any person to violate any of the provisions of this title unless violation is by this title or other law of this state declared to be a felony, a gross misdemeanor, or a misdemeanor.

Unless another penalty is in this title provided, every person convicted of a misdemeanor for violation of any provisions of this title shall be punished accordingly. [1979 ex.s. c 136 § 93; 1975-'76 2nd ex.s. c 95 § 3; 1961 c 12 § 46.64.050. Prior: (i) 1937 c 189 § 150; RRS § 6360-150; 1927 c 309 § 53; RRS § 6362-53. (ii) 1937 c

188 § 82; RRS § 6312-82; 1921 c 108 § 16; RRS § 6378.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.64.060 Stopping motor vehicles for driver's license check, vehicle inspection and test—Purpose. The purpose of RCW 46.64.060 and 46.64.070 is to provide for the exercise of the police power of this state to protect the health and safety of its citizens by assuring that only qualified drivers and vehicles which meet minimum equipment standards shall operate upon the highways of this state. [1967 c 144 § 1.]

Severability—1967 c 144: "If any provision, clause or word of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision of application, and to this end the provisions of this act are declared to be severable." [1967 c 144 § 3.]

46.64.070 Stopping motor vehicles for driver's license check, vehicle inspection and test—Authorized—Powers additional. To carry out the purpose of RCW 46.64.060 and 46.64.070, officers of the Washington state patrol are hereby empowered during daylight hours and while using plainly marked state patrol vehicles to require the driver of any motor vehicle being operated on any highway of this state to stop and display his or her driver's license and/or to submit the motor vehicle being driven by such person to an inspection and test to ascertain whether such vehicle complies with the minimum equipment requirements prescribed by chapter 46.37 RCW, as now or hereafter amended. No criminal citation shall be issued for a period of ten days after giving a warning ticket pointing out the defect.

The powers conferred by RCW 46.64.060 and 46.64.070 are in addition to all other powers conferred by law upon such officers, including but not limited to powers conferred upon them as police officers pursuant to RCW 46.20.430 and powers conferred by chapter 46.32 RCW. [1973 2nd ex.s. c 22 § 1; 1967 c 144 § 2.]

Severability—1967 c 144: See note following RCW 46.64.060.

Chapter 46.65

WASHINGTON HABITUAL TRAFFIC OFFENDERS ACT

Sections

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46.65.010 State policy enunciated. It is hereby declared to be the policy of the state of Washington:

(1) To provide maximum safety for all persons who travel or otherwise use the public highways of this state; and

(2) To deny the privilege of operating motor vehicles on such highways to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws of the state, the orders of her courts and the statutorily required acts of her administrative agencies; and

(3) To discourage repetition of criminal acts by individuals against the peace and dignity of the state and her political subdivisions and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual offenders who have been convicted repeatedly of violations of traffic laws. [1971 ex.s. c 284 § 3.]

Severability—1971 ex.s. c 284: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 284 § 17.]

46.65.020 Habitual offender defined. As used in this chapter, unless a different meaning is plainly required by the context, an habitual offender means any person, resident or nonresident, who has accumulated convictions or findings that the person committed a traffic infraction as defined in RCW 46.20.270, or, if a minor, has violations recorded with the department of licensing, for separate and distinct offenses as described in either subsection (1) or (2) below committed within a five-year period, as evidenced by the records maintained in the department of licensing: *Provided*, That where more than one described offense is committed within a six-hour period such multiple offenses shall, on the first such occasion, be treated as one offense for the purposes of this chapter:

(1) Three or more convictions, singularly or in combination, of the following offenses:

(a) Vehicular homicide as defined in RCW 46.61.520;

(b) Vehicular assault as defined in RCW 46.61.522;

(c) Driving or operating a motor vehicle while under the influence of intoxicants or drugs;

(d) Driving a motor vehicle while his or her license, permit, or privilege to drive has been suspended or revoked;

(e) Failure of the driver of any vehicle involved in an accident resulting in the injury or death of any person or damage to any vehicle which is driven or attended by any person to immediately stop such vehicle at the scene of such accident or as close thereto as possible and to forthwith return to and in every event remain at, the scene of such accident until he has fulfilled the requirements of RCW 46.52.020;

(f) Reckless driving as defined in RCW 46.61.500;

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(g) Being in physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504; or

(h) Attempting to elude a pursuing police vehicle as defined in RCW 46.61.024;

(2) Twenty or more convictions or findings that the person committed a traffic infraction for separate and distinct offenses, singularly or in combination, in the operation of a motor vehicle that are required to be reported to the department of licensing other than the offenses of driving with an expired driver's license and not having a driver's license in the operator's immediate possession. Such convictions or findings shall include those for offenses enumerated in subsection (1) of this section when taken with and added to those offenses described herein but shall not include convictions or findings for any nonmoving violation. No person may be considered an habitual offender under this subsection unless at least three convictions have occurred within the three hundred sixty-five days immediately preceding the last conviction.

The offenses included in subsections (1) and (2) of this section are deemed to include offenses under any valid town, city, or county ordinance substantially conforming to the provisions cited in subsections (1) and (2) or amendments thereto, and any federal law, or any law of another state, including subdivisions thereof, substantially conforming to the aforesaid state statutory provisions. [1983 c 164 § 7; 1981 c 188 § 1; 1979 ex.s. c 136 § 94; 1979 c 62 § 1; 1971 ex.s. c 284 § 4.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1979 c 62: "If any provision of this 1979 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 c 62 § 8.]

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.030 Transcript or abstract of conviction record certified—As prima facie evidence. The director of the department of licensing shall certify a transcript or abstract of the record of convictions and findings of traffic infractions as maintained by the department of licensing of any person whose record brings him or her within the definition of an habitual offender, as defined in RCW 46.65.020, to the hearing officer appointed in the event a hearing is requested. Such transcript or abstract may be admitted as evidence in any hearing or court proceeding and shall be prima facie evidence that the person named therein was duly convicted by the court wherein such conviction or holding was made of each offense shown by such transcript or abstract; and if such person denies any of the facts as stated therein, he or she shall have the burden of proving that such fact is untrue. [1983 c 209 § 1; 1979 ex.s. c 136 § 95; 1979 c 62 § 2; 1971 ex.s. c 284 § 5.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1979 c 62: See note following RCW 46.65.020.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.060 Department findings—Revocation of operator's license—Stay by department. If the department finds that such person is not an habitual offender under this chapter, the proceeding shall be dismissed, but if the department finds that such person is an habitual offender, the department shall revoke the operator's license for a period of five years: *Provided*, That the department may stay the date of the revocation if it finds that the traffic offenses upon which it is based were caused by or are the result of alcoholism and/or drug addiction as evaluated by a program approved by the department of social and health services, and that since his or her last offense he or she has undertaken and followed a course of treatment for alcoholism and/or drug treatment in a program approved by the department of social and health services; such stay shall be subject to terms and conditions as are deemed reasonable by the department. Said stay shall continue as long as there is no further conviction for any of the offenses listed in RCW 46.65.020(1). Upon a subsequent conviction for any offense listed in RCW 46.65.020(1) or violation of any of the terms or conditions of the original stay order, the stay shall be removed and the department shall revoke the operator's license for a period of five years. [1985 c 101 § 2; 1981 c 188 § 2; 1979 c 62 § 3; 1973 1st ex.s. c 83 § 1; 1971 ex.s. c 284 § 8.]

Severability—1979 c 62: See note following RCW 46.65.020.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.065 Revocation of habitual offender license—Request for hearing, scope—Right to appeal.

(1) Whenever a person's driving record, as maintained by the department, brings him or her within the definition of an habitual traffic offender, as defined in RCW 46.65.020, the department shall forthwith notify the person of the revocation in writing by certified mail at his or her address of record as maintained by the department. If the person is a nonresident of this state, notice shall be sent to the person's last known address. Notices of revocation shall inform the recipient thereof of his or her right to a formal hearing and specify the steps which must be taken in order to obtain a hearing. Within fifteen days after the notice has been given, the person may, in writing, request a formal hearing. If such a request is not made within the prescribed time the right to a hearing is waived. A request for a hearing stays the effectiveness of the revocation.

(2) Upon receipt of a request for a hearing, the department shall schedule a hearing in the county in which the person making the request resides, and if person is a nonresident of this state, the hearing shall be held in Thurston county. The department shall give at least ten days notice of the hearing to the person.

(3) The scope of the hearings provided by this section is limited to the issues of whether the certified transcripts or abstracts of the convictions, as maintained by the department, show that the requisite number of violations have been accumulated within the prescribed period of time as set forth in RCW 46.65.020 and whether

the terms and conditions for granting stays, as provided in RCW 46.65.060, have been met.

(4) Upon receipt of the hearing officer's decision, an aggrieved party may appeal to the superior court of the county in which he or she resides, or, in the case of a nonresident of this state, in the superior court of Thurston county, for review of the revocation. Notice of appeal must be filed within thirty days after receipt of the hearing officer's decision or the right to appeal is waived. Review by the court shall be de novo and without a jury.

(5) The filing of a notice of appeal does not stay the effective date of the revocation. [1989 c 337 § 10; 1979 c 62 § 5.]

Severability—1979 c 62: See note following RCW 46.65.020.

46.65.070 Period during which habitual offender not to be issued license. No license to operate motor vehicles in Washington shall be issued to an habitual offender (1) for a period of five years from the date of the license revocation, and (2) until the privilege of such person to operate a motor vehicle in this state has been restored by the department of licensing as hereinafter in this chapter provided. [1979 c 62 § 4; 1971 ex.s. c 284 § 9.]

Severability—1979 c 62: See note following RCW 46.65.020.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.080 Petition for restoration of operator's license after two years—Reinstatement of driving privilege. At the end of two years, the habitual offender may petition the department of licensing for the return of his operator's license and upon good and sufficient showing, the department of licensing may, wholly or conditionally, reinstate the privilege of such person to operate a motor vehicle in this state. [1979 c 158 § 181; 1971 ex.s. c 284 § 10.]

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.090 Unlawful operation of motor vehicle by habitual offender—Penalty. (1) It is unlawful for any person to operate a motor vehicle in this state while the order of revocation remains in effect. Any person found to be an habitual offender under the provisions of this chapter who is convicted of operating a motor vehicle in this state while the order of revocation prohibiting such operation is in effect is guilty of a gross misdemeanor. First, second, third, and subsequent violations of this subsection shall be punished in the same way as violations of RCW 46.20.342(1), except that the minimum sentence of confinement required shall not be suspended or deferred.

(2) Any person convicted for a first violation of subsection (1) of this section who is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, shall be punished in the same way as provided in RCW 46.20.342(1) except that the minimum sentence of confinement shall be not less than thirty days and shall not

be suspended or deferred. [1985 c 302 § 8; 1979 c 62 § 6; 1977 ex.s. c 138 § 1; 1971 ex.s. c 284 § 11.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Severability—1979 c 62: See note following RCW 46.65.020.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

License plates and registration, confiscation and marking: RCW 46.16.710.

46.65.100 Petition for restoration of operator's license after five years—Reinstatement of driving privilege. At the expiration of five years from the date of any final order finding a person to be an habitual offender and directing him not to operate a motor vehicle in this state, such person may petition the department of licensing for restoration of his privilege to operate a motor vehicle in this state. Upon receipt of such petition, and for good cause shown, the department of licensing shall restore to such person the privilege to operate a motor vehicle in this state upon such terms and conditions as the department of licensing may prescribe, subject to the provisions of chapter 46.29 RCW and such other provisions of law relating to the issuance or revocation of operators' licenses. [1979 c 158 § 182; 1971 ex.s. c 284 § 12.]

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.900 Construction—Chapter supplemental. Nothing in this chapter shall be construed as amending, modifying, or repealing any existing law of Washington or any existing ordinance of any political subdivision relating to the operation or licensing of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof or shall be construed so as to preclude the exercise of regulatory powers of any division, agency, department, or political subdivision of the state having the statutory power to regulate such operation and licensing. [1971 ex.s. c 284 § 14.]

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.910 Short title. This chapter shall be known and may be cited as the "Washington Habitual Traffic Offenders Act." [1971 ex.s. c 284 § 18.]

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

Chapter 46.68

DISPOSITION OF REVENUE

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State patrol: Chapter 43.43 RCW.

Treasurer's duty to refund snowmobile fuel tax to general fund—Crediting—Use: RCW 46.10.150.

46.68.010 Refunds, collections of erroneous amounts—Proof—Time limitation on filing claims—Penalty for false statements. Whenever any license fee, paid under the provisions of this title, has been erroneously paid, wholly or in part, the person paying the fee, upon satisfactory proof to the director of licensing, shall be entitled to have refunded the amount so erroneously paid. A renewal license fee paid prior to the actual expiration date of the license being renewed shall be deemed to be erroneously paid if the vehicle for which the renewal license is being purchased is destroyed or permanently removed from the state prior to the beginning date of the registration period for which the renewal fee is being paid. Upon such refund being certified to the state treasurer by the director as correct and being claimed in the time required by law the state treasurer shall mail or deliver the amount of each refund to the person entitled thereto: *Provided*, That no claim for refund shall be allowed for such erroneous payments unless filed with the director within thirteen months after such claimed erroneous payment was made.

If due to error a person has been required to pay a vehicle license fee under this title and an excise tax

which amounts to an overpayment of ten dollars or more, that person shall be entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agent has failed to collect the full amount of the license fee and excise tax due and the underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and fees.

Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [1989 c 68 § 1; 1979 c 120 § 1; 1967 c 32 § 73; 1961 c 12 § 46.68.010. Prior: 1937 c 188 § 76; RRS § 6312-76.]

46.68.020 Disposition of fees for certificates of ownership. The director shall forward all fees for certificates of ownership or other moneys accruing under the provisions of chapter 46.12 RCW to the state treasurer, together with a proper identifying detailed report. The state treasurer shall credit such moneys to the motor vehicle fund and all expenses incurred in carrying out the provisions of that chapter shall be paid from such fund as authorized by legislative appropriation. [1961 c 12 § 46.68.020. Prior: 1955 c 259 § 3; 1947 c 164 § 7; 1937 c 188 § 11; Rem. Supp. 1947 § 6312-11.]

46.68.030 Disposition of vehicle license fees. Except for proceeds from fees for vehicle licensing for vehicles paying such fees under RCW 46.16.070 and 46.16.085, all fees received by the director for vehicle licenses under the provisions of chapter 46.16 RCW shall be forwarded to the state treasurer, accompanied by a proper identifying detailed report, and be by him deposited to the credit of the motor vehicle fund, except that the proceeds from the vehicle license fee and renewal license fee shall be deposited by the state treasurer as hereinafter provided. After July 1, 1981, that portion of each vehicle license fee in excess of \$7.40 and that portion of each renewal license fee in excess of \$3.40 shall be deposited in the state patrol highway account in the motor vehicle fund, hereby created. Vehicle license fees, renewal license fees, and all other funds in the state patrol highway account shall be for the sole use of the Washington state patrol for highway activities of the Washington state patrol, subject to proper appropriations and reappropriations therefor, for any fiscal biennium after June 30, 1981, and twenty-seven and three-tenths percent of the proceeds from \$7.40 of each vehicle license fee and \$3.40 of each renewal license fee shall be deposited each biennium in the Puget Sound ferry operations account to partially finance, together with other funds in the account, any budgeted state ferry system maintenance and operating deficit for that biennium. The deficit shall be calculated by subtracting from total costs the sum of all unappropriated funds available to the state ferry system, including revenues from tolls that are adjusted by the transportation commission. Any remaining amounts of vehicle license fees and renewal license fees that are not

deposited in the Puget Sound ferry operations account shall be deposited in the motor vehicle fund. [1985 c 380 § 20. Prior: 1983 c 15 § 23; 1983 c 3 § 122; 1981 c 342 § 9; 1973 c 103 § 3; 1971 ex.s. c 231 § 11; 1971 ex.s. c 91 § 1; 1969 ex.s. c 281 § 25; 1969 c 99 § 8; 1965 c 25 § 2; 1961 ex.s. c 7 § 17; 1961 c 12 § 46.68.030; prior: 1957 c 105 § 2; 1955 c 259 § 4; 1947 c 164 § 15; 1937 c 188 § 40; Rem. Supp. 1947 § 6312-40.]

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Severability—1983 c 15: See RCW 47.64.910.

Effective date—**Severability**—1981 c 342: See notes following RCW 82.36.010.

Refund of mobile home identification tag fees: "The department of motor vehicles shall refund all moneys collected in 1973 for mobile home identification tags. Such refunds shall be made to those persons who have purchased such tags. The department shall adopt rules pursuant to chapter 34.04 RCW to comply with the provisions of this section." [1973 c 103 § 4.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

Effective date—1965 c 25: See note following RCW 46.16.060.

46.68.035 Disposition of combined vehicle licensing fees. All proceeds from combined vehicle licensing fees received by the director for vehicles licensed under RCW 46.16.070 and 46.16.085 shall be forwarded to the state treasurer to be distributed into accounts according to the following method:

(1) 34.644 percent, representing the vehicle licensing fee, shall be distributed according to the following formula:

(a) 76.772 percent shall be deposited into the state patrol highway account of the motor vehicle fund;

(b) 6.348 percent shall be deposited into the Puget Sound ferry operations account of the motor vehicle fund;

(c) 16.880 percent shall be deposited into the motor vehicle fund.

(2) The sum of two dollars for each vehicle shall be deposited into the highway safety fund, except that for each vehicle registered by a county auditor or agent to a county auditor pursuant to RCW 46.01.140, the sum of two dollars shall be credited to the current county expense fund.

(3) The remaining proceeds, representing the gross vehicle weight fee, identification fee, special fee, minimum fee, and application fee, shall be deposited into the motor vehicle fund. [1989 c 156 § 4; 1985 c 380 § 21.]

Application—1989 c 156: See note following RCW 46.16.070.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

46.68.041 Disposition of drivers' license fees. (1) The department shall forward all funds accruing under the provisions of chapter 46.20 RCW together with a proper identifying, detailed report to the state treasurer who shall deposit such moneys to the credit of the highway safety fund except as otherwise provided in this section.

(2) Out of each fee of fourteen dollars collected for a driver's license, the sum of ten dollars and twenty cents shall be deposited in the highway safety fund, and three

dollars and eighty cents shall be deposited in the general fund. [1985 ex.s. c 1 § 12; 1981 c 245 § 3; 1979 c 63 § 3; 1977 c 27 § 1; 1975 1st ex.s. c 293 § 20; 1971 ex.s. c 91 § 2; 1969 c 99 § 9; 1967 c 174 § 3; 1965 c 25 § 4.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—1981 c 245: See note following RCW 46.20.161.

Severability—**Effective date**—1975 1st ex.s. c 293: See RCW 43.88.902 and 43.88.910.

Effective date—1967 c 174: See note following RCW 46.29.050.

Effective date—1965 c 25: See note following RCW 46.16.060.

46.68.060 Highway safety fund created—Use limited. There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which shall be deposited all moneys directed by law to be deposited therein. This fund shall be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set forth in RCW 43.59.010. [1969 c 99 § 11; 1967 c 174 § 4; 1965 c 25 § 3; 1961 c 12 § 46.68.060. Prior: 1957 c 104 § 1; 1937 c 188 § 81; RRS § 6312-81; 1921 c 108 § 13; RRS § 6375.]

Effective date—1969 c 99: See note following RCW 43.51.060.

Effective date—1969 c 25: See note following RCW 46.16.060.

Effective date—1967 c 174: See note following RCW 46.29.050.

Deposits into account: RCW 46.20.505, 46.20.510, 46.81A.030.

46.68.065 Motorcycle safety education account. There is hereby created the motorcycle safety education account in the highway safety fund of the state treasury, to the credit of which shall be deposited all moneys directed by law to be credited thereto. All expenses incurred by the director of the department of licensing in administering RCW 46.20.505 through 46.20.520 shall be borne by appropriations from this account. [1982 c 77 § 8.]

Severability—1982 c 77: See note following RCW 46.20.500.

46.68.070 Motor vehicle fund created—Use limited. There is created in the state treasury a permanent fund to be known as the motor vehicle fund to the credit of which shall be deposited all moneys directed by law to be deposited therein. This fund shall be for the use of the state, and through state agencies, for the use of counties, cities, and towns for proper road, street, and highway purposes, including the purposes of RCW 47.30.030. [1972 ex.s. c 103 § 6; 1961 c 12 § 46.68.070. Prior: (i) 1935 c 111 § 1, part; 1933 c 41 § 4, part; RRS § 6600, part; 1929 c 163 § 1; 1925 ex.s. c 185 § 1; 1923 c 181 § 3; 1921 c 96 § 18; 1919 c 46 § 3; 1917 c 155 § 13; 1915 c 142 § 18; RRS § 6330. (ii) 1939 c 181 § 1; RRS § 6600-1; 1937 c 208 §§ 1, 2, part.]

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

46.68.080 Refund of vehicle license fees and fuel tax to island counties. All motor vehicle license fees and all motor vehicle fuel tax directly or indirectly paid by the

residents of those counties composed entirely of islands and which have neither a fixed physical connection with the mainland nor any state highways on any of the islands of which they are composed, shall be paid into the motor vehicle fund of the state of Washington and shall monthly, as they accrue, and after deducting therefrom the expenses of issuing such licenses and the cost of collecting such motor vehicle fuel tax, be paid to the county treasurer of each such county to be by him disbursed as hereinafter provided.

One-half of all motor vehicle license fees and motor vehicle fuel tax directly or indirectly paid by the residents of those counties composed entirely of islands and which have either a fixed physical connection with the mainland or state highways on any of the islands of which they are composed, shall be paid into the motor vehicle fund of the state of Washington and shall monthly, as they accrue, and after deducting therefrom the expenses of issuing such licenses and the cost of collecting such motor vehicle fuel tax, be paid to the county treasurer of each such county to be by him disbursed as hereinafter provided.

All funds paid to the county treasurer of the counties of either class above referred to as in this section provided, shall be by such county treasurer distributed and credited to the several road districts of each such county and paid to the city treasurer of each incorporated city and town within each such county, in the direct proportion that the assessed valuation of each such road district and incorporated city and town shall bear to the total assessed valuation of each such county.

The amount of motor vehicle fuel tax paid by the residents of those counties composed entirely of islands shall, for the purposes of this section, be that percentage of the total amount of motor vehicle fuel tax collected in the state that the motor vehicle license fees paid by the residents of counties composed entirely of islands bears to the total motor vehicle license fees paid by the residents of the state. [1961 c 12 § 46.68.080. Prior: 1939 c 181 § 9; RRS § 6450-54a.]

46.68.090 Motor vehicle fund "net tax amount," how arrived at. All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for the following purposes:

(1) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(2) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly;

(3) For payments to the rural arterial trust account in the motor vehicle fund, an amount as provided in RCW 82.36.025(2);

(4) For payments to the urban arterial trust account in the motor vehicle fund, an amount as provided in RCW 82.36.025(3); and

(5) For expenditure for highway purposes of the state as defined in RCW 46.68.130, an amount as provided in RCW 82.36.025(4).

The amount accruing to the motor vehicle fund by virtue of the motor vehicle fuel tax and the special fuel tax and remaining after payments and expenditures as provided in subsections (1), (2), (3), (4), and (5) of this section shall, for the purposes of this chapter, be referred to as the "net tax amount." [1983 1st ex.s. c 49 § 21; 1979 c 158 § 184; 1977 ex.s. c 317 § 8; 1967 c 32 § 74; 1961 ex.s. c 7 § 5; 1961 c 12 § 46.68.090. Prior: 1943 c 115 § 3; 1939 c 181 § 2; Rem. Supp. 1943 § 6600-1d; 1937 c 208 §§ 2, part, 3, part.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900, 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Rural arterial trust account: RCW 36.79.020.

Urban arterial trust account: RCW 47.26.080.

46.68.100 Allocation of net tax amount in motor vehicle fund. From the net tax amount in the motor vehicle fund there shall be paid monthly as funds accrue the following sums:

(1) To the cities and towns, to be distributed as provided by RCW 46.68.110, sums equal to six and ninety-two hundredths percent of the net tax amount;

(2) To the cities and towns, to be expended as provided by RCW 46.68.115, sums equal to four and sixty-one hundredths percent of the net tax amount;

(3) To the counties, sums equal to twenty-two and seventy-eight hundredths percent of the net tax amount out of which there shall be distributed from time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725, with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(4) To the urban arterial trust account in the motor vehicle fund, sums equal to seven and twelve hundredths percent of the net tax amount;

(5) To the state, to be expended as provided by RCW 46.68.130, sums equal to forty-five and twenty-six hundredths percent of the net tax amount;

(6) To the state, to be expended as provided by RCW 46.68.150 as now or hereafter amended, sums equal to six and ninety-five hundredths percent of the net tax amount;

(7) To the Puget Sound capital construction account in the motor vehicle fund sums equal to three and twenty-one hundredths percent of the net tax amount;

(8) To the Puget Sound ferry operations account in the motor vehicle fund sums equal to three and fifteen hundredths percent of the net tax amount.

Nothing in this section or in RCW 46.68.090 or 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor and special vehicle fuels. [1986 c

66 § 1; 1984 c 7 § 73; 1977 ex.s. c 317 § 9; 1977 c 51 § 1; 1975-'76 2nd ex.s. c 57 § 1; 1973 1st ex.s. c 124 § 1; 1972 ex.s. c 24 § 2; 1970 ex.s. c 85 § 4; 1967 ex.s. c 145 § 79; 1967 ex.s. c 83 § 8; 1961 ex.s. c 7 § 6; 1961 c 12 § 46.68.100. Prior: 1959 ex.s. c 4 § 1; 1957 c 271 § 3; 1957 c 175 § 10; 1943 c 83 § 1; 1939 c 181 § 3; Rem. Supp. 1943 § 6600-1e; 1937 c 208 §§ 2, part, 3, part.]

Effective date—1986 c 66: "This act shall take effect July 1, 1987. The secretary of transportation may immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1986 c 66 § 14.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—**Severability**—1977 ex.s. c 317: See notes following RCW 82.36.010.

Effective date—1977 c 51: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977." [1977 c 51 § 4.]

Severability—1977 c 51: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 c 51 § 3.]

Effective date—1970 ex.s. c 85: See note following RCW 47.60.500.

Severability—**Effective dates**—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

46.68.110 Distribution of amount allocated to cities and towns. Funds credited to the incorporated cities and towns of the state as set forth in subdivision (1) of RCW 46.68.100 shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: *Provided*, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) From July 1, 1987, through June 30, 1989, thirty-three one-hundredths of one percent of such funds shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) From July 1, 1989, through June 30, 1991, thirty-three one-hundredths of one percent of such funds shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(4) The balance remaining to the credit of incorporated cities and towns after such deduction shall be apportioned monthly as such funds accrue among the

several cities and towns within the state ratably on the basis of the population last determined by the office of financial management. [1989 1st ex.s. c 6 § 41; 1987 1st ex.s. c 10 § 37; 1985 c 460 § 32; 1979 c 151 § 161; 1975 1st ex.s. c 100 § 1; 1961 ex.s. c 7 § 7; 1961 c 12 § 46.68.110. Prior: 1957 c 175 § 11; 1949 c 143 § 1; 1943 c 83 § 2; 1941 c 232 § 1; 1939 c 181 § 4; Rem. Supp. 1949 § 6600-3a; 1937 c 208 §§ 2, part, 3, part.]

Severability—1989 1st ex.s. c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 6 § 75.]

Severability—1987 1st ex.s. c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 10 § 60.]

Severability—1985 c 460: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 460 § 42.]

Expense of cost-audit examination of city and town street records payable from funds withheld under RCW 46.68.110(1): RCW 35.76.050.

Population determination, office of financial management: Chapter 43.62 RCW.

46.68.115 Allocation and use of amounts distributed to cities and towns. The sums distributed to cities and towns as set forth in subsection (2) of RCW 46.68.100 shall be allocated between them as provided by RCW 46.68.110, subject to the provisions of RCW 35.76.050, to be used exclusively: For the construction, improvement, chip sealing, seal-coating, and repair of arterial highways and city streets as those terms are defined in RCW 46.04.030 and 46.04.120; for the maintenance of arterial highways and city streets for those cities with a population of less than fifteen thousand; or for the payment of any municipal indebtedness which may be incurred in the construction, improvement, chip sealing, seal-coating, and repair of arterial highways and city streets. [1987 c 234 § 1; 1983 c 43 § 1; 1977 ex.s. c 317 § 10.]

Effective dates—**Severability**—1977 ex.s. c 317: See notes following RCW 82.36.010.

46.68.120 Distribution of amount allocated to counties—Generally. Funds to be paid to the counties of the state shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such funds shall be deducted monthly as such funds accrue and set aside for the use of the department of transportation and the county road administration board for the supervision of work and expenditures of such counties on the county roads thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: *Provided*, That any funds so retained and not expended shall be credited in the succeeding biennium to the counties in proportion to deductions herein made;

(2) All sums required to be repaid to counties composed entirely of islands shall be deducted;

(3) From July 1, 1987, through June 30, 1989, thirty-three one-hundredths of one percent of such funds shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the counties' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the counties in proportion to the deductions made;

(4) From July 1, 1989, through June 30, 1991, thirty-three one-hundredths of one percent of such funds shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the counties' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the counties in proportion to the deductions made;

(5) The balance of such funds remaining to the credit of counties after such deductions shall be paid to the several counties monthly, as such funds accrue, in accordance with RCW 46.68.122 and 46.68.124. [1989 1st ex.s. c 6 § 42; 1987 1st ex.s. c 10 § 38; 1985 c 460 § 33; 1985 c 120 § 1; 1982 c 33 § 1; 1980 c 87 § 44; 1979 c 158 § 185; 1977 ex.s. c 151 § 42; 1975 1st ex.s. c 100 § 2; 1973 1st ex.s. c 195 § 47; 1972 ex.s. c 103 § 1; 1967 c 32 § 75; 1965 ex.s. c 120 § 12; 1961 c 12 § 46.68.120. Prior: 1957 c 109 § 1; 1955 c 243 § 1; 1949 c 143 § 2; 1945 c 260 § 1; 1943 c 83 § 3; 1939 c 181 § 5; Rem. Supp. 149 § 6600-2a.]

Severability—1989 1st ex.s. c 6: See note following RCW 46.68.110.

Severability—1987 1st ex.s. c 10: See note following RCW 46.68.110.

Severability—1985 c 460: See note following RCW 46.68.110.

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

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

County road administration board—Expenses to be paid from motor vehicle fund—Disbursement procedure: RCW 36.78.110.

46.68.122 Distribution of amount to counties—Factors of distribution formula. Funds to be paid to the several counties pursuant to RCW 46.68.120(4) shall be allocated among them upon the basis of a distribution formula consisting of the following four factors:

(1) An equal distribution factor of ten percent of such funds shall be paid to each county;

(2) A population factor of thirty percent of such funds shall be paid to each county in direct proportion that the county's total equivalent population, as computed pursuant to RCW 46.68.124(1), is to the total equivalent population of all counties;

(3) A road cost factor of thirty percent of such funds shall be paid to each county in direct proportion that the county's total annual road cost, as computed pursuant to RCW 46.68.124(2), is to the total annual road costs of all counties;

(4) A money need factor of thirty percent of such funds shall be paid to each county in direct proportion that the county's money need factor, as computed pursuant to RCW 46.68.124(3), is to the total of money need factors of all counties. [1982 c 33 § 2.]

46.68.124 Distribution of amount to counties—Population, road cost, money need, computed—Allocation percentage adjustment, when. (1) The equivalent population for each county shall be computed as the sum of the population residing in the county's unincorporated area plus twenty-five percent of the population residing in the county's incorporated area. Population figures required for the computations in this subsection shall be certified by the director of the office of financial management on or before July 1st of each odd-numbered year.

(2) The total annual road cost for each county shall be computed as the sum of one twenty-fifth of the total estimated county road replacement cost, plus the total estimated annual maintenance cost. Appropriate costs for bridges and ferries shall be included. The county road administration board shall be responsible for establishing a uniform system of roadway categories for both maintenance and construction and also for establishing a single state-wide cost per mile rate for each roadway category. The total annual cost for each county will be based on the established state-wide cost per mile and associated mileage for each category. The mileage to be used for these computations shall be as shown in the county road log as maintained by the county road administration board as of July 1, 1985, and each two years thereafter. Each county shall be responsible for submitting changes, corrections, and deletions as regards the county road log to the county road administration board. Such changes, corrections, and deletions shall be subject to verification and approval by the county road administration board prior to inclusion in the county road log.

(3) The money need factor for each county shall be the county's total annual road cost less the following four amounts:

(a) One-half the sum of the actual county road tax levied upon the valuation of all taxable property within the county road districts pursuant to RCW 36.82.040 for the two calendar years next preceding the year of computation of the allocation amounts as certified by the department of revenue;

(b) One-half the sum of all funds received by the county road fund from the federal forest reserve fund pursuant to RCW 28A.02.300 and 28A.02.310 during the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer;

(c) One-half the sum of timber excise taxes received by the county road fund pursuant to chapter 84.33 RCW in the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer;

(d) One-half the sum of motor vehicle license fees and motor vehicle and special fuel taxes refunded to the

county, pursuant to RCW 46.68.080 during the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer.

(4) The state treasurer and the department of revenue shall furnish to the county road administration board the information required by subsection (3) of this section on or before July 1st of each odd-numbered year.

(5) The county road administration board, shall compute and provide to the counties the allocation factors of the several counties on or before September 1st of each year based solely upon the sources of information herein before required: *Provided*, That the allocation factor shall be held to a level not more than five percent above or five percent below the allocation factor in use during the previous calendar year. Upon computation of the actual allocation factors of the several counties, the county road administration board shall provide such factors to the state treasurer to be used in the computation of the counties' fuel tax allocation for the succeeding calendar year. The state treasurer shall adjust the fuel tax allocation of each county on January 1st of every year based solely upon the information provided by the county road administration board. [1985 c 120 § 2; 1985 c 7 § 113; 1982 c 33 § 3.]

Reviser's note: This section was amended by 1985 c 7 § 113 and by 1985 c 120 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

46.68.130 Expenditure of balance of motor vehicle fund. The net tax amount distributed to the state in the manner provided by RCW 46.68.100, and all moneys accruing to the motor vehicle fund from any other source, less such sums as are properly appropriated and reappropriated for expenditure for costs of collection and administration thereof, shall be expended, subject to proper appropriation and reappropriation, solely for highway purposes of the state, including the purposes of RCW 47.30.030. For the purposes of this section, the term "highway purposes of the state" does not include those expenditures of the Washington state patrol heretofore appropriated or reappropriated from the motor vehicle fund. [1981 c 342 § 11; 1974 ex.s. c 9 § 1; 1972 ex.s. c 103 § 7; 1971 ex.s. c 91 § 6; 1963 c 83 § 1; 1961 ex.s. c 7 § 9; 1961 c 12 § 46.68.130. Prior: 1957 c 271 § 4; 1957 c 105 § 3; 1941 c 246 § 1; 1939 c 181 § 6; Rem. Supp. 1941 § 6600-26.]

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

46.68.150 Construction and improvements in urban areas—Expenditure of motor vehicle fuel taxes and bond proceeds. The sums distributed to the state pursuant to RCW 46.68.100(6) and the proceeds of bonds issued and sold pursuant to RCW 47.26.400 through 47.26.407 shall be expended by the state department of transportation for construction and improvement of state highways in urban areas as provided for in RCW 47.26.040 through 47.26.070 or for payment of principal and interest on bonds issued pursuant to RCW 47.26.400

through 47.26.407. At the end of each fiscal quarter the state treasurer shall determine the amount, if any, that the sums distributed to the state pursuant to RCW 46.68.100(6) as now or hereafter amended exceed an amount equivalent to the proceeds of five-eighths of one cent motor vehicle and special fuel excise tax collected on the net gallonage after the deductions provided for in RCW 82.36.020 for the preceding fiscal quarter. The amount so ascertained shall be available first to repay the counties, cities, and towns for any moneys derived from excise taxes on motor vehicle and special fuels distributable to the counties, cities, and towns pursuant to RCW 46.68.100 but as a result of the pledge and debt service payment provisions contained in RCW 47.26.404 and 47.26.405 and as certified by the state finance committee have been used to repay state urban bonds (and interest thereon) authorized by RCW 47.26.400 through 47.26.407, and after such sums have been repaid in full, then for expenditure as provided in RCW 46.68.130. [1984 c 7 § 74; 1977 ex.s. c 317 § 11; 1967 ex.s. c 83 § 9.]

Reviser's note: The reference to "sections 37 through 44 of this 1967 amendatory act" has been translated to "RCW 47.26.400 through 47.26.407." A literal translation of the phrase would have been "RCW 47.26.401 through 47.26.410," which appears to be erroneous. The error appears to have occurred in failure to change this internal reference in accordance with the renumbering of sections brought about by removal of section 34 from Engrossed House Bill No. 595 by floor amendment.

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900, 47.26.910.

46.68.160 Urban arterial trust account—Created in motor vehicle fund—Expenditures from. See RCW 47.26.080.

46.68.170 RV account—Use for sanitary disposal systems. There is hereby created in the motor vehicle fund the RV account. All moneys hereafter deposited in said account shall be used by the department of transportation for the construction and maintenance of recreational vehicle sanitary disposal systems at rest areas on federal-aid highways. [1980 c 60 § 3.]

Effective date—1980 c 60: See note following RCW 47.38.050.

Additional license fees for recreational vehicles: RCW 46.16.063.

46.68.180 Highway construction stabilization account—Established, purpose. The highway construction stabilization account is established in the motor vehicle fund. Moneys in the account may be spent to supplement available motor vehicle fund revenues only for the purposes set forth in RCW 46.68.200. [1985 c 140 § 1.]

Effective date—1985 c 140: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 140 § 5.]

46.68.190 Highway construction stabilization account—Deposits, transfers. (1) There shall be deposited in the highway construction stabilization account the amounts specified by subsection (2) of this section and such other amounts as the legislature may from time to time direct to be deposited in the account.

(2) At the conclusion of each biennium, the state treasurer shall transfer the unexpended cash balance in the motor vehicle fund in excess of the minimum required working capital balance established by the transportation commission to the highway construction stabilization account. [1985 c 140 § 2.]

Effective date—1985 c 140: See note following RCW 46.68.180.

46.68.200 Highway construction stabilization account—Uses limited. Moneys in the highway construction stabilization account may be spent by the department of transportation only for the following purposes:

(1) To fund state highway improvement program expenditures if available motor vehicle fund revenues are not sufficient to fund legislative appropriations;

(2) To fund state highway improvement program appropriations that otherwise would require the use of bond proceeds; and

(3) To meet temporary seasonal cash requirements in the motor vehicle fund. [1985 c 140 § 3.]

Effective date—1985 c 140: See note following RCW 46.68.180.

Chapter 46.70

UNFAIR BUSINESS PRACTICES—DEALERS' LICENSES

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Automotive repair: Chapter 46.71 RCW.

False or deceptive advertising: Chapter 9.04 RCW.

Mobile home safety and construction standards, inspections: RCW 43-22.431 through 43.22.434.

Motor vehicle express warranties ("Lemon Law"): Chapter 19.118 RCW.

Retail installment sales of goods: Chapter 63.14 RCW.

Unfair business practices—Consumer protection: Chapter 19.86 RCW.

46.70.005 Declaration of purpose. The legislature finds and declares that the distribution and sale of vehicles in the state of Washington vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and license vehicle manufacturers, distributors, or wholesalers and factory or distributor representatives, and to regulate and license dealers of vehicles doing business in Washington, in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state. [1986 c 241 § 1; 1973 1st ex.s. c 132 § 1; 1967 ex.s. c 74 § 1.]

Reviser's note: Throughout chapter 46.70 RCW the phrases "this act" and "this amendatory act" have been changed to "this chapter." This 1967 act or amendatory act [1967 ex.s. c 74] consists of RCW 46.70.005 through 46.70.042, 46.70.051, 46.70.061, 46.70.081 through 46.70.083, 46.70.101 through 46.70.111, 46.70.180 through 46.70.910, the 1967 amendments to RCW 46.70.060 and 46.70.070, and the repeal of RCW 46.70.010 through 46.70.050, 46.70.080, 46.70.100, and 46.70.110.

Emergency—Effective date—1967 ex.s. c 74: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and sections 1 through 3 and sections 16 through 25 shall take effect immediately. Sections 4 through 15 and sections 26 through 30 inclusive shall take effect on July 1, 1967." [1967 ex.s. c 74 § 31.] Sections 1 through 3 are codified as RCW 46.70.005, 46.70.900, and 46.70.011; sections 16 through 25 are codified as RCW 46.70.180 through 46.70.270; sections 4 through 15 are codified as RCW 46.70.021 through 46.70.051, 46.70.061, 46.70.081 through 46.70.083, and 46.70.101 through 46.70.111; sections 26 through 29 are codified as RCW 46.70.060, 46.70.070, 46.70.280, and 46.70.910, and section 30 repeals RCW 46.70.010 through 46.70.050, 46.70.080, 46.70.100, and 46.70.110.

46.70.011 Definitions. As used in this chapter:

(1) "Vehicle" means and includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(2) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and which is required to be registered and titled under Title 46 RCW, Motor Vehicles.

(3) "Vehicle dealer" means any person, firm, association, corporation, or trust, not excluded by subsection (4) of this section, engaged in the business of buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising the sale of new or used vehicles, or arranging or offering or attempting to solicit or negotiate on behalf of others, a sale, purchase, or exchange of an interest in new or used motor vehicles, irrespective of whether the motor vehicles are owned by that person. Vehicle dealers shall be classified as follows:

(a) A "motor vehicle dealer" is a vehicle dealer that deals in new or used motor vehicles, or both;

(b) A "mobile home and travel trailer dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles;

(c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals in motorcycles or vehicles other than motor vehicles or mobile homes and travel trailers or any combination of such vehicles.

(4) The term "vehicle dealer" does not include, nor do the licensing requirements of RCW 46.70.021 apply to, the following persons, firms, associations, or corporations:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under a judgment or order of, any court; or

(b) Public officers while performing their official duties; or

(c) Employees of vehicle dealers who are engaged in the specific performance of their duties as such employees; or

(d) Any person engaged in an isolated sale of a vehicle in which he is the registered or legal owner, or both, thereof; or

(e) Any person, firm, association, corporation, or trust, engaged in the selling of equipment other than vehicles, subject to registration, used for agricultural or industrial purposes; or

(f) A real estate broker licensed under chapter 18.85 RCW, or his authorized representative, who, on behalf of the legal or registered owner of a used mobile home negotiates the purchase, sale, or exchange of the used mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the used mobile home is located and the real estate broker is not acting as an agent, subagent, or representative of a vehicle dealer licensed under this chapter; or

(g) Owners who are also operators of the special highway construction equipment or of the highway construction equipment for which a vehicle license and display vehicle license number plate is required as defined in RCW 46.16.010; or

(h) Any bank, trust company, savings bank, mutual savings bank, savings and loan association, credit union, and any parent, subsidiary, or affiliate thereof, authorized to do business in this state under state or federal law with respect to the sale or other disposition of a motor vehicle owned and used in their business; or with respect to the acquisition and sale or other disposition of a motor vehicle in which the entity has acquired an interest as a lessor, lessee, or secured party.

(5) "Vehicle salesperson" means any person who for any form of compensation sells, auctions, leases with an option to purchase, or offers to sell or to so lease vehicles on behalf of a vehicle dealer.

(6) "Department" means the department of licensing, which shall administer and enforce the provisions of this chapter.

(7) "Director" means the director of licensing.

(8) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanufactures vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new and unused vehicle to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, vehicles to a distributor, wholesaler, or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further includes any sales promotion organization, whether a person, firm, or corporation, which is engaged in promoting the sale of new and unused vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of their vehicles or for supervising or contracting with their dealers or prospective dealers.

(9) "Established place of business" means a location meeting the requirements of RCW 46.70.023(1) at which a vehicle dealer conducts business in this state.

(10) "Principal place of business" means that dealer firm's business location in the state, which place the dealer designates as their principal place of business.

(11) "Subagency" means any place of business of a vehicle dealer within the state, which place is physically and geographically separated from the principal place of business of the firm or any place of business of a vehicle dealer within the state, at which place the firm does business using a name other than the principal name of the firm, or both.

(12) "Temporary subagency" means a location other than the principal place of business or subagency within the state where a licensed vehicle dealer may secure a license to conduct the business and is licensed for a period of time not to exceed ten days for a specific purpose such as auto shows, shopping center promotions, tent sales, exhibitions, or similar merchandising ventures. No more than six temporary subagency licenses may be issued to a licensee in any twelve-month period.

(13) "Wholesale vehicle dealer" means a vehicle dealer who buys and sells other than at retail.

(14) "Retail vehicle dealer" means a vehicle dealer who may buy and sell at both wholesale and retail.

(15) "Listing dealer" means a used mobile home dealer who makes contracts with sellers who will compensate the dealer for obtaining a willing purchaser for the seller's mobile home.

(16) "Auction" means a transaction conducted by means of exchanges between an auctioneer and the members of the audience, constituting a series of oral invitations for offers for the purchase of vehicles made by the auctioneer, offers to purchase by members of the audience, and the acceptance of the highest or most favorable offer to purchase.

(17) "Auction company" means a sole proprietorship, partnership, corporation, or other legal or commercial entity licensed under chapter 18.11 RCW that only sells or offers to sell vehicles at auction or only arranges or sponsors auctions. [1989 c 337 § 11; 1989 c 301 § 1; 1988 c 287 § 1; 1986 c 241 § 2; 1981 c 305 § 2; 1979 c 158 § 186; 1979 c 11 § 3. Prior: 1977 ex.s. c 204 § 2; 1977 ex.s. c 125 § 1; 1973 1st ex.s. c 132 § 2; 1969 ex.s. c 63 § 1; 1967 ex.s. c 74 § 3.]

Reviser's note: This section was amended by 1989 c 301 § 1 and by 1989 c 337 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

46.70.021 License required for dealers or manufacturers—Penalties. It is unlawful for any person, firm, or association to act as a vehicle dealer or vehicle manufacturer, to engage in business as such, serve in the capacity of such, advertise himself, herself, or themselves as such, solicit sales as such, or distribute or transfer vehicles for resale in this state, without first obtaining and holding a current license as provided in this chapter, unless the title of the vehicle is in the name of the seller. It is unlawful for any person other than a licensed vehicle

dealer to display a vehicle for sale unless the registered owner or legal owner is the displayer or holds a notarized power of attorney. A person or firm engaged in buying and offering for sale, or buying and selling five or more vehicles in a twelve-month period, or in any other way engaged in dealer activity without holding a vehicle dealer license, is guilty of a gross misdemeanor, and upon conviction is subject to a fine of up to one thousand dollars for each violation and up to one year in jail. A second offense is a class C felony punishable under chapter 9A.20 RCW. A violation of this section is also a per se violation of chapter 19.86 RCW and is considered a deceptive practice. The department of licensing, the Washington state patrol, the attorney general's office, and the department of revenue shall cooperate in the enforcement of this section. A distributor, factory branch, or factory representative shall not be required to have a vehicle manufacturer license so long as the vehicle manufacturer so represented is properly licensed pursuant to this chapter. Nothing in this chapter prohibits financial institutions from cooperating with vehicle dealers licensed under this chapter in dealer sales or leases. However, financial institutions shall not broker vehicles and cooperation is limited to organizing, promoting, and financing of such dealer sales or leases. [1988 c 287 § 2; 1986 c 241 § 3; 1973 1st ex.s. c 132 § 3; 1967 ex.s. c 74 § 4.]

46.70.023 Place of business. (1) An "established place of business" requires a permanent, enclosed commercial building located within the state of Washington easily accessible at all reasonable times. An established place of business shall have an improved display area of not less than three thousand square feet in or immediately adjoining the building, or a display area large enough to display six or more vehicles of the type the dealer is licensed to sell, whichever area is larger. The business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on at an established place of business in accordance with the terms of all applicable building code, zoning, and other land-use regulatory ordinances. The dealer shall keep the building open to the public so that they may contact the vehicle dealer or the dealer's salespersons at all reasonable times. The books, records, and files necessary to conduct the business shall be kept and maintained at that place. The established place of business shall display an exterior sign with the business name and nature of the business, such as auto sales, permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. In no event may a room or rooms in a hotel, rooming house, or apartment house building or part of a single or multiple-unit dwelling house be considered an "established place of business" unless the ground floor of such a dwelling is devoted principally to and occupied for commercial purposes and the dealer offices are located on the ground floor. A mobile office or mobile home may be used as an office if it is connected to utilities and is set up in accordance with state law. This subsection does not apply to auction

companies that do not own vehicle inventory or sell vehicles from an auction yard.

(2) An auction company shall have office facilities within the state. The books, records, and files necessary to conduct the business shall be maintained at the office facilities. All storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. An auction company shall maintain a telecommunications system.

(3) Auction companies shall post their vehicle dealer license at each auction where vehicles are offered, and shall provide the department with the address of the auction at least three days before the auction.

(4) If a dealer maintains a place of business at more than one location or under more than one name in this state, he or she shall designate one location as the principal place of business of the firm, one name as the principal name of the firm, and all other locations or names as subagencies. A subagency license is required for each and every subagency: *Provided*, That the department may grant an exception to the subagency requirement in the specific instance where a licensed new motor vehicle dealer is unable to locate their used vehicle sales facilities adjacent to or at the established place of business. This exception shall be granted and defined under the promulgation of rules consistent with the Administrative Procedure Act.

(5) All vehicle dealers shall maintain ownership or leasehold throughout the license year of the real property from which they do business. The dealer shall provide the department with evidence of ownership or leasehold whenever the ownership changes or the lease is terminated.

(6) A subagency shall comply with all requirements of an established place of business, except that auction companies shall comply with the requirements in subsection (2) of this section.

(7) A temporary subagency shall meet all local zoning and building codes for the type of merchandising being conducted. The dealer license certificate shall be posted at the location. No other requirements of an established place of business apply to a temporary subagency. Auction companies are not required to obtain a temporary subagency license.

(8) A wholesale vehicle dealer shall have office facilities in a commercial building within this state, and all storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. A wholesale vehicle dealer shall maintain a telecommunications system. An exterior sign visible from the nearest street shall identify the business name and the nature of business. A wholesale dealer need not maintain a display area as required in this section. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory, if any, must be physically segregated and clearly identified.

(9) A retail vehicle dealer shall be open during normal business hours, maintain office and display facilities in a commercially zoned location or in a location complying with all applicable building and land use ordinances, and

maintain a business telephone listing in the local directory. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory shall be physically segregated and clearly identified.

(10) A listing dealer need not have a display area if the dealer does not physically maintain any vehicles for display.

(11) A subagency license is not required for a mobile home dealer to display an on-site display model, a consigned mobile home not relocated from its site, or a repossessed mobile home if sales are handled from a principal place of business or subagency. A mobile home dealer shall identify on-site display models, repossessed mobile homes, and those consigned at their sites with a sign that includes the dealer's name and telephone number.

(12) Every vehicle dealer shall advise the department of the location of each and every place of business of the firm and the name or names under which the firm is doing business at such location or locations. If any name or location is changed, the dealer shall notify the department of such change within ten days. The license issued by the department shall reflect the name and location of the firm and shall be posted in a conspicuous place at that location by the dealer.

(13) A vehicle dealer's license shall upon the death or incapacity of an individual vehicle dealer authorize the personal representative of such dealer, subject to payment of license fees, to continue the business for a period of six months from the date of the death or incapacity. [1989 c 301 § 2; 1986 c 241 § 4.]

46.70.025 Established place of business—Waiver of requirements. The director may by rule waive any requirements pertaining to a vehicle dealer's established place of business if such waiver both serves the purposes of this chapter and is necessary due to unique circumstances such as a location divided by a public street or a highly specialized type of business. [1986 c 199 § 1.]

46.70.027 Accountability of dealer for employees—Actions for damages on violation of chapter. A vehicle dealer is accountable for the dealer's employees, sales personnel, and managerial personnel while in the performance of their official duties. Any violations of this chapter or applicable provisions of chapter 46.12 or 46.16 RCW committed by any of these employees subjects the dealer to license penalties prescribed under RCW 46.70.101. A retail purchaser, consignor who is not a motor vehicle dealer, or a motor vehicle dealer who has purchased from a wholesale dealer, who has suffered a loss or damage by reason of any act by a dealer, salesperson, managerial person, or other employee of a dealership, that constitutes a violation of this chapter or applicable provisions of chapter 46.12 or 46.16 RCW may institute an action for recovery against the dealer and the surety bond as set forth in RCW 46.70.070. However, under this section, motor vehicle dealers who have purchased from wholesale dealers may only institute actions against wholesale dealers and their surety bonds. [1989 c 337 § 12; 1986 c 241 § 5.]

46.70.028 Consignment. Dealers who transact dealer business by consignment shall obtain a consignment contract for sale and shall comply with applicable provisions of chapter 46.70 RCW. The dealer shall place all funds received from the sale of the consigned vehicle in a trust account until the sale is completed, except that the dealer shall pay any outstanding liens against the vehicle from these funds. Where title has been delivered to the purchaser, the dealer shall pay the amount due a consignor within ten days after the sale. [1989 c 337 § 13.]

46.70.029 Listing dealers, transaction of business. Listing dealers shall transact dealer business by obtaining a consignment for sale, and the buyer's purchase of the mobile home shall be handled as dealer inventory. All funds from the purchaser shall be placed in a trust account until the sale is completed, except that the dealer shall pay any outstanding liens against the mobile home from these funds. A complete account of all funds received and disbursed shall be given to the seller or consignor after the sale is completed. [1986 c 241 § 6.]

46.70.031 Application for license—Form. A vehicle dealer or vehicle manufacturer may apply for a license by filing with the department an application in such form as the department may prescribe. [1986 c 241 § 7; 1973 1st ex.s. c 132 § 4; 1967 ex.s. c 74 § 5.]

46.70.041 Application for license—Contents. (1) Every application for a vehicle dealer license shall contain the following information to the extent it applies to the applicant:

(a) Proof as the department may require concerning the applicant's identity, including but not limited to his fingerprints, the honesty, truthfulness, and good reputation of the applicant for the license, or of the officers of a corporation making the application;

(b) The applicant's form and place of organization including if the applicant is a corporation, proof that the corporation is licensed to do business in this state;

(c) The qualification and business history of the applicant and any partner, officer, or director;

(d) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has any unsatisfied judgment in any federal or state court;

(e) Whether the applicant has been adjudged guilty of a crime which directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners;

(f) A business telephone with a listing in the local directory;

(g) The name or names of new vehicles the vehicle dealer wishes to sell;

(h) The names and addresses of each manufacturer from whom the applicant has received a franchise;

(i) Whether the applicant intends to sell used vehicles, and if so, whether he has space available for servicing and repairs;

(j) A certificate by the chief of police or his deputy, or a member of the Washington state patrol or a representative of the department, that the applicant's principal place of business and each subagency business location in the state of Washington meets the location requirements as required by this chapter. The certificate shall include proof of the applicant's ownership or lease of the real property where the applicant's principal place of business is established. In no event may the certificate be issued by a member of the Washington state patrol if the dealership is located in a city which has a population in excess of five thousand persons;

(k) A copy of a current service agreement with a manufacturer, or distributor for a foreign manufacturer, requiring the applicant, upon demand of any customer receiving a new vehicle warranty to perform or arrange for, within a reasonable distance of his established place of business, the service repair and replacement work required of the manufacturer or distributor by such vehicle warranty. This requirement applies only to applicants seeking to sell, to exchange, to offer, to auction, to solicit, or to advertise new or current-model vehicles with factory or distributor warranties;

(l) The class of vehicles the vehicle dealer will be buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising, and which classification or classifications the dealer wishes to be designated as;

(m) Any other information the department may reasonably require.

(2) If the applicant is a manufacturer the application shall contain the following information to the extent it is applicable to the applicant:

(a) The name and address of the principal place of business of the applicant and, if different, the name and address of the Washington state representative of the applicant;

(b) The name or names under which the applicant will do business in the state of Washington;

(c) Evidence that the applicant is authorized to do business in the state of Washington;

(d) The name or names of the vehicles that the licensee manufactures;

(e) The name or names and address or addresses of each and every distributor, factory branch, and factory representative;

(f) The name or names and address or addresses of resident employees or agents to provide service or repairs to vehicles located in the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured, unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(g) Any other information the department may reasonably require. [1986 c 241 § 8; 1979 c 158 § 187; 1977 ex.s. c 125 § 2; 1973 1st ex.s. c 132 § 5; 1971 ex.s. c 74 § 1; 1969 ex.s. c 63 § 2; 1967 ex.s. c 74 § 6.]

Requirements of "established place of business": RCW 46.70.023.

46.70.042 Application for license—Retention by department—Confidentiality. Every application for license shall be retained by the department for a period of three years and shall be confidential information for the use of the department, the attorney general or the prosecuting attorney only: *Provided*, That upon a showing of good cause therefor any court in which an action is pending by or against the applicant or licensee, may order the director to produce and permit the inspection and copying or photographing the application and any accompanying statements. [1967 ex.s. c 74 § 14.]

46.70.051 Issuance of license. (1) After the application has been filed, the fee paid, and bond posted, if required the department shall, if no denial order is in effect and no proceeding is pending under RCW 46.70.180 or *46.70.200, issue the appropriate license, which license, in the case of a vehicle dealer, shall designate the classification of the dealer. Nothing prohibits a vehicle dealer from obtaining licenses for more than one classification, and nothing prevents any vehicle dealer from dealing in other classes of vehicles on an isolated basis.

(2) An auction company licensed under chapter 18.11 RCW may sell at auction all classifications of vehicles under a motor vehicle dealer's license issued under this chapter including motor vehicles, miscellaneous type vehicles, and mobile homes and travel trailers. [1989 c 301 § 3; 1973 1st ex.s. c 132 § 6; 1971 ex.s. c 74 § 2; 1967 ex.s. c 74 § 7.]

*Reviser's note: RCW 46.70.200 was repealed by 1989 c 415 § 23.

46.70.061 Fees—Disposition. (1) The annual fees for original licenses issued for twelve consecutive months from the date of issuance under this chapter shall be:

(a) Vehicle dealers, principal place of business for each and every license classification: Five hundred dollars;

(b) Vehicle dealers, each subagency: Fifty dollars; temporary subagency: Twenty-five dollars;

(c) Vehicle manufacturers: Five hundred dollars.

(2) The annual fee for renewal of any license issued pursuant to this chapter shall be:

(a) Vehicle dealers, principal place of business for each and every license classification: Two hundred fifty dollars;

(b) Vehicle dealer, each and every subagency: Twenty-five dollars;

(c) Vehicle manufacturers: Two hundred fifty dollars.

If any licensee fails or neglects to apply for such renewal within thirty days after the expiration of the license, or assigned renewal date under a staggered licensing system, the license shall be declared canceled by the director, in which case the licensee will be required to apply for an original license and pay the fee required for the original license.

(3) The fee for the transfer to another location of any license issued pursuant to this chapter shall be twenty-five dollars.

(4) The fee for vehicle dealer license plates and manufacturer license plates shall be the amount required by law for vehicle license plates exclusive of excise tax, except those specified in RCW 82.44.030, and gross weight and tonnage fees.

(5) All fees collected under this chapter shall be deposited in the state treasury and credited to the motor vehicle fund.

(6) The fees prescribed in this section are in addition to any excise taxes imposed by chapter 82.44 RCW. [1986 c 241 § 10; 1986 c 241 § 9; 1979 ex.s. c 251 § 1; 1973 1st ex.s. c 132 § 7; 1967 ex.s. c 74 § 13.]

Effective dates—1986 c 241: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except section 9 of this act shall take effect July 1, 1986, and section 10 of this act shall take effect July 1, 1987." [1986 c 241 § 28.]

46.70.070 Dealers—Bond required, exceptions—Actions—Cancellation of license. (1) Before issuing a vehicle dealer's license, the department shall require the applicant to file with the department a surety bond in the amount of:

(a) Fifteen thousand dollars for motor vehicle dealers;

(b) Thirty thousand dollars for mobile home, park trailer, and travel trailer dealers: *Provided*, That if such dealer does not deal in mobile homes or park trailers such bond shall be fifteen thousand dollars;

(c) Five thousand dollars for miscellaneous dealers, running to the state, and executed by a surety company authorized to do business in the state. Such bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his business in conformity with the provisions of this chapter.

Any retail purchaser, consignor who is not a motor vehicle dealer, or a motor vehicle dealer who has purchased from a wholesale dealer, who has suffered any loss or damage by reason of any act by a dealer which constitutes a violation of this chapter shall have the right to institute an action for recovery against such dealer and the surety upon such bond. However, under this section, motor vehicle dealers who have purchased from wholesale dealers may only institute actions against wholesale dealers and their surety bonds. Successive recoveries against said bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. Upon exhaustion of the penalty of said bond or cancellation of the bond by the surety the vehicle dealer license shall automatically be deemed canceled.

(2) The bond for any vehicle dealer licensed or to be licensed under more than one classification shall be the highest bond required for any such classification.

(3) Vehicle dealers shall maintain a bond for each business location in this state and bond coverage for all temporary subagencies. [1989 c 337 § 15; 1986 c 241 § 11; 1981 c 152 § 1; 1973 1st ex.s. c 132 § 8; 1971 ex.s. c 74 § 4; 1967 ex.s. c 74 § 27; 1961 c 239 § 1; 1961 c 12 § 46.70.070. Prior: 1959 c 166 § 19; 1951 c 150 § 8.]

46.70.075 Manufacturers—Bond required—Actions—Cancellation of license. Before issuing a manufacturer license to a manufacturer of mobile homes or travel trailers, the department shall require the applicant to file with the department a surety bond in the amount of forty thousand dollars in the case of a mobile home manufacturer and twenty thousand dollars in the case of a travel trailer manufacturer, running to the state and executed by a surety company authorized to do business in the state. Such bond shall be approved by the attorney general as to form and conditioned that the manufacturer shall conduct his business in conformity with the provisions of this chapter and with all standards set by the state of Washington or the federal government pertaining to the construction or safety of such vehicles. Any retail purchaser or vehicle dealer who has suffered any loss or damage by reason of breach of warranty or by any act by a manufacturer which constitutes a violation of this chapter or a violation of any standards set by the state of Washington or the federal government pertaining to construction or safety of such vehicles has the right to institute an action for recovery against such manufacturer and the surety upon such bond. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. Upon exhaustion of the penalty of the bond or cancellation of the bond by the surety the manufacturer license is automatically deemed canceled. [1981 c 152 § 3; 1973 1st ex.s. c 132 § 9.]

46.70.083 Expiration of license—Application for renewal—Certification of established place of business. The license of a vehicle dealer or a vehicle manufacturer expires on the date assigned by the director, and may be renewed by filing with the department prior to the expiration thereof an application containing such information as the department may require to indicate any material change in the information contained in the original application.

Before renewal, the dealer's established place of business shall be certified by a representative of the department, the chief of police or his deputy, or a member of the Washington state patrol. The certification shall verify compliance with the requirements of this chapter for an established place of business. Failure by the dealer to comply is grounds for denial of the renewal application. [1986 c 241 § 12; 1985 c 109 § 1; 1973 1st ex.s. c 132 § 12; 1971 ex.s. c 74 § 6; 1967 ex.s. c 74 § 10.]

46.70.085 Dealers, manufacturers, salespersons licenses—Staggered renewal. Notwithstanding any provision of law to the contrary, the director may extend or diminish licensing periods of dealers, manufacturers, and salespersons for the purpose of staggering renewal periods. The extension or diminishment shall be by rule of the department adopted in accordance with chapter 34-.05 RCW. [1985 c 109 § 2.]

46.70.090 Dealer and manufacturer license plates—Use. (1) The department shall issue a vehicle

dealer license plate which shall be attached to the rear of the vehicle only and which is capable of distinguishing the classification of the dealer, to vehicle dealers properly licensed pursuant to this chapter and shall, upon application, issue manufacturer's license plates to manufacturers properly licensed pursuant to this chapter.

(2) Motor vehicle dealer license plates may be used:

(a) To demonstrate motor vehicles held for sale when operated by an individual holding a valid operator's license, if a dated demonstration permit, valid for no more than seventy-two hours, is carried in the vehicle at all times it is operated by any such individual.

(b) On motor vehicles owned, held for sale, and which are in fact available for sale by the firm when operated by an officer of the corporation, partnership, or proprietorship or by their spouses, or by a bona fide full-time employee of the firm, if a card so identifying any such individual is carried in the vehicle at all times it is operated by such individual. Any such vehicle so operated may be used to transport the dealer's own tools, parts, and equipment of a total weight not to exceed five hundred pounds.

(c) On motor vehicles being tested for repair.

(d) On motor vehicles being moved to or from a motor vehicle dealer's place of business for sale.

(e) On motor vehicles being moved to or from motor vehicle service and repair facilities before sale.

(f) On motor vehicles being moved to or from motor vehicle exhibitions within the state of Washington, if any such exhibition does not exceed a period of twenty days.

(3) Mobile home and travel trailer dealer license plates may be used:

(a) On units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer.

(b) On mobile homes hauled to a customer's location for set-up after sale.

(c) On travel trailers held for sale to demonstrate the towing capability of the vehicle if a dated demonstration permit, valid for not more than seventy-two hours, is carried with the vehicle at all times.

(d) On mobile homes being hauled from a customer's location if the requirements of RCW 46.44.170 and 46-.44.175 are met.

(e) On any motor vehicle owned by the dealer which is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer so owning any such motor vehicle.

(f) On vehicles being moved to or from vehicle exhibitions within the state of Washington, if any such exhibition does not exceed a period of twenty days.

(4) Miscellaneous vehicle dealer license plates may be used:

(a) To demonstrate any miscellaneous vehicle: *Provided*, That:

(i) No such vehicle may be demonstrated on a public highway unless the customer has an appropriate endorsement on his driver's license, if such endorsement is required to operate such vehicle; and

(ii) A dated demonstration permit, valid for no more than seventy-two hours, is carried with the vehicle at all times it is operated by any such individual.

(b) On vehicles owned, held for sale, and which are in fact available for sale, by the firm when operated by an officer of the corporation, partnership, or proprietorship or by a bona fide full-time employee of the firm, if a card so identifying such individual is carried in the vehicle at all times it is operated by him.

(c) On vehicles being tested for repair.

(d) On vehicles being transported to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer.

(e) On vehicles on which any other item sold or to be sold by the dealer is transported from the place of business of the manufacturer to the place of business of the dealer or to and from places of business of the dealer if such vehicle and such item are purchased or sold as one package.

(5) Manufacturers properly licensed pursuant to this chapter may apply for and obtain manufacturer license plates and may be used:

(a) On vehicles being moved to or from the place of business of a manufacturer to a vehicle dealer within this state who is properly licensed pursuant to this chapter.

(b) To test vehicles for repair.

(6) Vehicle dealer license plates and manufacturer license plates shall not be used for any purpose other than set forth in this section and specifically shall not be:

(a) Used on any vehicle not within the class for which the vehicle dealer or manufacturer license plates are issued unless specifically provided for in this section.

(b) Loaned to any person for any reason not specifically provided for in this section.

(c) Used on any vehicles for the transportation of any person, produce, freight, or commodities unless specifically provided for in this section, except there shall be permitted the use of such vehicle dealer license plates on a vehicle transporting commodities in the course of a demonstration over a period not to exceed seventy-two consecutive hours from the commencement of such demonstration, if a representative of the dealer is present and accompanies such vehicle during the course of the demonstration.

(d) Used on any vehicle sold to a resident of another state to transport such vehicle to that other state in lieu of a trip permit or in lieu of vehicle license plates obtained from that other state.

(7) In addition to or in lieu of any sanction imposed by the director pursuant to RCW 46.70.101 for unauthorized use of vehicle dealer license plates or manufacturer license plates, the director may order that any or all vehicle dealer license plates or manufacturer license plates issued pursuant to this chapter be confiscated for such period as he deems appropriate. [1983 c 3 § 123; 1981 c 152 § 4; 1973 1st ex.s. c 132 § 13; 1971 ex.s. c 74 § 7; 1969 ex.s. c 63 § 3; 1961 c 12 § 46.70.090. Prior: 1955 c 283 § 1; 1951 c 150 § 10.]

46.70.101 Denial, suspension, or revocation of licenses—Grounds. The director may by order deny, suspend, or revoke the license of any vehicle dealer or vehicle manufacturer or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if the director finds that the order is in the public interest and that the applicant or licensee:

(1) In the case of a vehicle dealer:

(a) The applicant or licensee, or any partner, officer, director, owner of ten percent or more of the assets of the firm, or managing employee:

(i) Was the holder of a license issued pursuant to this chapter, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled or which license was assessed a civil penalty and the assessed amount has not been paid;

(ii) Has been adjudged guilty of a crime which directly relates to the business of a vehicle dealer and the time elapsed since the adjudication is less than ten years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, adjudged guilty shall mean in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended;

(iii) Has knowingly or with reason to know made a false statement of a material fact in his application for license or any data attached thereto, or in any matter under investigation by the department;

(iv) Does not have an established place of business as required in this chapter;

(v) Refuses to allow representatives or agents of the department to inspect during normal business hours all books, records, and files maintained within this state;

(vi) Sells, exchanges, offers, brokers, auctions, solicits, or advertises a new or current model vehicle to which a factory new vehicle warranty attaches and fails to have a valid, written service agreement as required by this chapter, or having such agreement refuses to honor the terms of such agreement within a reasonable time or repudiates the same;

(vii) Is insolvent, either in the sense that their liabilities exceed their assets, or in the sense that they cannot meet their obligations as they mature;

(viii) Fails to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after such assessment becomes final;

(ix) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183;

(x) Knowingly, or with reason to know, allows a salesperson employed by the dealer, or acting as their agent, to commit any of the prohibited practices set forth in subsection (1)(a) of this section and RCW 46.70.180.

(b) The applicant or licensee, or any partner, officer, director, owner of ten percent of the assets of the firm, or any employee or agent:

(i) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(ii) Has defrauded or attempted to defraud the state, or a political subdivision thereof of any taxes or fees in connection with the sale or transfer of a vehicle;

(iii) Has forged the signature of the registered or legal owner on a certificate of title;

(iv) Has purchased, sold, disposed of, or has in his or her possession any vehicle which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(v) Has willfully failed to deliver to a purchaser a certificate of ownership to a vehicle which he has sold;

(vi) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates or manufacturer license plates;

(vii) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(viii) Has engaged in practices inimical to the health or safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction or safety of vehicles;

(ix) Has aided or assisted an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, allowing use of facilities, dealer license number, or by any other means;

(x) Converts or appropriates, whether temporarily or permanently, property or funds belonging to a customer, dealer, or manufacturer, without the consent of the owner of the property or funds; or

(xi) Has sold any vehicle with knowledge that it has "REBUILT" on the title or has been declared totaled out by an insurance carrier and then rebuilt without clearly disclosing that fact in writing.

(c) The licensee or any partner, officer, director, or owner of ten percent or more of the assets of the firm holds or has held any such position in any other vehicle dealership licensed pursuant to this chapter which is subject to final proceedings under this section.

(2) In the case of a manufacturer, or any partner, officer, director, or majority shareholder:

(a) Was or is the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid;

(b) Has knowingly or with reason to know, made a false statement of a material fact in his application for license, or any data attached thereto, or in any matter under investigation by the department;

(c) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(d) Has defrauded or attempted to defraud the state or a political subdivision thereof, of any taxes or fees in connection with the sale or transfer of a vehicle;

(e) Has purchased, sold, disposed of, or has in his possession, any vehicle which he knows or has reason to know has been stolen or appropriated without the consent of the owner;

(f) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates and manufacturer license plates;

(g) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(h) Sells or distributes in this state or transfers into this state for resale, any new or unused vehicle to which a warranty attaches or has attached and refuses to honor the terms of such warranty within a reasonable time or repudiates the same;

(i) Fails to maintain one or more resident employees or agents to provide service or repairs to vehicles located within the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured and which are or have been sold or distributed in this state or transferred into this state for resale unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(j) Fails to reimburse within a reasonable time any vehicle dealer within the state of Washington who in good faith incurs reasonable obligations in giving effect to warranties that attach or have attached to any new or unused vehicle sold or distributed in this state or transferred into this state for resale by any such manufacturer;

(k) Engaged in practices inimical to the health and safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles;

(l) Is insolvent either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature;

(m) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183. [1989 c 337 § 16; 1986 c 241 § 13; 1981 c 152 § 5; 1977 ex.s. c 125 § 3; 1973 1st ex.s. c 132 § 14; 1969 ex.s. c 63 § 4; 1967 ex.s. c 74 § 11.]

46.70.102 Denial, suspension, or revocation of licenses—Notice, hearing, procedure. Upon the entry of the order under RCW 46.70.101 the director shall promptly notify the applicant or licensee that the order has been entered and of the reasons therefor and that if requested by the applicant or licensee within fifteen days after the receipt of the director's notification, the matter will be promptly set down for hearing pursuant to chapter 34.05 RCW. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, or his personal representative, after notice of and opportunity for hearing, may modify or vacate the order, or extend it until

final determination. No final order may be entered under RCW 46.70.101 denying or revoking a license without appropriate prior notice to the applicant or licensee, opportunity for hearing, and written findings of fact and conclusions of law. [1986 c 241 § 14; 1967 ex.s. c 74 § 12.]

46.70.111 Investigations or proceedings—Powers of director or designees—Penalty. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(1) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director, or the officer designated by him, to produce documentary or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt. [1967 ex.s. c 74 § 15.]

46.70.115 Cease and desist orders. If it appears to the director that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, or a rule adopted or an order issued under this chapter, the director may issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order pending a hearing. The temporary order shall remain in effect until ten days after the hearing is held and shall become final if the person to whom the notice is addressed does not request a hearing within fifteen days after receipt of the notice. [1986 c 241 § 15.]

46.70.120 Record of transactions. A dealer shall complete and maintain for a period of at least five years a record of the purchase and sale of all vehicles purchased or sold by him. The records shall consist of:

- (1) The license and title numbers of the state in which the last license was issued;
- (2) A description of the vehicle;
- (3) The name and address of person from whom purchased;
- (4) The name of legal owner, if any;
- (5) The name and address of purchaser;
- (6) If purchased from a dealer, the name, business address, dealer license number, and resale tax number of the dealer;
- (7) The price paid for the vehicle and the method of payment;
- (8) The odometer statement given by the seller to the dealer, and the odometer statement given by the dealer to the purchaser;

(9) The written agreement to allow a dealer to sell between the dealer and the consignor, or the listing dealer and the seller;

(10) Trust account records of receipts, deposits, and withdrawals;

(11) All sale documents, which shall show the full name of dealer employees involved in the sale;

(12) Any additional information the department may require.

Such record shall be maintained separate and apart from all other business records of the dealer and shall at all times be available for inspection by the director or his duly authorized agent. [1986 c 241 § 16; 1973 1st ex.s. c 132 § 15; 1961 c 12 § 46.70.120. Prior: 1951 c 150 § 15.]

46.70.125 Used vehicles—Asking price, posting or disclosure. A vehicle dealer who sells used vehicles shall either display on the vehicle, or disclose upon request, the written asking price of a specific vehicle offered for sale by the dealer as of that time.

A violation of this section is an unfair business practice under chapter 19.86 RCW, the Consumer Protection Act, and the provisions of chapter 46.70 RCW. [1986 c 165 § 1.]

46.70.130 Details of charges must be furnished buyer or mortgagor. Before the execution of a contract or chattel mortgage or the consummation of the sale of any vehicle, the seller must furnish the buyer an itemization in writing signed by the seller separately disclosing to the buyer the finance charge, insurance costs, taxes, and other charges which are paid or to be paid by the buyer. [1973 1st ex.s. c 132 § 16; 1961 c 12 § 46.70.130. Prior: 1951 c 150 § 16.]

46.70.135 Mobile homes—Warranties and inspections—Advertising of dimensions. (Effective until March 1, 1990.) Mobile home manufacturers and mobile home dealers who sell mobile homes to be assembled on site and used as residences in this state shall conform to the following requirements:

(1) No new manufactured home may be sold unless the purchaser is provided with a manufacturer's written warranty for construction of the home in compliance with the Magnuson–Moss Warranty Act (88 Stat. 2183; 15 U.S.C. Sec. 47 et seq.; 15 U.S.C. Sec. 2301 et seq.).

(2) No new manufactured home may be sold unless the purchaser is provided with a dealer's written warranty for all installation services performed by the dealer.

(3) The warranties required by subsections (1) and (2) of this section shall be valid for a minimum of one year from the date of sale and shall not be invalidated by resale by the original purchaser to a subsequent purchaser. Copies of the warranties shall be given to the purchaser upon signing a purchase agreement and shall include an explanation of remedies available to the purchaser under state and federal law for breach of warranty, the name and address of the federal department

of housing and urban development and the state departments of licensing and labor and industries, and a brief description of the duties of these agencies concerning mobile homes.

(4) Warranty service shall be completed within forty-five days after the owner gives written notice of the defect unless there is a bona fide dispute between the parties. Warranty service for a defect affecting health or safety shall be completed within seventy-two hours of receipt of written notice. Warranty service shall be performed on site and a written work order describing labor performed and parts used shall be completed and signed by the service agent and the owner. If the owner's signature cannot be obtained, the reasons shall be described on the work order. Work orders shall be retained by the dealer or manufacturer for a period of three years.

(5) Before delivery of possession of the home to the purchaser, an inspection shall be performed by the dealer or his agent and by the purchaser or his agent which shall include a test of all systems of the home to insure proper operation. At the time of the inspection, the purchaser shall be given copies of all documents required by state or federal agencies to be supplied by the manufacturer with the home which have not previously been provided as required under subsection (3) of this section, and the dealer shall complete any required purchaser information card and forward the card to the manufacturer.

(6) Manufacturer and dealer advertising which states the dimensions of a home shall not include the length of the draw bar assembly in a listed dimension, and shall state the square footage of the actual floor area. [1981 c 304 § 36.]

Severability—1981 c 304: See note following RCW 26.16.030.

Mobile home installation and warranty service: RCW 43.22.440, 43.22.442.

Mobile home safety and construction standards, inspections, etc.: RCW 43.22.431 through 43.22.434.

46.70.135 Mobile homes—Warranties and inspections—Advertising of dimensions. (Effective March 1, 1990.) Mobile home manufacturers and mobile home dealers who sell mobile homes to be assembled on site and used as residences in this state shall conform to the following requirements:

(1) No new manufactured home may be sold unless the purchaser is provided with a manufacturer's written warranty for construction of the home in compliance with the Magnuson-Moss Warranty Act (88 Stat. 2183; 15 U.S.C. Sec. 47 et seq.; 15 U.S.C. Sec. 2301 et seq.).

(2) No new manufactured home may be sold unless the purchaser is provided with a dealer's written warranty for all installation services performed by the dealer.

(3) The warranties required by subsections (1) and (2) of this section shall be valid for a minimum of one year from the date of sale and shall not be invalidated by resale by the original purchaser to a subsequent purchaser or by the certificate of ownership being eliminated or not issued as described in chapter 65.20 RCW. Copies of the warranties shall be given to the purchaser

upon signing a purchase agreement and shall include an explanation of remedies available to the purchaser under state and federal law for breach of warranty, the name and address of the federal department of housing and urban development and the state departments of licensing and labor and industries, and a brief description of the duties of these agencies concerning mobile homes.

(4) Warranty service shall be completed within forty-five days after the owner gives written notice of the defect unless there is a bona fide dispute between the parties. Warranty service for a defect affecting health or safety shall be completed within seventy-two hours of receipt of written notice. Warranty service shall be performed on site and a written work order describing labor performed and parts used shall be completed and signed by the service agent and the owner. If the owner's signature cannot be obtained, the reasons shall be described on the work order. Work orders shall be retained by the dealer or manufacturer for a period of three years.

(5) Before delivery of possession of the home to the purchaser, an inspection shall be performed by the dealer or his agent and by the purchaser or his agent which shall include a test of all systems of the home to insure proper operation. At the time of the inspection, the purchaser shall be given copies of all documents required by state or federal agencies to be supplied by the manufacturer with the home which have not previously been provided as required under subsection (3) of this section, and the dealer shall complete any required purchaser information card and forward the card to the manufacturer.

(6) Manufacturer and dealer advertising which states the dimensions of a home shall not include the length of the draw bar assembly in a listed dimension, and shall state the square footage of the actual floor area. [1989 c 343 § 22; 1981 c 304 § 36.]

Severability—Effective date—1989 c 343: See RCW 65.20.940 and 65.20.950.

Severability—1981 c 304: See note following RCW 26.16.030.

Mobile home installation and warranty service: RCW 43.22.440, 43.22.442.

Mobile home safety and construction standards, inspections, etc.: RCW 43.22.431 through 43.22.434.

46.70.137 Violations relating to mobile/manufactured homes. See RCW 18.27.117.

46.70.140 Handling "hot" vehicles—Unreported motor "switches"—Unauthorized use of dealer plates—Penalty. Any vehicle dealer who shall knowingly or with reason to know, buy or receive, sell or dispose of, conceal or have in his possession, any vehicle from which the motor or serial number has been removed, defaced, covered, altered, or destroyed, or any dealer, who shall remove from or install in any motor vehicle a new or used motor block without immediately notifying the department of such fact upon a form provided by the department, or any vehicle dealer who shall loan or permit the use of vehicle dealer license plates by any person not entitled to the use thereof, shall be guilty of a gross misdemeanor. [1973 1st ex.s. c 132 § 17; 1971

ex.s. c 74 § 8; 1967 c 32 § 79; 1961 c 12 § 46.70.140. Prior: 1951 c 150 § 11.]

46.70.150 Violations—Additional penalties as to license and plates. The director may, when informed of the conviction of any dealer of the violation of any of the provisions of this chapter, in addition to penalties imposed by the court, require the surrender of the dealer license and dealer license plates, and may thereupon suspend such license for a period of not less than thirty days or not more than one year, or he may confiscate the dealer license plates that have been issued to such dealer for the current license year. [1961 c 12 § 46.70.150. Prior: 1951 c 150 § 12.]

46.70.160 Rules and regulations. The director may make any reasonable rules and regulations not inconsistent with the provisions of chapter 46.70 RCW relating to the enforcement and proper operation thereof. [1961 c 12 § 46.70.160. Prior: 1959 c 166 § 21.]

46.70.170 Penalty for violations. It is a misdemeanor for any person to violate any of the provisions of this chapter, except where expressly provided otherwise, and the rules adopted as provided under this chapter. [1986 c 241 § 17; 1965 c 68 § 5.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

46.70.180 Unlawful acts and practices. Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2) To incorporate within the terms of any purchase and sale agreement any statement or representation with regard to the sale or financing of a vehicle which is false,

deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold to a person for a consideration and upon further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Taking from a prospective buyer of a vehicle a written order or offer to purchase, or a contract document signed by the buyer, which:

(a) Is subject to the dealer's, or his authorized representative's future acceptance, and the dealer fails or refuses within forty-eight hours, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer, to deliver to the buyer either the dealer's signed acceptance or all copies of the order, offer, or contract document together with any initial payment or security made or given by the buyer, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer as part of the purchase price, for any reason except substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesman to refuse to furnish, upon request of a prospective purchaser, the name and address of the previous registered owner of any used vehicle offered for sale.

(7) To commit any other offense under RCW 46.37-.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle.

(9) For a dealer, salesman, or mobile home manufacturer, having taken an instrument or cash "on deposit"

from a purchaser prior to the delivery of the bargained-for vehicle, to commingle said "on deposit" funds with assets of the dealer, salesman, or mobile home manufacturer instead of holding said "on deposit" funds as trustee in a separate trust account until the purchaser has taken delivery of the bargained-for vehicle. Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: *Provided, however*, That a motor vehicle dealer may keep a separate trust account which equals his customary total customer deposits for vehicles for future delivery.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales agreement signed by the seller and buyer.

(11) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.94 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: *Provided*, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) said cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided*, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith.

(c) Encourage, aid, abet, or teach a vehicle dealer to sell vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either

threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser of any new or unused vehicle that has been sold, distributed for sale, or transferred into this state for resale by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (11)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW. [1989 c 415 § 20; 1986 c 241 § 18; 1985 c 472 § 13; 1981 c 152 § 6; 1977 ex.s. c 125 § 4; 1973 1st ex.s. c 132 § 18; 1969 c 112 § 1; 1967 ex.s. c 74 § 16.]

Severability—1989 c 415: See RCW 46.96.900.

Severability—1985 c 472: See RCW 46.94.900.

Odometers—*Disconnecting, resetting, turning back, replacing without notifying purchaser*: RCW 46.37.540 through 46.37.570.

46.70.183 Notice of bankruptcy proceedings. Any vehicle dealer or manufacturer, by or against whom a petition in bankruptcy has been filed, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending. [1981 c 152 § 7.]

46.70.190 Civil actions for violations—Injunctions—Claims under Federal Automobile Dealer Franchise Act—Time limitation. Any person who is injured in his business or property by a violation of this chapter, or any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter, may bring a civil action in the superior court to enjoin further violations, to recover the actual damages sustained by him together with the costs of the suit, including a reasonable attorney's fee.

If a new motor vehicle dealer recovers a judgment or has a claim dismissed with prejudice against a manufacturer under RCW 46.96.040 or 46.96.050(3) or this section, the new motor vehicle dealer is precluded from pursuing that same claim or recovering judgment for that same claim against the same manufacturer under the federal Automobile Dealer Franchise Act, 15 U.S.C. Sections 1221 through 1225, but only to the extent that the damages recovered by or denied to the new motor vehicle dealer are the same as the damages being sought under the federal Automobile Dealer Franchise Act. Likewise, if a new motor vehicle dealer recovers a judgment or has a claim dismissed with prejudice against a manufacturer under the federal Automobile Dealer Franchise Act, the dealer is precluded from pursuing that same claim or recovering judgment for that same claim against the same manufacturer under this chapter, but only to the extent that the damages recovered by or denied to the dealer are the same as the damages being sought under this chapter.

A civil action brought in the superior court pursuant to the provisions of this section must be filed no later than one year following the alleged violation of this chapter. [1989 c 415 § 21; 1986 c 241 § 19; 1973 1st ex.s. c 132 § 19; 1967 ex.s. c 74 § 21.]

Severability—1989 c 415: See RCW 46.96.900.

46.70.220 Duties of attorney general and prosecuting attorneys to act on violations—Limitation of civil actions. The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice herein prohibited or declared unlawful: *Provided*, That this chapter shall be considered in conjunction with chapter 9.04 RCW, 19.86 RCW and 63.14 RCW and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter: *Provided further*, That any action to enforce a claim for civil damages under chapter 19.86 RCW shall be forever barred unless commenced within six years after the cause of action accrues. [1967 ex.s. c 74 § 19.]

46.70.230 Duties of attorney general and prosecuting attorneys to act on violations—Assurance of compliance—Filing. In the enforcement of this chapter, the attorney general and/or any said prosecuting attorney may accept an assurance of compliance with the provisions of this chapter from any person deemed in violation hereof. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. [1967 ex.s. c 74 § 20.]

46.70.240 Penalties—Jurisdiction. Any person who violates the terms of any court order, or temporary or permanent injunction issued pursuant to this chapter, shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general and/or the prosecuting attorney acting in the name of the state, or any person who pursuant to RCW 46.70.190 has secured the injunction violated, may petition for the recovery of civil penalties. [1967 ex.s. c 74 § 22.]

46.70.250 Personal service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. [1967 ex.s. c 74 § 23.]

46.70.260 Application of chapter to existing and future franchises and contracts. The provisions of this chapter shall be applicable to all franchises and contracts existing between vehicle dealers and manufacturers or factory branches and to all future franchises and contracts. [1986 c 241 § 22; 1967 ex.s. c 74 § 24.]

46.70.270 Provisions of chapter cumulative—Violation of RCW 46.70.180 deemed civil. The provisions of this chapter shall be cumulative to existing laws: *Provided*, That the violation of RCW 46.70.180 shall be construed as exclusively civil and not penal in nature. [1967 ex.s. c 74 § 25.]

46.70.290 Application of chapter to mobile homes and persons engaged in distribution and sale thereof. The provisions of chapter 46.70 RCW shall apply to the distribution and sale of mobile homes and to mobile home dealers, salesmen, distributors, manufacturers, factory representatives, or other persons engaged in such distribution and sale to the same extent as for motor vehicles. [1971 ex.s. c 231 § 23.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.70.300 Provisions of chapter exclusive—Local business and occupation tax not prevented. (1) The provisions of this chapter relating to the licensing and regulation of vehicle dealers, salesmen, and manufacturers shall be exclusive and no county, city, or other political subdivision of this state shall enact any laws, rules, or regulations licensing or regulating vehicle dealers, salesmen, or manufacturers.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business and occupation tax upon vehicle dealers or manufacturers maintaining an office within that political subdivision

if a business and occupation tax is levied by such a political subdivision upon other types of businesses within its boundaries. [1981 c 152 § 2.]

46.70.310 Violation of Consumer Protection Act. Any violation of this chapter is deemed to affect the public interest and constitutes a violation of chapter 19.86 RCW. [1986 c 241 § 23.]

46.70.900 Liberal construction. All provisions of this chapter shall be liberally construed to the end that deceptive practices or commission of fraud or misrepresentation in the sale, barter, or disposition of vehicles in this state may be prohibited and prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of selling, bartering, or otherwise dealing in vehicles in this state and reliable persons may be encouraged to engage in the business of selling, bartering and otherwise dealing in vehicles in this state: *Provided*, That this chapter shall not apply to printers, publishers, or broadcasters who in good faith print, publish or broadcast material without knowledge of its deceptive character. [1973 1st ex.s. c 132 § 20; 1967 ex.s. c 74 § 2.]

46.70.910 Severability—1967 ex.s. c 74. If any provision of this amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby. [1967 ex.s. c 74 § 28.]

46.70.920 Severability—1973 1st ex.s. c 132. If any provision of this 1973 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this 1973 amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby. [1973 1st ex.s. c 132 § 21.]

Chapter 46.71 AUTOMOTIVE REPAIR

Sections

46.71.010	Definitions.
46.71.020	Invoices—Requirements.
46.71.030	Replaced parts—Return to customer—Exceptions.
46.71.040	Estimate of costs—Alternatives—Customer's choice.
46.71.043	Posting of signs required.
46.71.047	Excessive repair costs, conditions for recovery of— Costs of action and attorneys' fee.
46.71.050	Certain repairman's remedies barred—Conditions.
46.71.060	Price estimates and invoices kept for one year.
46.71.065	Understating estimates prohibited.
46.71.070	Unfair practices as violation of consumer protection act—Defense.
46.71.080	Notice of this chapter to vehicle owners.
46.71.090	Notice of this chapter to repairmen.

Vehicle warranties (Lemon law): Chapter 19.118 RCW.

46.71.010 Definitions. For purposes of this chapter:

(1) "Automotive repairman" means a person who for compensation engages in the business of automotive repairing and/or diagnosing malfunctions of motor vehicles subject to RCW 46.16.010; and

(2) "Automotive repairs" includes but is not limited to:

(a) All repairs to vehicles subject to RCW 46.16.010 which are commonly performed in a repair shop by a motor vehicle mechanic including the installation, exchange, or repair of mechanical parts or units for any vehicle or the performance of any electrical or mechanical adjustment to any vehicle; and

(b) All work in shops that perform one or more specialties within the automotive repair trade including but not limited to body, frame, front-end, brake repair, transmission, tune-up, and electrical repair work, and muffler installation. [1982 c 62 § 1; 1977 ex.s. c 280 § 1.]

46.71.020 Invoices—Requirements. All work done and all parts supplied by an automotive repairman, including all warranty work, shall be recorded on an invoice. If any used, rebuilt, or reconditioned parts are supplied the invoice shall clearly state the fact. One copy of the invoice shall be given to the customer and one copy of the invoice shall be retained by the automotive repairman. [1977 ex.s. c 280 § 2.]

46.71.030 Replaced parts—Return to customer—Exceptions. Upon request of the customer when the work order is taken, except for parts covered by a manufacturer's warranty, the automotive repairman shall return replaced parts to the customer at the time the work is completed.

If a customer requests the return of a part that must be returned to the manufacturer or distributor under the terms of a warranty agreement, the repairman shall offer to show the part to the customer at the time the work is completed. The repairman need not show a replaced part when no charge is being made for the replacement part. [1982 c 62 § 2; 1977 ex.s. c 280 § 3.]

46.71.040 Estimate of costs—Alternatives—Customer's choice. (1) If the price of the automotive repairs is estimated to exceed seventy-five dollars and the repairman chooses to preserve any right to assert a possessory or chattel lien or if the customer requests a written price estimate, the automotive repairman shall, prior to the commencement of supplying any parts or the performance of any labor, provide the customer a written price estimate or the following choice of estimate alternatives:

"YOU ARE ENTITLED TO A WRITTEN PRICE ESTIMATE FOR THE REPAIRS YOU HAVE AUTHORIZED. YOU ARE ALSO ENTITLED TO REQUIRE THE REPAIRMAN TO OBTAIN YOUR ORAL OR WRITTEN AUTHORIZATION TO EXCEED THE WRITTEN PRICE ESTIMATE. YOUR SIGNATURE OR INITIALS WILL INDICATE YOUR SELECTION.

1. I request an estimate in writing before you begin repairs. Contact me if the price will exceed this estimate by more than ten percent.

2. Proceed with repairs but contact me if the price will exceed \$-----

3. I do not want a written estimate.
-----"

These alternatives shall not be required when the customer's motor vehicle has been brought to the automotive repairman without face-to-face contact between the customer and the automotive repairman or the repairman's representative at the repairman's regular place of business. A repairman is not required to provide a customer with a written price estimate or a choice of estimate alternatives except as required by this subsection.

(2) If the customer signs or initials alternative 1, the automotive repairman shall, prior to supplying any parts or performing any labor, give to the customer a written price estimate for the labor and parts necessary for the specific repair requested. If the customer signs or initials either alternative 2 or 3, no written price estimate is required unless the repairman chooses to preserve any right to assert a possessory or chattel lien. The repairman may not charge for work done or parts supplied which are not a part of the written price estimate and may not charge the customer more than one hundred ten percent, exclusive of retail sales tax, of the total shown on the written price estimate: *Provided*, That neither of these limitations shall apply if, prior to performing the additional labor and/or supplying the additional parts, the repairman obtains either the oral or written authorization of the customer to exceed the written price estimate. The repairman or his agent shall note on the written price estimate the date and time of obtaining an oral authorization.

(3) If the price of the automotive repairs is estimated to be less than seventy-five dollars and, after the repairs commence, it is determined that the final price will exceed this amount, the automotive repairman must obtain the oral or written authorization of the customer to exceed a final price of seventy-five dollars. No repairman may charge a customer more than seventy-five dollars for repairs under this subsection unless authorized orally or in writing by the customer. [1982 c 62 § 3; 1977 ex.s. c 280 § 4.]

46.71.043 Posting of signs required. An automotive repairman shall post in a prominent place on the business premises one or more signs, readily visible to customers, in the following form:

YOUR CUSTOMER RIGHTS

ON REQUEST, YOU ARE ENTITLED BY LAW TO:

- (1) A WRITTEN ESTIMATE OF REPAIRS WHICH WILL COST MORE THAN SEVENTY-FIVE DOLLARS;

- (2) RETURN OR INSPECTION OF ALL REPLACED PARTS; AND
- (3) AUTHORIZE ANY REPAIRS WHICH EXCEED THE ESTIMATED PRICE BY MORE THAN TEN PERCENT.

The first line of each sign shall be in letters not less than one and one-half inch in height and the remaining lines shall be in letters not less than three-quarters of an inch in height. [1982 c 62 § 4.]

46.71.047 Excessive repair costs, conditions for recovery of—Costs of action and attorneys' fee. If an automotive repairman is required by RCW 46.71.040 to provide the customer a written price estimate or a choice of estimate alternatives, the repairman is barred from recovering in an action to recover for automotive repairs any amount in excess of one hundred ten percent of the amount authorized by the customer unless the repairman proves by a preponderance of the evidence that his or her conduct was reasonable, necessary, and justified under the circumstances. In any action to recover for automotive repairs the prevailing party may, in the discretion of the court, recover the costs of the action and a reasonable attorneys' fee. [1982 c 62 § 5.]

46.71.050 Certain repairman's remedies barred—Conditions. A repairman who performs work or supplies parts which are not a part of the written price estimate or which together exceed one hundred ten percent of the written price estimate, without the oral or written authorization of the customer or who is not required by RCW 46.71.040 to provide the customer with a written price estimate or a choice of estimate alternatives shall be barred from asserting a possessory or chattel lien for the amount of the unauthorized parts or labor upon the motor vehicle. A repairman who supplies used, rebuilt, or reconditioned parts in violation of RCW 46.71.020 or who fails or refuses to return replaced parts as required by RCW 46.71.030 shall be barred from asserting a possessory or chattel lien for the amount charged for that replacement part upon the motor vehicle. [1982 c 62 § 6; 1977 ex.s. c 280 § 5.]

46.71.060 Price estimates and invoices kept for one year. Every automotive repairman shall retain and make available for inspection upon request by the customer or the customer's authorized representative true copies of the written price estimates and invoices required under this chapter for at least one year after the date on which the repairs were performed. [1982 c 62 § 7; 1977 ex.s. c 280 § 6.]

46.71.065 Understating estimates prohibited. An automotive repairman shall not materially understate or misstate the estimated price of automotive repairs. [1982 c 62 § 8.]

46.71.070 Unfair practices as violation of consumer protection act—Defense. A violation of this chapter is an unfair act or practice in violation of the consumer protection act, chapter 19.86 RCW. In an action under

chapter 19.86 RCW due to an automotive repairman's charging or attempt to charge a customer an amount in excess of one hundred ten percent of the amount authorized by the customer, a violation shall not be found if the automotive repairman proves by a preponderance of the evidence that his or her conduct was reasonable, necessary, and justified under the circumstances.

Notwithstanding RCW 46.64.050, no violation of this chapter shall give rise to criminal liability under that section. [1982 c 62 § 9; 1977 ex.s. c 280 § 7.]

46.71.080 Notice of this chapter to vehicle owners. Whenever a vehicle license renewal form under RCW 46.16.210 is given to the registered owner of any vehicle, the department of licensing shall give to the owner written notice of the provisions of this chapter in a manner prescribed by the director of licensing. [1982 c 62 § 10.]

46.71.090 Notice of this chapter to repairmen. When the department of revenue issues a registration certificate under RCW 82.32.030 to an automotive repairman, it shall give written notice to the person of the requirements of this chapter in a manner prescribed by the director of revenue. The department of revenue shall thereafter give the notice on an annual basis in conjunction with the business and occupation tax return provided to each person holding a registration certificate as an automotive repairman. [1982 c 62 § 11.]

Chapter 46.72

TRANSPORTATION OF PASSENGERS IN FOR HIRE VEHICLES

Sections

46.72.010	Definitions.
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46.72.030	Permit fee—Issuance—Display.
46.72.040	Surety bond.
46.72.050	Liability coverage—Right of action saved.
46.72.060	Right of action—Limitation of recovery.
46.72.070	Certificate—Fee.
46.72.080	Substitution of security—New certificate.
46.72.100	Refusal, suspension, or revocation of permit or certificate—Penalty for unlawful operation.
46.72.110	Fees to highway safety fund.
46.72.120	Rules and regulations.
46.72.130	Nonresident taxicabs—Permit—Fee—Compliance.
46.72.140	Nonresident taxicabs—Permit required for entry.
46.72.150	Nonresident taxicabs—Reciprocity.

Age limit for drivers of for hire vehicles: RCW 46.20.045.

Taxicab companies, local regulation: Chapter 81.72 RCW.

46.72.010 Definitions. When used in this chapter:

(1) The term "for hire vehicle" includes all vehicles used for the transportation of passengers for compensation, except auto stages, school buses operating exclusively under a contract to a school district, and ride-sharing vehicles;

(2) The term "for hire operator" means and includes any person, concern, or entity engaged in the transportation of passengers for compensation in for hire vehicles. [1979 c 111 § 14; 1961 c 12 § 46.72.010. Prior:

1947 c 253 § 1; Rem. Supp. 1947 § 6386-1. Formerly RCW 81.72.010.]

Severability—1979 c 111: See note following RCW 46.74.010.

46.72.020 Permit required—Form of application.

No for hire operator shall cause operation of a for hire vehicle upon any highway of this state without first obtaining a permit from the director of licensing. Application for a permit shall be made on forms provided by the director and shall include (1) the name and address of the owner or owners, and if a corporation, the names and addresses of the principal officers thereof; (2) city, town or locality in which any vehicle will be operated; (3) name and motor number of any vehicle to be operated; (4) the endorsement of a city official authorizing an operator under a law or ordinance requiring a license; and (5) such other information as the director may require. [1979 c 158 § 188; 1967 c 32 § 80; 1961 c 12 § 46.72.020. Prior: 1947 c 253 § 2; Rem. Supp. 1947 § 6386-2; prior: 1915 c 57 § 1; RRS § 6382. Formerly RCW 81.72.020.]

46.72.030 Permit fee—Issuance—Display. Application for a permit shall be forwarded to the director with a fee of five dollars. Upon receipt of such application and fee, the director shall, if such application be in proper form, issue a permit authorizing the applicant to operate for hire vehicles upon the highways of this state until such owner ceases to do business as such, or until the permit is suspended or revoked. Such permit shall be displayed in a conspicuous place in the principal place of business of the owner. [1967 c 32 § 81; 1961 c 12 § 46.72.030. Prior: 1947 c 253 § 3; Rem. Supp. 1947 § 6386-3; prior: 1933 c 73 § 1, part; 1915 c 57 § 2, part; RRS § 6383, part. Formerly RCW 81.72.030.]

46.72.040 Surety bond. Before a permit is issued every for hire operator shall be required to deposit and thereafter keep on file with the director a surety bond running to the state of Washington covering each and every for hire vehicle as may be owned or leased by him and used in the conduct of his business as a for hire operator. Such bond shall be in the sum of one hundred thousand dollars for any recovery for death or personal injury by one person, and three hundred thousand dollars for all persons killed or receiving personal injury by reason of one act of negligence, and twenty-five thousand dollars for damage to property of any person other than the assured, with a good and sufficient surety company licensed to do business in this state as surety and to be approved by the director, conditioned for the faithful compliance by the principal of said bond with the provisions of this chapter, and to pay all damages which may be sustained by any person injured by reason of any careless negligence or unlawful act on the part of said principal, his agents or employees in the conduct of said business or in the operation of any motor propelled vehicle used in transporting passengers for compensation on any public highway of this state. [1973 c 15 § 1; 1967 c 32 § 82; 1961 c 12 § 46.72.040. Prior: 1947 c 253 § 4; Rem. Supp. 1947 § 6386-4; prior: 1933 c 73 § 1, part;

1915 c 57 § 2, part; RRS § 6383, part. Formerly RCW 81.72.040.]

46.72.050 Liability coverage—Right of action saved. In lieu of the surety bond as provided in this chapter, there may be deposited and kept on file and in force with the director a public liability insurance policy covering each and every motor vehicle operated or intended to be so operated, executed by an insurance company licensed and authorized to write such insurance policies in the state of Washington, assuring the applicant for a permit against property damage and personal liability to the public, with the premiums paid and payment noted thereon. Said policy of insurance shall provide a minimum coverage equal and identical to the coverage required by the aforesaid surety bond, specified under the provisions of RCW 46.72.040. No provisions of this chapter shall be construed to limit the right of any injured person to any private right of action against a for hire operator as herein defined. [1973 c 15 § 2; 1967 c 32 § 83; 1961 c 12 § 46.72.050. Prior: 1947 c 253 § 5; Rem. Supp. 1947 § 6386-5. Formerly RCW 81.72.050.]

46.72.060 Right of action—Limitation of recovery. Every person having a cause of action for damages against any person, firm, or corporation receiving a permit under the provisions of this chapter, for injury, damages or wrongful death caused by any careless, negligent or unlawful act of any such person, firm, or corporation or his, their, or its agents or employees in conducting or carrying on said business or in operating any motor propelled vehicle for the carrying and transporting of passengers over and along any public street, road or highway shall have a cause of action against the principal and surety upon the bond or the insurance company and the insured for all damages sustained, and in any such action the full amount of damages sustained may be recovered against the principal, but the recovery against the surety shall be limited to the amount of the bond. [1961 c 12 § 46.72.060. Prior: 1947 c 253 § 6; Rem. Supp. 1947 § 6386-6; prior: 1929 c 27 § 1; 1927 c 161 § 1; 1915 c 57 § 3; RRS § 6384. Formerly RCW 81.72.060.]

46.72.070 Certificate—Fee. The director shall approve and file all bonds and policies of insurance. The director shall, upon receipt of fees and after approving the bond or policy, furnish the owner with an appropriate certificate which must be carried in a conspicuous place in the vehicle at all times during for hire operation. A for hire operator shall secure a certificate for each for hire vehicle operated and pay therefor a fee of one dollar for each vehicle so registered. Such permit or certificate shall expire on June 30th of each year, and may be annually renewed upon payment of a fee of one dollar. [1967 c 32 § 84; 1961 c 12 § 46.72.070. Prior: 1947 c 253 § 7; Rem. Supp. 1947 § 6386-7. Formerly RCW 81.72.070.]

46.72.080 Substitution of security—New certificate. In the event the owner substitutes a policy or bond after a for hire certificate has been issued, a new certificate shall be issued to the owner. The owner shall submit the substituted bond or policy to the director for approval, together with a fee of one dollar. If the director approves the substituted policy or bond, a new certificate shall be issued. In the event any certificate has been lost, destroyed or stolen, a duplicate thereof may be obtained by filing an affidavit of loss and paying a fee of fifty cents. [1967 c 32 § 85; 1961 c 12 § 46.72.080. Prior: 1947 c 253 § 8; Rem. Supp. 1947 § 6386-8. Formerly RCW 81.72.080.]

46.72.100 Refusal, suspension, or revocation of permit or certificate—Penalty for unlawful operation. The director may refuse to issue a permit or certificate, or he may suspend or revoke a permit or certificate if he has good reason to believe that one of the following is true of the operator or the applicant for a permit or certificate: (1) He has been convicted of an offense of such a nature as to indicate that he is unfit to hold a certificate or permit; (2) he is guilty of committing two or more offenses for which mandatory revocation of driver's license is provided by law; (3) he has been convicted of vehicular homicide or vehicular assault; (4) he is intemperate or addicted to the use of narcotics.

Notice of the director to refuse, suspend, or revoke the permit or certificate shall be given by certified mail to the holder or applicant for the permit or certificate and shall designate a time and place for a hearing before the director, which shall not be less than ten days from the date of the notice. If the director, after the hearing, decides that a permit shall be canceled or revoked, he shall notify the holder or applicant to that effect by certified mail. The applicant or permit holder may within thirty days from the date of the decision appeal to the superior court of Thurston county for a review of the decision by filing a copy of the notice with the clerk of the superior court and a copy of the notice in the office of the director. The court shall set the matter down for hearing with the least possible delay.

Any for hire operator who operates a for hire vehicle without first having filed a bond or insurance policy and having received a for hire permit and a for hire certificate as required by this chapter is guilty of a gross misdemeanor, and upon conviction shall be punished by imprisonment in jail for a period not exceeding ninety days or a fine of not exceeding five hundred dollars, or both fine and imprisonment. [1983 c 164 § 8; 1967 c 32 § 86; 1961 c 12 § 46.72.100. Prior: 1947 c 253 § 9; Rem. Supp. 1947 § 6386-9; prior: 1915 c 57 § 4; RRS § 6385. Formerly RCW 81.72.100.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

46.72.110 Fees to highway safety fund. All fees received by the director under the provisions of this chapter shall be transmitted by him, together with a proper identifying report, to the state treasurer to be deposited by the state treasurer in the highway safety fund. [1967

c 32 § 87; 1961 c 12 § 46.72.110. Prior: 1947 c 253 § 10; Rem. Supp. 1947 § 6386-10. Formerly RCW 81.72.110.]

46.72.120 Rules and regulations. The director is empowered to make and enforce such rules and regulations as may be consistent with and necessary to carry out the provisions of this chapter. [1967 c 32 § 88; 1961 c 12 § 46.72.120. Prior: 1947 c 253 § 11; Rem. Supp. 1947 § 6386-11. Formerly RCW 81.72.120.]

46.72.130 Nonresident taxicabs—Permit—Fee—Compliance. No operator of a taxicab licensed or possessing a permit in another state to transport passengers for hire, and principally engaged as a for hire operator in another state, shall cause the operation of a taxicab upon any highway of this state without first obtaining an annual permit from the director upon an application accompanied with an annual fee of twenty dollars for each taxicab. The issuance of a permit shall be further conditioned upon compliance with this chapter. [1967 c 32 § 89; 1961 c 12 § 46.72.130. Prior: 1953 c 12 § 1; 1951 c 219 § 1. Formerly RCW 81.72.130.]

46.72.140 Nonresident taxicabs—Permit required for entry. All law enforcement officers shall refuse every taxicab entry into this state which does not have a certificate from the director on the vehicle. [1967 c 32 § 90; 1961 c 12 § 46.72.140. Prior: 1951 c 219 § 2. Formerly RCW 81.72.140.]

46.72.150 Nonresident taxicabs—Reciprocity. RCW 46.72.130 and 46.72.140 shall be inoperative to operators of taxicabs residing and licensed in any state which allows Washington operators of taxicabs to use such state's highways free from such regulations. [1961 c 12 § 46.72.150. Prior: 1951 c 219 § 3. Formerly RCW 81.72.150.]

Chapter 46.73

PRIVATE CARRIER DRIVERS

Sections

46.73.010	Standards for qualifications and hours of service.
46.73.020	Federal funds as necessary condition.
46.73.030	Penalty.

Rules of court: *Monetary penalty schedule—JTIR 6.2.*

46.73.010 Standards for qualifications and hours of service. The Washington state patrol may adopt rules establishing standards for qualifications and hours of service of drivers for private carriers as defined by RCW 81.80.010(6). Such standards shall correlate with and, as far as reasonable, conform to the regulations contained in Title 49 C.F.R., Chapter 3, Subchapter B, Parts 391 and 395, on July 28, 1985. At least thirty days before filing notice of the proposed rules with the code reviser, the state patrol shall submit them to the legislative transportation committee for review. [1985 c 333 § 1.]

Legislative transportation committee: Chapter 44.40 RCW.

[Title 46 RCW—p 232]

46.73.020 Federal funds as necessary condition. The delegation of rule-making authority contained in RCW 46.73.010 is conditioned upon the continued receipt of federal funds or grants for the support of state enforcement of such rules. Within ninety days of finding that federal funds or grants are withdrawn or not renewed, the Washington state patrol and the Washington utilities and transportation commission shall repeal any and all rules adopted under RCW 46.73.010. [1985 c 333 § 2.]

46.73.030 Penalty. A violation of any rule adopted by the Washington state patrol under RCW 46.73.010 is a traffic infraction. [1985 c 333 § 3.]

Chapter 46.74 RIDE SHARING

Sections

46.74.010	Definitions.
46.74.020	Vehicles excluded from for hire vehicle laws.
46.74.030	Operators—Reasonable standard of care—Exempted from certain regulations.

Acquisition and disposal of vehicle for commuter ride sharing by city employees: RCW 35.21.810.

Business and occupation tax exemption: RCW 82.04.365.

Public utility tax exemption: RCW 82.16.047.

State-owned vehicles used for commuter ride sharing: RCW 43.41.130.

46.74.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Commuter ride sharing" means a car pool or van pool arrangement whereby a fixed group not exceeding fifteen persons including passengers and driver, is transported between their places of abode or termini near such places, and their places of employment or educational or other institutions, in a single daily round trip where the driver is also on the way to or from his or her place of employment or educational or other institution.

(2) "Ride sharing for the elderly and the handicapped" means a car pool or van pool arrangement whereby a group of elderly and/or handicapped persons and their attendants, not exceeding fifteen persons including passengers and driver, is transported by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010(3): *Provided*, That the driver need be neither elderly nor handicapped.

(3) "Ride-sharing vehicle" means a passenger motor vehicle with a seating capacity not exceeding fifteen persons including the driver, while being used for commuter ride sharing or for ride sharing for the elderly and the handicapped.

(4) "Ride-sharing operator" means the person, entity, or concern, not necessarily the driver, responsible for the existence and continuance of commuter ride sharing or ride sharing for the elderly and the handicapped.

(5) "Elderly" means any person sixty years of age or older.

(6) "Handicapped" means all persons who, by reason of illness, injury, age, congenital malfunction, or other

permanent or temporary incapacity or disability, are unable without special facilities or special planning or design to use mass transportation facilities and services as efficiently as persons who are not so affected. Handicapped people include (a) ambulatory persons whose capacities are hindered by sensory disabilities such as blindness or deafness, mental disabilities such as mental retardation or emotional illness, physical disability which still permits the person to walk comfortably, or a combination of these disabilities; (b) semiambulatory persons who require special aids to travel such as canes, crutches, walkers, respirators, or human assistance; and (c) nonambulatory persons who must use wheelchairs or wheelchair-like equipment to travel. [1979 c 111 § 1.]

Severability—1979 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 111 § 21.]

46.74.020 Vehicles excluded from for hire vehicle laws. Ride-sharing vehicles are not deemed for hire vehicles and do not fall within the provisions of chapter 46.72 RCW or any other provision of Title 46 RCW affecting for hire vehicles, whether or not the ride-sharing operator receives compensation. [1979 c 111 § 2.]

Severability—1979 c 111: See note following RCW 46.74.010.

46.74.030 Operators—Reasonable standard of care—Exempted from certain regulations. A ride-sharing operator and the driver of a ride-sharing vehicle shall be held to a reasonable and ordinary standard of care, and are not subject to ordinances or regulations which relate exclusively to the regulation of drivers or owners of motor vehicles operated for hire, or other common carriers or public transit carriers. [1979 c 111 § 3.]

Severability—1979 c 111: See note following RCW 46.74.010.
Standard of care for private, nonprofit transportation provider: RCW 81.66.070.

Chapter 46.76

MOTOR VEHICLE TRANSPORTERS

Sections

46.76.010	License required—Exceptions—"Driveaway," "towaway," method defined.
46.76.020	Application for license.
46.76.030	Issuance of license—Plates.
46.76.040	License and plate fees—New plates.
46.76.050	Expiration, renewal—Fee.
46.76.055	Staggering renewal periods.
46.76.060	Display of plates—Nontransferability.
46.76.065	Grounds for denial, suspension, or revocation of license.
46.76.067	Compliance with chapter 81.80 RCW.
46.76.070	Rules and regulations.
46.76.080	Penalty.

46.76.010 License required—Exceptions—"Driveaway," "towaway," method defined. It shall be unlawful for any person, firm, partnership, association, or corporation to engage in the business of delivering by the driveaway or towaway methods vehicles not his own

and of a type required to be registered under the laws of this state, without procuring a transporter's license in accordance with the provisions of this chapter.

This shall not apply to motor freight carriers or operations regularly licensed under the provisions of chapter 81.80 RCW to haul such vehicles on trailers or semitrailers.

Driveaway or towaway methods means the delivery service rendered by a motor vehicle transporter wherein motor vehicles are driven singly or in combinations by the towbar, saddle mount or full mount methods or any lawful combinations thereof, or where a truck or truck-tractor draws or tows a semitrailer or trailer. [1961 c 12 § 46.76.010. Prior: 1957 c 107 § 1; 1953 c 155 § 1; 1947 c 97 § 1; Rem. Supp. 1947 § 6382-75.]

46.76.020 Application for license. Application for a transporter's license shall be made on a form provided for that purpose by the director of licensing and when executed shall be forwarded to the director together with the proper fee. The application shall contain the name and address of the applicant and such other information as the director may require. [1979 c 158 § 189; 1967 c 32 § 91; 1961 c 12 § 46.76.020. Prior: 1947 c 97 § 2; Rem. Supp. 1947 § 6382-76.]

46.76.030 Issuance of license—Plates. Upon receiving an application for transporter's license the director, if satisfied that the applicant is entitled thereto, shall issue a proper certificate of license registration and a distinctive set of license plates and shall transmit the fees obtained therefor with a proper identifying report to the state treasurer, who shall deposit such fees in the motor vehicle fund. The certificate of license registration and license plates issued by the director shall authorize the holder of the license to drive or tow any motor vehicle or trailers upon the public highways. [1967 c 32 § 92; 1961 c 12 § 46.76.030. Prior: 1947 c 97 § 3; Rem. Supp. 1947 § 6382-77.]

46.76.040 License and plate fees—New plates. The fee for an original transporter's license shall be twenty-five dollars. Transporter license number plates bearing an appropriate symbol and serial number shall be attached to all vehicles being delivered in the conduct of the business licensed under the provisions hereof. Such plates may be obtained for a fee of two dollars for each set. New plates must be procured with each annual renewal. [1961 c 12 § 46.76.040. Prior: 1957 c 107 § 2; 1947 c 97 § 4; Rem. Supp. 1947 § 6382-78.]

46.76.050 Expiration, renewal—Fee. A transporter's license expires on the date assigned by the director, and may be renewed by filing a proper application and paying an annual fee of fifteen dollars. [1985 c 109 § 3; 1961 c 12 § 46.76.050. Prior: 1947 c 97 § 5; Rem. Supp. 1947 § 6382-79.]

46.76.055 Staggering renewal periods. Notwithstanding any provision of law to the contrary, the director may extend or diminish the licensing period of

transporters for the purpose of staggering renewal periods. The extension or diminishment shall be by rule of the department adopted in accordance with chapter 34.05 RCW. [1985 c 109 § 4.]

46.76.060 Display of plates—Nontransferability. Transporter's license plates shall be conspicuously displayed on all vehicles being delivered by the driveaway or towaway methods. These plates shall not be loaned to or used by any person other than the holder of the license or his employees. [1961 c 12 § 46.76.060. Prior: 1957 c 107 § 3; 1947 c 97 § 6; Rem. Supp. 1947 § 6382-80.]

46.76.065 Grounds for denial, suspension, or revocation of license. The following conduct shall be sufficient grounds pursuant to RCW 34.05.422 for the director or a designee to deny, suspend, or revoke the license of a motor vehicle transporter:

- (1) Using transporter plates for driveaway or towaway of any vehicle owned by such transporter;
- (2) Knowingly, as that term is defined in RCW 9A.08.010(1)(b), having possession of a stolen vehicle or a vehicle with a defaced, missing, or obliterated manufacturer's identification serial number;
- (3) Loaning transporter plates;
- (4) Using transporter plates for any purpose other than as provided under RCW 46.76.010; or
- (5) Violation of provisions of this chapter or of rules and regulations adopted relating to enforcement and proper operation of this chapter. [1977 ex.s. c 254 § 1.]

46.76.067 Compliance with chapter 81.80 RCW. (1) Any person or organization that transports any mobile home or other vehicle for hire shall comply with this chapter and chapter 81.80 RCW. Persons or organizations that do not have a valid permit or meet other requirements under chapter 81.80 RCW shall not be issued a transporter license or transporter plates to transport mobile homes or other vehicles. RCW 46.76.065(5) applies to persons or organizations that have transporter licenses or plates and do not meet the requirements of chapter 81.80 RCW.

(2) This section does not apply to mobile home manufacturers or dealers that are licensed and delivering the mobile home under chapter 46.70 RCW. [1988 c 239 § 4.]

46.76.070 Rules and regulations. The director may make any reasonable rules or regulations not inconsistent with the provisions of this chapter relating to the enforcement and proper operation of this chapter. [1967 c 32 § 93; 1961 c 12 § 46.76.070. Prior: 1947 c 97 § 7; Rem. Supp. 1947 § 6382-81.]

46.76.080 Penalty. The violation of any provision of this chapter is a traffic infraction. In addition to any other penalty imposed upon a violator of the provisions

of this chapter, the director may confiscate any transporter license plates used in connection with such violation. [1979 ex.s. c 136 § 96; 1961 c 12 § 46.76.080. Prior: 1947 c 97 § 8; Rem. Supp. 1947 § 6382-82.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Chapter 46.79

HULK HAULERS' OR SCRAP PROCESSORS' LICENSES

Sections	
46.79.010	Definitions.
46.79.020	Transporting hulks to scrap processor, authorized, procedure—Removal of parts, restrictions.
46.79.030	Application for license, renewal—Form—Signature—Contents.
46.79.040	Application forwarded with fees—Issuance of license—Disposition of fees—Display of license.
46.79.050	License expiration—Renewal fee—Surrender of license, when.
46.79.055	Staggering renewal periods.
46.79.060	Special license plates—Fee.
46.79.070	Acts for which license may be denied, suspended, revoked or monetary penalties assessed.
46.79.080	Rules and regulations.
46.79.090	Inspection of premises and records—Certificate of inspection.
46.79.100	Other provisions to comply with chapter.
46.79.110	Chapter not to prohibit individual towing of vehicles to wreckers or processors.
46.79.120	Unlicensed hulk hauling or scrap processing—Penalty.

46.79.010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context indicates otherwise.

(1) "Abandoned vehicle" means any vehicle left within the limits of any highway or upon the property of another without the consent of the owner of such property for a period of twenty-four hours or longer, except that a vehicle shall not be considered abandoned if its owner or operator is unable to remove it from the place where it is located and so notifies law enforcement officials and requests assistance.

(2) "Abandoned automobile hulk" means the abandoned remnant, major component part, or remains of a motor vehicle which is inoperative and cannot be made mechanically operative without the addition of parts or mechanisms and the application of a substantial amount of labor to effect repairs.

(3) "Scrap processor" means a licensed establishment that maintains a hydraulic baler and shears, or a shredder for recycling salvage.

(4) "Demolish" means to destroy completely by use of a hydraulic baler and shears, or a shredder.

(5) "Hulk hauler" means any person who deals in vehicles for the sole purpose of transporting and/or selling them to a licensed motor vehicle wrecker or scrap processor in substantially the same form in which they are obtained. A hulk hauler may not sell second-hand motor vehicle parts to anyone other than a licensed vehicle wrecker or scrap processor, except for those parts specifically enumerated in RCW 46.79.020(2), as now or

hereafter amended, which may be sold to a licensed motor vehicle wrecker or disposed of at a public facility for waste disposal.

(6) "Director" means the director of licensing.

(7) "Major component parts" include engines and short blocks, frames, transmissions or transfer cases, cabs, doors, front or rear differentials, front or rear clips, quarter panels or fenders, bumpers, truck beds or boxes, seats, and hoods. [1983 c 142 § 2; 1979 c 158 § 190; 1971 ex.s. c 110 § 1.]

46.79.020 Transporting hulks to scrap processor, authorized, procedure—Removal of parts, restrictions. Any hulk hauler or scrap processor licensed under the provisions of this chapter may:

(1) Notwithstanding any other provision of law, transport any flattened or junk abandoned vehicle hulk whether such hulk is from in state or out of state, to a scrap processor upon obtaining the certificate of title or release of interest from the owner or an affidavit of sale from the landowner who has complied with RCW 46.55.230. The scrap processor shall forward such document(s) to the department, together with a monthly report of all vehicles acquired from other than a licensed automobile wrecker, and no further identification shall be necessary.

(2) Prepare vehicles and vehicle salvage for transportation and delivery to a scrap processor or vehicle wrecker only by removing the following vehicle parts:

- (a) Gas tanks;
- (b) Vehicle seats containing springs;
- (c) Tires;
- (d) Wheels;
- (e) Scrap batteries;
- (f) Scrap radiators.

Such parts may not be removed if they will be accepted by a scrap processor or wrecker. Such parts may be removed only at a properly zoned location, and all preparation activity, vehicles, and vehicle parts shall be obscured from public view. Storage is limited to two vehicles or the parts thereof which are authorized by this subsection, and any such storage may take place only at a properly zoned location. Any vehicle parts removed under the authority of this subsection shall be lawfully disposed of at or through a public facility or service for waste disposal or by sale to a licensed motor vehicle wrecker. [1987 c 62 § 1; 1983 c 142 § 3; 1979 c 158 § 191; 1971 ex.s. c 110 § 2.]

46.79.030 Application for license, renewal—Form—Signature—Contents. Application for a hulk hauler's license or a scrap processor's license or renewal of a hulk hauler's license or a scrap processor's license shall be made on a form for this purpose, furnished by the director, and shall be signed by the applicant or his authorized agent and shall include the following information:

(1) Name and address of the person, firm, partnership, association or corporation under which name the business is to be conducted;

(2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;

(3) Certificate of approval of the chief of police of any city or town, wherever located, having a population of over five thousand persons and in all other instances a member of the state patrol certifying that the applicant can be found at the address shown on the application, and;

(4) Any other information that the director may require. [1971 ex.s. c 110 § 3.]

46.79.040 Application forwarded with fees—Issuance of license—Disposition of fees—Display of license. Application for a hulk hauler's license, together with a fee of ten dollars, or application for a scrap processor's license, together with a fee of twenty-five dollars, shall be forwarded to the director. Upon receipt of the application the director shall, if the application be in order, issue the license applied for authorizing him to do business as such and forward the fee, together with an itemized and detailed report, to the state treasurer, to be deposited in the motor vehicle fund. Upon receiving the certificate the owner shall cause it to be prominently displayed at the address shown in his application, where it may be inspected by an investigating officer at any time. [1971 ex.s. c 110 § 4.]

46.79.050 License expiration—Renewal fee—Surrender of license, when. A license issued pursuant to this chapter expires on the date assigned by the director, and may be renewed by filing a proper application and payment of a fee of ten dollars.

Whenever a hulk hauler or scrap processor ceases to do business or the license has been suspended or revoked, the license shall immediately be surrendered to the director. [1985 c 109 § 5; 1983 c 142 § 4; 1971 ex.s. c 110 § 5.]

46.79.055 Staggering renewal periods. Notwithstanding any provision of law to the contrary, the director may extend or diminish the licensing period of hulk haulers and scrap processors for the purpose of staggering renewal periods. The extension or diminishment shall be by rule of the department adopted in accordance with chapter 34.05 RCW. [1985 c 109 § 6.]

46.79.060 Special license plates—Fee. The hulk hauler or scrap processor shall obtain a special set of license plates in addition to the regular licenses and plates required for the operation of vehicles owned and/or operated by him and used in the conduct of his business. Such special license shall be displayed on the operational vehicles and shall be in lieu of a trip permit or current license on any vehicle being transported. The fee for these plates shall be five dollars for the original plates and two dollars for each additional set of plates bearing the same license number. [1971 ex.s. c 110 § 6.]

46.79.070 Acts for which license may be denied, suspended, revoked or monetary penalties assessed. The director may by order pursuant to the provisions of chapter 34.05 RCW, deny, suspend, or revoke the license of any hulk hauler or scrap processor or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed five hundred dollars per violation, whenever the director finds that the applicant or licensee:

(1) Removed a vehicle or vehicle major component part from property without obtaining both the written permission of the property owner and documentation approved by the department for acquiring vehicles, abandoned vehicle hulks, or major component parts thereof;

(2) Acquired, disposed of, or possessed a vehicle or major component part thereof when he or she knew that such vehicle or part had been stolen or appropriated without the consent of the owner;

(3) Sold, bought, received, concealed, had in his or her possession, or disposed of a vehicle or major component part thereof having a missing, defaced, altered, or covered manufacturer's identification number, unless approved by a law enforcement officer;

(4) Committed forgery or made any material misrepresentation on any document relating to the acquisition, disposition, registration, titling, or licensing of a vehicle pursuant to Title 46 RCW;

(5) Committed any dishonest act or omission which has caused loss or serious inconvenience as a result of the acquisition or disposition of a vehicle or any major component part thereof;

(6) Failed to comply with any of the provisions of this chapter or other applicable law relating to registration and certificates of title of vehicles and any other document releasing any interest in a vehicle;

(7) Been authorized to remove a particular vehicle or vehicles and failed to take all remnants and debris from those vehicles from that area unless requested not to do so by the person authorizing the removal;

(8) Removed parts from a vehicle at other than an approved location or removed or sold parts or vehicles beyond the scope authorized by this chapter or any rule adopted hereunder;

(9) Been adjudged guilty of a crime which directly relates to the business of a hulk hauler or scrap processor and the time elapsed since the adjudication is less than five years. For the purposes of this section adjudged guilty means, in addition to a final conviction in either a federal, state, or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the imposition of sentence is deferred or the penalty is suspended; or

(10) Been the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty

and the assessed amount has not been paid. [1983 c 142 § 5; 1971 ex.s. c 110 § 7.]

46.79.080 Rules and regulations. The director is hereby authorized to promulgate and adopt reasonable rules and regulations not in conflict with provisions hereof for the proper operation and enforcement of this chapter. [1971 ex.s. c 110 § 8.]

46.79.090 Inspection of premises and records—Certificate of inspection. It shall be the duty of the chiefs of police, or the Washington state patrol, in cities having a population of over five thousand persons, and in all other cases the Washington state patrol, to make periodic inspection of the hulk hauler's or scrap processor's premises and records provided for in this chapter, and furnish a certificate of inspection to the director in such manner as may be determined by the director: *Provided*, That the above inspection in any instance can be made by an authorized representative of the department.

The department is hereby authorized to enlist the services and cooperation of any law enforcement officer or state agency of another state to inspect the premises of any hulk hauler or scrap processor whose established place of business is in that other state but who is licensed to transport automobile hulks within Washington state. [1983 c 142 § 6; 1971 ex.s. c 110 § 9.]

46.79.100 Other provisions to comply with chapter. Any municipality or political subdivision of this state which now has or subsequently makes provision for the regulation of hulk haulers or scrap processors shall comply strictly with the provisions of this chapter. [1971 ex.s. c 110 § 10.]

46.79.110 Chapter not to prohibit individual towing of vehicles to wreckers or processors. Nothing contained in this chapter shall be construed to prohibit any individual not engaged in business as a hulk hauler or scrap processor from towing any vehicle owned by him or her to any motor vehicle wrecker or scrap processor. [1983 c 142 § 7; 1971 ex.s. c 110 § 11.]

46.79.120 Unlicensed hulk hauling or scrap processing—Penalty. Any hulk hauler or scrap processor who engages in the business of hulk hauling or scrap processing without holding a current license issued by the department for authorization to do so, or, holding such a license, exceeds the authority granted by that license, is guilty of a gross misdemeanor. [1983 c 142 § 8.]

Chapter 46.80

MOTOR VEHICLE WRECKERS

Sections	
46.80.005	Legislative declaration.
46.80.010	Definitions.
46.80.020	License required—Penalty.
46.80.030	Application for license—Contents.
46.80.040	Issuance of license—Fee.
46.80.050	Expiration, renewal—Fee.
46.80.055	Staggering renewal periods.

46.80.060	License plates—Fee—Display.
46.80.070	Bond.
46.80.080	Records to be kept.
46.80.090	Reports to department of licensing—Record of title to accompany.
46.80.100	Cancellation of bond, effect of.
46.80.110	Refusal, suspension, revocation of license or assessment of civil fine.
46.80.130	Place of business must be exclusively used—Wall, fence, or hedge required.
46.80.140	Rules and regulations.
46.80.150	Inspection of licensed premises and records.
46.80.160	Duty of municipalities to conform.
46.80.170	Violations—Penalties.
46.80.900	Liberal construction.

Hulk haulers' or scrap processors' licenses: Chapter 46.79 RCW.

46.80.005 Legislative declaration. The legislature finds and declares that the distribution and sale of vehicle parts in the state of Washington vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare and in the exercise of its police power, it is necessary to regulate and license motor vehicle wreckers and dismantlers, the buyers—for-resale, and the sellers of second-hand vehicle components doing business in Washington, in order to prevent the sale of stolen vehicle parts, to prevent frauds, impositions, and other abuses, and to preserve the investments and properties of the citizens of this state. [1977 ex.s. c 253 § 1.]

Severability—1977 ex.s. c 253: "If any provision of this 1977 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby." [1977 ex.s. c 253 § 14.]

46.80.010 Definitions. (1) "Motor vehicle wrecker," whenever used in this chapter, shall mean every person, firm, partnership, association, or corporation engaged in the business of buying, selling, or dealing in vehicles of a type required to be licensed under the laws of this state, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of any motor vehicle, or who buys or sells integral second-hand parts of component material thereof, in whole or in part, or who deals in second-hand motor vehicle parts.

(2) "Established place of business," whenever used in this chapter, shall mean a building or enclosure which the motor vehicle wrecker occupies either continuously or at regular periods and where his books and records are kept and business is transacted and which must conform with zoning regulations.

(3) "Major component part", whenever used in this chapter, shall include at least each of the following vehicle parts: (a) Engines and short blocks; (b) frame; (c) transmission and/or transfer case; (d) cab; (e) door; (f) front or rear differential; (g) front or rear clip; (h) quarter panel; (i) truck bed or box; (j) seat; (k) hood; and (l) bumper. The director may supplement this list by rule.

(4) "Wrecked vehicle", whenever used in this chapter, shall mean a vehicle which is disassembled or dismantled

or a vehicle which is acquired with the intent to dismantle or disassemble and never again to operate as a vehicle, or a vehicle which has sustained such damage that its cost to repair exceeds the fair market value of a like vehicle which has not sustained such damage, or a damaged vehicle whose salvage value plus cost to repair equals or exceeds its fair market value, if repaired, or a vehicle which has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state for which the salvage value plus cost to repair exceeds its fair market value, if repaired; further, it is presumed that a vehicle is a wreck if it has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state. [1977 ex.s. c 253 § 2; 1961 c 12 § 46.80.010. Prior: 1947 c 262 § 1; Rem. Supp. 1947 § 8326–40.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.020 License required—Penalty. It shall be unlawful for any motor vehicle wrecker, as defined herein, to engage in the business of wrecking motor vehicles or trailers without having first applied for and received a license from the department of licensing authorizing him so to do. [1979 c 158 § 192; 1977 ex.s. c 253 § 3; 1971 ex.s. c 7 § 1; 1967 c 32 § 94; 1961 c 12 § 46.80.020. Prior: 1947 c 262 § 2; Rem. Supp. 1947 § 8326–41.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.030 Application for license—Contents. Application for a motor vehicle wrecker's license or renewal of a vehicle wrecker's license shall be made on a form for this purpose, furnished by the department of licensing, and shall be signed by the motor vehicle wrecker or his authorized agent and shall include the following information:

(1) Name and address of the person, firm, partnership, association or corporation under which name the business is to be conducted;

(2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;

(3) Certificate of approval of the chief of police of any city or town having a population of over five thousand persons and in all other instances a member of the Washington state patrol certifying that:

(a) The applicant has an established place of business at the address shown on the application, and;

(b) In the case of a renewal of a vehicle wrecker's license, the applicant has been complying with the provisions of this chapter, as now or hereafter amended, and the provisions of Title 46 RCW, relating to registration and certificates of title: *Provided*, That the above certifications in any instance can be made by an authorized representative of the department of licensing;

(4) Any other information that the department may require. [1979 c 158 § 193; 1977 ex.s. c 253 § 4; 1971 ex.s. c 7 § 2; 1967 ex.s. c 13 § 1; 1967 c 32 § 95; 1961 c

12 § 46.80.030. Prior: 1947 c 262 § 3; Rem. Supp. 1947 § 8326-42.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.040 Issuance of license—Fee. Such application, together with a fee of twenty-five dollars, and a surety bond as hereinafter provided, shall be forwarded to the department. Upon receipt of the application the department shall, if the application be in order, issue a motor vehicle wrecker's license authorizing him to do business as such and forward the fee, together with an itemized and detailed report, to the state treasurer, to be deposited in the motor vehicle fund. Upon receiving the certificate the owner shall cause it to be prominently displayed in his place of business, where it may be inspected by an investigating officer at any time. [1971 ex.s. c 7 § 3; 1967 c 32 § 96; 1961 c 12 § 46.80.040. Prior: 1947 c 262 § 4; Rem. Supp. 1947 § 8326-43.]

46.80.050 Expiration, renewal—Fee. A license issued on this application shall remain in force until suspended or revoked and may be renewed annually upon reapplication according to RCW 46.80.030 and upon payment of a fee of ten dollars. Any motor vehicle wrecker who fails or neglects to renew his license before the assigned expiration date shall be required to pay the fee for an original motor vehicle wrecker license as provided in this chapter.

Whenever a motor vehicle wrecker ceases to do business as such or his license has been suspended or revoked, he shall immediately surrender such license to the department. [1985 c 109 § 7; 1971 ex.s. c 7 § 4; 1967 ex.s. c 13 § 2; 1967 c 32 § 97; 1961 c 12 § 46.80.050. Prior: 1947 c 262 § 5; Rem. Supp. 1947 § 8326-44.]

46.80.055 Staggering renewal periods. Notwithstanding any provision of law to the contrary, the director may extend or diminish the licensing period of motor vehicle wreckers for the purpose of staggering renewal periods. The extension or diminishment shall be by rule of the department adopted in accordance with chapter 34.05 RCW. [1985 c 109 § 8.]

46.80.060 License plates—Fee—Display. The motor vehicle wrecker shall obtain a special set of license plates in addition to the regular licenses and plates required for the operation of such vehicles which shall be displayed on vehicles owned and/or operated by him and used in the conduct of his business. The fee for these plates shall be five dollars for the original plates and two dollars for each additional set of plates bearing the same license number. [1961 c 12 § 46.80.060. Prior: 1957 c 273 § 21; 1947 c 262 § 6; Rem. Supp. 1947 § 8326-45.]

46.80.070 Bond. Before issuing a motor vehicle wrecker's license, the department shall require the applicant to file with said department a surety bond in the amount of one thousand dollars, running to the state of Washington and executed by a surety company authorized to do business in the state of Washington. Such

bond shall be approved as to form by the attorney general and conditioned that such wrecker shall conduct his business in conformity with the provisions of this chapter. Any person who shall have suffered any loss or damage by reason of fraud, carelessness, neglect, violation of the terms of this chapter, or misrepresentation on the part of the wrecking company, shall have the right to institute an action for recovery against such motor vehicle wrecker and surety upon such bond: *Provided*, That the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. [1977 ex.s. c 253 § 5; 1971 ex.s. c 7 § 5; 1967 c 32 § 98; 1961 c 12 § 46.80.070. Prior: 1947 c 262 § 7; Rem. Supp. 1947 § 8326-46.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.080 Records to be kept. (1) Every motor vehicle wrecker shall maintain books or files in which he shall keep a record and a description of:

(a) Every vehicle wrecked, dismantled, disassembled, or substantially altered by him; and

(b) Every major component part acquired by him; together with a bill of sale signed by a seller whose identity has been verified and the name and address of the person, firm, or corporation from whom he purchased the vehicle or part: *Provided*, That major component parts shall be further identified by the vehicle identification number of the vehicle from which the part came.

(2) Such record shall also contain the following data regarding the wrecked or acquired vehicle or vehicle which is the source of a major component part:

(a) The certificate of title number (if previously titled in this or any other state);

(b) Name of state where last registered;

(c) Number of the last license number plate issued;

(d) Name of vehicle;

(e) Motor or identification number and serial number of the vehicle;

(f) Date purchased;

(g) Disposition of the motor and chassis;

(h) Yard number assigned by the licensee to the vehicle or major component part which shall also appear on the identified vehicle or part; and

(i) Such other information as the department may require.

(3) Such records shall also contain a bill of sale signed by the seller for other minor component parts acquired by the licensee, identifying the seller by name, address, and date of sale.

(4) Such records shall be maintained by the licensee at his established place of business for a period of three years from the date of acquisition.

(5) Such record shall be subject to inspection at all times during regular business hours by members of the police department, sheriff's office, members of the Washington state patrol, or officers or employees of the department.

(6) A motor vehicle wrecker shall also maintain a similar record of all disabled vehicles that have been towed or transported to the motor vehicle wrecker's

place of business or to other places designated by the owner of the vehicle or his representative. This record shall specify the name and description of the vehicle, name of owner, number of license plate, condition of the vehicle and place to which it was towed or transported. [1977 ex.s. c 253 § 6; 1971 ex.s. c 7 § 6; 1967 c 32 § 99; 1961 c 12 § 46.80.080. Prior: 1947 c 262 § 8; Rem. Supp. 1947 § 8326-47.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.090 Reports to department of licensing—Record of title to accompany. Within thirty days after a vehicle has been acquired by the motor vehicle wrecker it shall be the duty of such motor vehicle wrecker to furnish a written report to the department on forms furnished by the department. This report shall be in such form as the department shall prescribe and shall be accompanied by the certificate of title, if the vehicle has been last registered in a state which issues a certificate, or a record of registration if registered in a state which does not issue a certificate of title. No motor vehicle wrecker shall acquire a vehicle without first obtaining such record or title. It shall be the duty of the motor vehicle wrecker to furnish a monthly report of all vehicles wrecked, dismantled, disassembled, or substantially changed in form by him. This report shall be made on forms prescribed by the department and contain such information as the department may require. This statement shall be signed by the motor vehicle wrecker or his authorized representative and the facts therein sworn to before a notary public, or before an officer or employee of the department of licensing designated by the director to administer oaths or acknowledge signatures, pursuant to RCW 46.01.180. [1979 c 158 § 194; 1977 ex.s. c 253 § 7; 1971 ex.s. c 7 § 7; 1967 c 32 § 100; 1961 c 12 § 46.80.090. Prior: 1947 c 262 § 9; Rem. Supp. 1947 § 8326-48.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.100 Cancellation of bond, effect of. If, after issuing a motor vehicle wrecker's license, the bond is canceled by the surety in a method provided by law, the department shall immediately notify the principal covered by such bond by registered mail and afford him the opportunity of obtaining another bond before the termination of the original and should such principal fail, neglect or refuse to obtain such replacement, the director may cancel or suspend the motor vehicle wrecker's license which has been issued to him under the provisions of this chapter. [1977 ex.s. c 253 § 8; 1967 c 32 § 101; 1961 c 12 § 46.80.100. Prior: 1947 c 262 § 10; Rem. Supp. 1947 § 8326-49.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.110 Refusal, suspension, revocation of license or assessment of civil fine. The director or a designee may, pursuant to the provisions of chapter 34.05 RCW,

by order deny, suspend, or revoke the license of any motor vehicle wrecker, or assess a civil fine of up to five hundred dollars for each violation, if the director finds that the applicant or licensee has:

(1) Acquired a vehicle or major component part other than by first obtaining title or other documentation as provided by this chapter;

(2) Willfully misrepresented the physical condition of any motor or integral part of a motor vehicle;

(3) Sold, had in his possession, or disposed of a motor vehicle or trailer or any part thereof when he knows that such vehicle or part has been stolen, or appropriated without the consent of the owner;

(4) Sold, bought, received, concealed, had in his possession, or disposed of a motor vehicle or trailer or part thereof having a missing, defaced, altered, or covered manufacturer's identification number, unless approved by a law enforcement officer;

(5) Committed forgery or misstated a material fact on any title, registration, or other document covering a vehicle that has been reassembled from parts obtained from the disassembling of other vehicles;

(6) Committed any dishonest act or omission which the director has reason to believe has caused loss or serious inconvenience as a result of a sale of a motor vehicle, trailer, or part thereof;

(7) Failed to comply with any of the provisions of this chapter or with any of the rules adopted under it, or with any of the provisions of Title 46 RCW relating to registration and certificates of title of vehicles;

(8) Procured a license fraudulently or dishonestly or that such license was erroneously issued;

(9) Been convicted of a crime that directly relates to the business of a vehicle wrecker and the time elapsed since conviction is less than ten years, or suffered any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, conviction means in addition to a final conviction in either a federal, state, or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended. [1989 c 337 § 17; 1977 ex.s. c 253 § 9; 1971 ex.s. c 7 § 8; 1967 ex.s. c 13 § 3; 1967 c 32 § 102; 1961 c 12 § 46.80.110. Prior: 1947 c 262 § 11; Rem. Supp. 1947 § 8326-50.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.130 Place of business must be exclusively used—Wall, fence, or hedge required. It shall be unlawful for any motor vehicle wrecker to keep any motor vehicle or any integral part thereof in any place other than the established place of business, designated in the certificate issued by the department, without permission of the department. All premises containing such motor vehicles or parts thereof shall be enclosed by a wall or fence of such height as to obscure the nature of the business carried on therein. To the extent reasonably necessary or permitted by the topography of the land,

the department shall have the right to establish specifications or standards for said fence or wall: *Provided, however,* That such wall or fence shall be painted or stained a neutral shade which shall blend in with the surrounding premises, and that such wall or fence must be kept in good repair. A living hedge of sufficient density to prevent a view of the confined area may be substituted for such a wall or fence. Any dead or dying portion of such hedge shall be replaced. [1971 ex.s. c 7 § 9; 1967 ex.s. c 13 § 4; 1967 c 32 § 103; 1965 c 117 § 1; 1961 c 12 § 46.80.130. Prior: 1947 c 262 § 13; Rem. Supp. 1947 § 8326–52.]

46.80.140 Rules and regulations. The director is hereby authorized to promulgate and adopt reasonable rules and regulations not in conflict with provisions hereof for the proper operation and enforcement of this chapter. [1967 c 32 § 104; 1961 c 12 § 46.80.140. Prior: 1947 c 262 § 14; Rem. Supp. 1947 § 8326–53.]

46.80.150 Inspection of licensed premises and records. It shall be the duty of the chiefs of police, or the Washington state patrol, in cities having a population of over five thousand persons, and in all other cases the Washington state patrol, to make periodic inspection of the motor vehicle wrecker's licensed premises and records provided for in this chapter during normal business hours, and furnish a certificate of inspection to the department in such manner as may be determined by the department: *Provided,* That the above inspection in any instance can be made by an authorized representative of the department. [1983 c 142 § 9; 1977 ex.s. c 253 § 10; 1971 ex.s. c 7 § 10; 1967 ex.s. c 13 § 5; 1967 c 32 § 105; 1961 c 12 § 46.80.150. Prior: 1947 c 262 § 15; Rem. Supp. 1947 § 8326–54.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.160 Duty of municipalities to conform. Any municipality or political subdivision of this state which now has or subsequently makes provision for the regulation of automobile wreckers shall comply strictly with the provisions of this chapter. [1961 c 12 § 46.80.160. Prior: 1947 c 262 § 16; Rem. Supp. 1947 § 8326–55.]

46.80.170 Violations—Penalties. It shall be a gross misdemeanor for any person to violate any of the provisions of this chapter or the rules and regulations promulgated as provided under this chapter, and any person so convicted shall be punished by imprisonment for not less than thirty days or more than one year in jail or by a fine of one thousand dollars. [1977 ex.s. c 253 § 11.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.900 Liberal construction. The provisions of this chapter shall be liberally construed to the end that

traffic in stolen vehicle parts may be prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of wrecking motor vehicles or selling used vehicle parts in this state and reliable persons may be encouraged to engage in businesses of wrecking or reselling vehicle parts in this state. [1977 ex.s. c 253 § 13.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

Chapter 46.81

TRAFFIC SAFETY EDUCATION COURSES (See chapter 28A.08 RCW)

Chapter 46.81A

MOTORCYCLE SKILLS EDUCATION PROGRAM

Sections

46.81A.001	Purpose.
46.81A.010	Definitions.
46.81A.020	Powers and duties of director.
46.81A.030	Deposit of gifts.
46.81A.900	Severability—1988 c 227.

46.81A.001 Purpose. It is the purpose of this chapter to provide the motorcycle riders of the state with an affordable motorcycle skills education program in order to promote motorcycle safety awareness. [1988 c 227 § 1.]

46.81A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Motorcycle skills education program" means a motorcycle rider skills training program to be administered by the department.

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

(3) "Director" means the director of licensing.

(4) "Motorcycle" means a motorcycle licensed under chapter 46.16 RCW, and does not include motorized bicycles, mopeds, scooters, off-road motorcycles, motorized tricycles, side-car equipped motorcycles, or four-wheel all-terrain vehicles. [1988 c 227 § 2.]

46.81A.020 Powers and duties of director. (1) The director shall administer and enforce the law pertaining to the motorcycle skills education program as set forth in this chapter.

(2) The director may adopt and enforce reasonable rules that are consistent with this chapter.

(3) The director shall revise the Washington motorcycle safety program to:

(a) Institute a motorcycle skills education course for both novice and advanced motorcycle riders that is a minimum of eight hours and no more than sixteen hours at a cost of no more than thirty dollars;

(b) Encourage the use of loaned or used motorcycles for use in the motorcycle skills education course if the instructor approves them;

(c) Require all instructors to conduct at least three classes in a one-year period to maintain their teaching eligibility;

(d) Encourage the use of radio or intercom equipped helmets when, in the opinion of the instructor, radio or intercom equipped helmets improve the quality of instruction;

(e) Require a biennial report to be submitted to the legislative transportation committee that includes the following:

- (i) A narrative history of the program;
- (ii) Current biennium program appropriations versus actual program expenditures;
- (iii) Historical enrollment statistics and enrollment forecasts;
- (iv) Comparative data evaluating motorcycle traffic statistics of program graduates versus nongraduates;
- (v) Data on the age of the enrollees;
- (vi) Statistical information regarding general trends in motorcycle ridership in Washington state;
- (vii) The number of courses offered throughout the biennium;
- (viii) Information on course dropout rates.

(4) The department shall obtain and compile information from applicants for a motorcycle endorsement regarding whether they have completed a state approved motorcycle skills education course. This information shall be used for the report required by subsection (3)(e) of this section. [1988 c 227 § 3.]

46.81A.030 Deposit of gifts. The director may receive gifts, grants, or endowments from private sources which shall be deposited in the motorcycle safety [education] account within the highway safety fund. [1988 c 227 § 4.]

Motorcycle safety education account: RCW 46.68.065.

46.81A.900 Severability—1988 c 227. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 227 § 8.]

Chapter 46.82

DRIVER TRAINING SCHOOLS

Sections

46.82.280	Definitions.
46.82.290	Administration of chapter—Adoption of rules.
46.82.300	Driver instructors' advisory committee—Composition, travel expenses, meetings, duties.
46.82.310	School license required—Application—Fees—Renewal—Notice of change in officers, location—Nontransferable—Insurance.
46.82.320	Instructor's license—Required—Application, renewal, fees—Laboratory phase only, rules—Identification card—Notice of change in employment.
46.82.330	Instructor's license—Examination—Requirements for taking, exceptions.
46.82.340	Duplicate license certificates.
46.82.350	Suspension, revocation, or denial of license—Causes enumerated.

46.82.360	Suspension, revocation, or denial of license—Failure to comply with specified business practices.
46.82.370	Suspension, revocation, or denial of license—Appeal of action—Emergency suspension—Hearing, notice and procedure.
46.82.380	Appeal from action or decision of director.
46.82.390	Penalty.
46.82.400	Chapter not applicable to educational institutions.
46.82.410	Disposition of moneys collected.
46.82.420	Basic minimum required curriculum—Compilation by advisory committee—Revocation of license for failure to teach, show cause hearing upon.
46.82.430	Information on proper use of left-hand lane.
46.82.900	Severability—1979 ex.s. c 51.

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

(1) "Driver training school" means a commercial driver training school engaged in the business of giving instruction, for a fee, in the operation of automobiles.

(2) "Director" means the director of the department of licensing of the state of Washington.

(3) "Advisory committee" means the driving instructors' advisory committee as created in this chapter.

(4) "Fraudulent practices" means any conduct or representation on the part of a licensee under this chapter tending to induce anyone to believe, or to give the impression, that a license to operate a motor vehicle or any other license granted by the director may be obtained by any means other than those prescribed by law, or furnishing or obtaining the same by illegal or improper means, or requesting, accepting, or collecting money for such purposes.

(5) "Instructor" means any person employed by a driver training school to instruct persons in the operation of automobiles.

(6) "Place of business" means a designated location at which the business of a driver training school is transacted and its records are kept.

(7) "Person" means any individual, firm, corporation, partnership, or association. [1986 c 80 § 1; 1979 ex.s. c 51 § 1.]

46.82.290 Administration of chapter—Adoption of rules. (1) The director shall be responsible for the administration and enforcement of the law pertaining to driver training schools as set forth in this chapter.

(2) The director is authorized to adopt and enforce such reasonable rules as may be consistent with and necessary to carry out this chapter. [1979 ex.s. c 51 § 2.]

46.82.300 Driver instructors' advisory committee—Composition, travel expenses, meetings, duties.

(1) The director shall be assisted in the duties and responsibilities of this chapter by the driver instructors' advisory committee, consisting of five members. Members of the advisory committee shall be appointed by the director for two-year terms and shall consist of a representative of the driver training schools, a representative of the driving instructors (who shall not be from the same school as the school member), a representative of the superintendent of public instruction, a representative of the department of licensing, and a representative from

the Washington state traffic safety commission. Members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. A member who is receiving a salary from the state shall not receive compensation other than travel expenses incurred in such service.

(2) The advisory committee shall meet at least semi-annually and shall have additional meetings as may be called by the director. The director or the director's representative shall attend all meetings of the advisory committee and shall serve as chairman.

(3) Duties of the advisory committee shall be to:

(a) Advise and confer with the director or the director's representative on matters pertaining to the establishment of rules necessary to carry out this chapter;

(b) Review violations of this chapter and to recommend to the director appropriate enforcement or disciplinary action as provided in this chapter;

(c) Review and update when necessary a curriculum consisting of a list of items of knowledge and the processes of driving a motor vehicle specifying the minimum requirements adjudged necessary in teaching a proper and adequate course of driver education; and

(d) Prepare the examination for a driver instructor's certificate and review examination results at least once each calendar year for the purpose of updating and revising examination standards. [1984 c 287 § 93; 1979 ex.s. c 51 § 3.]

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

46.82.310 School license required—Application—Fees—Renewal—Notice of change in officers, location—Nontransferable—Insurance. (1) No person shall engage in the business of conducting a driver training school without a license issued by the director for that purpose. An application for a driver training school license shall be filed with the director, containing such information as prescribed by the director, accompanied by an application fee of one hundred dollars, which shall in no event be refunded. If an application is approved by the director, the applicant upon payment of an additional fee of twenty-five dollars shall be granted a license valid for a period of one year from the date of issuance.

(2) The annual fee for renewal of a school license shall be twenty-five dollars. The director shall issue a license certificate to each licensee which shall be conspicuously displayed in the place of business of the licensee. If a renewal application has not been received by the director within sixty days from the date a notice of license expiration was mailed to the licensee, the license will be void requiring a new application as provided for in this chapter, including payment of all fees.

(3) The person to whom a driver training school license has been issued must notify the director in writing within thirty days after any change is made in the officers, directors, or location of the place of business of the school.

(4) Driver training school licenses shall not be transferable. In the event of any transfer of ownership in the

business, an application for a new license, including payment of all fees, must be made. The director shall permit continuance of the business for a period not to exceed sixty days from [the] date of transfer pending approval of the new application for a school license.

(5) The director shall not issue or renew a school license certificate until the licensee has filed with the director evidence of liability insurance coverage with an insurance company authorized to do business in this state in the amount of not less than three hundred thousand dollars because of bodily injury or death to two or more persons in any one accident, not less than one hundred thousand dollars because of bodily injury or death to one person in one accident, and not less than fifty thousand dollars because of property damage to others in one accident, and the coverage shall include uninsured motorists coverage. The insurance coverage shall be maintained in full force and effect and the director shall be notified at least ten days prior to cancellation or expiration of any such policy of insurance.

(6) The increased insurance requirements of subsection (5) of this section must be in effect by no later than one year after September 1, 1979. [1979 ex.s. c 51 § 4.]

46.82.320 Instructor's license—Required—Application, renewal, fees—Laboratory phase only, rules—Identification card—Notice of change in employment. (1) No person, including the owner, operator, partner, officer, or stockholder of a driver training school shall give instruction in the operation of an automobile for a fee without a license issued by the director for that purpose. An application for an instructor's license shall be filed with the director, containing such information as prescribed by the director, accompanied by an application fee of twenty-five dollars which shall in no event be refunded. If the application is approved by the director and the applicant satisfactorily meets the examination requirements as prescribed in RCW 46.82-.330, the applicant shall be granted a license valid for a period of one year from the date of issuance. An instructor shall take a requalification examination every five years.

(2) The annual fee for renewal of an instructor's license shall be five dollars. The director shall issue a license certificate to each licensee which shall be conspicuously displayed in the place of business of the employing driver training school. Unless revoked, canceled, or denied by the director, the license shall remain the property of the licensee in the event of termination of employment or employment by another driver training school. If a renewal application has not been received by the director within sixty days from the date a notice of license expiration was mailed to the licensee, the license will be voided requiring a new application as provided for in this chapter, including examination and payment of all fees.

(3) Persons who qualify under the rules jointly adopted by the superintendent of public instruction and the director of licensing to teach only the laboratory phase, shall be subject to a ten dollar examination fee.

(4) Each licensee shall be provided with a wallet-size identification card by the director at the time the license is issued which shall be carried on the instructor's person at all times while engaged in instructing.

(5) The person to whom an instructor's license has been issued shall notify the director in writing within thirty days of any change of employment or termination of employment, providing the name and address of the new driver training school by whom the instructor will be employed. [1989 c 337 § 18; 1986 c 80 § 2; 1979 ex.s. c 51 § 5.]

46.82.330 Instructor's license—Examination—Requirements for taking, exceptions. (1) Upon receipt and approval of an application accompanied by the proper fees, the director shall arrange for the examination of each applicant for an instructor's license and shall notify each applicant of the time and place to appear for examination.

(2) The examination prepared by the advisory committee shall consist of a knowledge test and an actual driving test conducted in a vehicle provided by the applicant. The examination shall determine: The applicant's knowledge of driving laws, rules, and regulations; the applicant's ability to safely operate a motor vehicle; and the applicant's ability to impart this knowledge to others.

(3) No applicant shall be permitted by the director to take the examination for an instructor's license until it is determined that the applicant meets the following requirements:

(a) Possesses a current and valid Washington driver's license and does not have on his driving record any of the violations or penalties set forth in (3)(a) (i), (ii), or (iii) of this section. The director shall have the right to examine the driving record of the applicant from the department of licensing and from other jurisdictions and from these records determine if the applicant has had:

(i) Not more than three moving traffic violations within the preceding twelve months or more than four moving traffic violations in the preceding twenty-four months;

(ii) No alcohol-related traffic violation within the preceding three years; and

(iii) No driver's license suspension, cancellation, revocation, or denial within the preceding three years;

(b) Is a high school graduate or the equivalent and at least twenty-one years of age;

(c) Has completed an acceptable application on a form prescribed by the director; and

(d) Has satisfactorily completed a sixty-hour course of instruction in the training of drivers acceptable to the director. The course shall include at least twelve hours of instruction in behind-the-wheel teaching methods and at least six hours supervised practice behind-the-wheel teaching of driving techniques.

(4) Any person with a valid instructor's license in effect as of September 1, 1979, shall not be required to take the examination, or complete the revised course of instruction, otherwise required under this section. [1979 ex.s. c 51 § 6.]

46.82.340 Duplicate license certificates. In case of the loss, mutilation, or destruction of a driver training school license certificate or an instructor's license certificate, the director shall issue a duplicate thereof upon proof of the facts and payment of a fee of two dollars. [1979 ex.s. c 51 § 7.]

46.82.350 Suspension, revocation, or denial of license—Causes enumerated. (1) The director may suspend, revoke, deny, or refuse to renew an instructor's license or a driver training school license for any of the following causes:

(a) Upon determination that the licensee has made a false statement or concealed any material fact in connection with the application or license renewal;

(b) Upon conviction of the applicant, licensee, or any person directly or indirectly interested in the driver training school's business of a felony, or any crime involving violence, dishonesty, deceit, indecency, degeneracy, or moral turpitude;

(c) Upon determination that the applicant, licensee, or any person directly or indirectly interested in the driver training school's business previously held a driver training school license which was revoked, suspended, or refused renewal by the director;

(d) Upon determination that the applicant or licensee does not have a place of business as required by this chapter;

(e) Upon determination that the applicant or licensee has failed to require all persons with financial interest in the driver training school to be signatories to the application;

(f) Upon determination that the applicant or licensee has been found guilty of fraud or fraudulent practices in relation to the business conducted under the license, or guilty of inducing another to resort to fraud in relation to securing for himself, herself, or another a license to drive a motor vehicle; or

(g) Upon determination that the applicant or licensee fails to satisfy the other conditions stated in this chapter. [1979 ex.s. c 51 § 8.]

46.82.360 Suspension, revocation, or denial of license—Failure to comply with specified business practices. The license of any driver training school or instructor may be suspended, revoked, denied, or refused renewal for failure to comply with the business practices specified in this section.

(1) No place of business shall be established nor any business of a driver training school conducted or solicited within one thousand feet of an office or building owned or leased by the department of licensing in which examinations for drivers' licenses are conducted. The distance of one thousand feet shall be measured along the public streets by the nearest route from the place of business to such building.

(2) Any automobile used by a driver training school or an instructor for instruction purposes must be equipped with:

(a) Dual controls for foot brake and clutch, or foot brake only in a vehicle equipped with an automatic transmission;

(b) An instructor's rear view mirror; and

(c) A sign displayed on the back or top, or both, of the vehicle not less than twenty inches in horizontal width or less than ten inches in vertical height and having the words "student driver" or "instruction car," or both, in legible, printed, English letters at least two and one-half inches in height near the top and the name of the school in similarly legible letters not less than one inch in height placed somewhere below the aforementioned words, and the street number and name and the telephone number in similarly legible letters at least one inch in height placed next below the name of the school. The lettering and background colors shall be of contrasting shades so as to be clearly readable at one hundred feet in clear daylight. The sign shall be displayed at all times when instruction is being given.

(3) Instruction may not be given by an instructor to a student in an automobile unless the student possesses a current and valid instruction permit issued pursuant to RCW 46.20.055 or a current and valid driver's license.

(4) No driver training school or instructor shall advertise or otherwise indicate that the issuance of a driver's license is guaranteed or assured as a result of the course of instruction offered.

(5) No driver training school or instructor shall utilize any types of advertising without using the full, legal name of the school and identifying itself as a driver training school. Items and services advertised must be available in a manner as might be expected by the average person reading the advertisement.

(6) A driver training school shall have an established place of business owned, rented, or leased by the school and regularly occupied and used exclusively for the business of giving driver instruction. The established place of business of a driver training school that applies for an initial license after July 23, 1989, shall be located in a district that is zoned for business or commercial purposes. The established place of business, branch office, or classroom or advertised address of any such driver training school shall not consist of or include a house trailer, residence, tent, temporary stand, temporary address, bus, telephone answering service if such service is the sole means of contacting the driver training school, a room or rooms in a hotel or rooming house or apartment house, or premises occupied by a single or multiple-unit dwelling house. To classify as a branch office or classroom the facility must be within a thirty-five mile radius of the established place of business. Nothing in this subsection may be construed as limiting the authority of local governments to grant conditional use permits or variances from zoning ordinances.

(7) No driver training school or instructor shall conduct any type of instruction or training on a course used by the department of licensing for testing applicants for a Washington driver's license.

(8) Each driver training school shall maintain records on all of its students, including the student's name and address, the starting and ending dates of instruction, the

student's instruction permit or driver's license number, the type of training given, and the total number of hours of instruction. Records of past students shall be maintained for five years following the completion of the instruction.

(9) Each driver training school shall, at its established place of business, display, in a place where it can be seen by all clients, a copy of the required minimum curriculum compiled by the driver advisory committee. Copies of the required minimum curriculum are to be provided to driver training schools and instructors by the director.

(10) Driver training schools and instructors shall submit to periodic inspections of their business practices, facilities, records, and insurance by authorized representatives of the director of the department of licensing. [1989 c 337 § 19; 1979 ex.s. c 51 § 9.]

46.82.370 Suspension, revocation, or denial of license—Appeal of action—Emergency suspension—Hearing, notice and procedure. Upon notification of suspension, revocation, denial, or refusal to renew a license under this chapter, a driver training school or instructor shall have the right to appeal the action being taken. An appeal may be made to the director, who shall cause a hearing to be held by the advisory committee in accordance with chapter 34.05 RCW. Filing an appeal shall stay the action pending the hearing and the director's decision. Upon conclusion of the hearing, the advisory committee shall notify the director of its findings of fact and recommended action. Within ten days of receipt of the advisory committee's findings and recommendation, the director shall issue a decision on the appeal.

(1) A license may, however, be temporarily suspended by the director without notice pending any prosecution, investigation, or hearing where such emergency action is warranted. A licensee or applicant entitled to a hearing shall be given due notice thereof.

(2) The sending of a notice of a hearing by registered mail to the last known address of a licensee or applicant in accordance with chapter 34.05 RCW shall be deemed due notice.

(3) The director or the director's authorized representative shall preside over the advisory committee during the hearing and shall have the power to subpoena witnesses, administer oaths to witnesses, take testimony of any person, and cause depositions to be taken. A subpoena issued under the authority of this section shall be served in the same manner as a subpoena issued by a court of record. Witnesses subpoenaed under this section and persons other than officers or employees of the department of licensing shall be entitled to the same fees and mileage as are allowed in civil actions in courts of law. [1979 ex.s. c 51 § 10.]

46.82.380 Appeal from action or decision of director. Any action or decision of the director may, after a hearing is held as provided in this chapter, be appealed by the party aggrieved to the superior court of the county in which the place of business is located or where the aggrieved person resides. [1979 ex.s. c 51 § 11.]

46.82.390 Penalty. A violation of any provision of this chapter shall be a misdemeanor. [1979 ex.s. c 51 § 12.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

46.82.400 Chapter not applicable to educational institutions. This chapter shall not apply to or affect in any manner courses of instruction offered in high schools, vocational-technical schools, colleges, or universities which are now or hereafter established, nor shall it be applicable to instructors in any such high schools, vocational-technical schools, colleges, or universities: *Provided*, That such course or courses are conducted by such schools in a like manner to their other regular courses. If such course is conducted by any commercial school as herein identified on a contractual basis, such school and instructors must qualify under this chapter. [1979 ex.s. c 51 § 13.]

46.82.410 Disposition of moneys collected. All moneys collected from driver training school licenses and instructor licenses shall be deposited in the general fund. [1979 ex.s. c 51 § 14.]

46.82.420 Basic minimum required curriculum—Compilation by advisory committee—Revocation of license for failure to teach, show cause hearing upon. The advisory committee shall compile and furnish to each qualifying applicant for an instructor's license or a driver training school license a basic minimum required curriculum. Should the director be presented with acceptable proof that any licensed instructor or driver training school is not showing proper diligence in teaching such basic minimum curriculum as required, the instructor or school shall be required to appear before the advisory committee and show cause why the license of the instructor or school should not be revoked for such negligence. If the committee does not accept such reasons as may be offered, the director may revoke the license of the instructor or school, or both. [1979 ex.s. c 51 § 15.]

46.82.430 Information on proper use of left-hand lane. Instructional material used in driver training schools shall include information on the proper use of the left-hand lane on multilane highways. [1986 c 93 § 5.]

Keep right except when passing, etc.: RCW 46.61.100.

46.82.900 Severability—1979 ex.s. c 51. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 51 § 19.]

Chapter 46.83 TRAFFIC SCHOOLS

Sections	
46.83.010	City or town and county traffic schools authorized—Procedure to establish.
46.83.020	County commissioners to control and supervise—Assistance of sheriff and police department.
46.83.030	Deposit, control of funds—Support.
46.83.040	Purpose of school.
46.83.050	Court may order attendance.
46.83.060	Duty of person required to attend—Penalty.

46.83.010 City or town and county traffic schools authorized—Procedure to establish. Any city or town and the county in which it is located are authorized, as may be agreed between the respective governing bodies of the city or town and county, to establish a traffic school for the purposes and under the conditions set forth in this chapter. Such city or town and county traffic school may be effected whenever the governing body of the city or town shall pass an ordinance and the board of commissioners of the county shall pass a resolution declaring intention to organize and operate a traffic school in accordance with agreements had between them as to the financing, organization, and operation thereof. [1961 c 12 § 46.83.010. Prior: 1959 c 182 § 1.]

46.83.020 County commissioners to control and supervise—Assistance of sheriff and police department. A traffic school established under this chapter shall be under the control and supervision of the board of county commissioners, through such agents, assistants, or instructors as the board may designate, and shall be conducted with the assistance of the county sheriff and the police department of the city or town. [1961 c 12 § 46.83.020. Prior: 1959 c 182 § 2.]

46.83.030 Deposit, control of funds—Support. All funds appropriated by the city or town and county to the operation of the traffic school shall be deposited with the county treasurer and shall be administered by the board of county commissioners. The governing bodies of every city or town and county participating in the operation of traffic schools are authorized to make such appropriations by ordinance or resolution, as the case may be, as they shall determine for the establishment and operation of traffic schools, and they are further authorized to accept and expend gifts, donations, and any other money from any source, private or public, given for the purpose of said schools. [1961 c 12 § 46.83.030. Prior: 1959 c 182 § 3.]

46.83.040 Purpose of school. It shall be the purpose of every traffic school which may be established hereunder to instruct, educate, and inform all persons appearing for training in the proper, lawful, and safe operation of motor vehicles, including but not limited to rules of the road and the limitations of persons, vehicles, and roads, streets and highways under varying conditions and circumstances. [1961 c 12 § 46.83.040. Prior: 1959 c 182 § 4.]

46.83.050 Court may order attendance. Every municipal court, district court, juvenile court, superior court, and every other court handling traffic cases within the limits of a county wherein a traffic school has been established may, as a part of any sentence imposed following a conviction for any traffic law violation, or as a condition on the suspension of sentence or deferral of any imposition of sentence, order any person so convicted, whether that person be a juvenile, a minor, or an adult, to attend the traffic school for a number of days to be determined by the court, but not to exceed the maximum number of days which the violator could be required to serve in the city or county jail as a result of his or her conviction. [1984 c 258 § 138; 1961 c 12 § 46.83.050. Prior: 1959 c 182 § 5.]

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

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

46.83.060 Duty of person required to attend—Penalty. Every person required to attend a traffic school as established under the provisions of this chapter shall maintain attendance in accordance with the sentence or order. Failure so to do, unless for good cause shown by clear and convincing evidence, is a traffic infraction. [1979 ex.s. c 136 § 98; 1961 c 12 § 46.83.060. Prior: 1959 c 182 § 6.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Chapter 46.85

RECIPROCAL OR PROPORTIONAL REGISTRATION OF VEHICLES

Sections

46.85.010	Declaration of policy.
46.85.020	Definitions.
46.85.030	Departmental entry into multistate proportional registration agreement, International Registration Plan.
46.85.040	Authority for reciprocity agreements—Provisions—Reciprocity standards.
46.85.050	Base state registration reciprocity.
46.85.060	Declarations of extent of reciprocity, when—Exemptions, benefits, and privileges—Rules.
46.85.070	Extension of reciprocal privileges to lessees authorized.
46.85.080	Automatic reciprocity, when.
46.85.090	Suspension of reciprocity benefits.
46.85.100	Agreements to be written, filed, and available for distribution.
46.85.110	Reciprocity agreements in effect at time of act.
46.85.900	Chapter part of and supplemental to motor vehicle registration law.
46.85.910	Constitutionality.
46.85.920	Repeal and saving.
46.85.930	Effective date—1963 c 106.
46.85.940	Section captions not a part of the law.

46.85.010 Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of vehicle reciprocal or proportional registration agreements, arrangements and declarations with

other states, provinces, territories, and countries with respect to vehicles registered in this and such other states, provinces, territories, and countries thus contributing to the economic and social development and growth of this state. [1987 c 244 § 8; 1963 c 106 § 1.]

46.85.020 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(2) "Owner" means a person, business firm, or corporation who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(3) "Properly registered," as applied to place of registration, means:

(a) The jurisdiction where the person registering the vehicle has his legal residence; or

(b) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from such place of business, and, the vehicle has been assigned to such place of business; or

(c) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

In case of doubt or dispute as to the proper place of registration of a vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected. [1987 c 244 § 9; 1985 c 173 § 2; 1982 c 227 § 18; 1981 c 222 § 1; 1963 c 106 § 2.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

Effective date—1982 c 227: See note following RCW 19.09.100.

46.85.030 Departmental entry into multistate proportional registration agreement, International Registration Plan. The department of licensing shall have the authority to execute agreements, arrangements, or declarations to carry out the provisions of chapter 46.87 RCW and this chapter.

If the department enters into a multistate proportional registration agreement which requires this state to perform acts in a quasi agency relationship, the department may collect and forward applicable registration fees and

applications to other jurisdictions on behalf of the applicant or on behalf of another jurisdiction and may take such other action as will facilitate the administration of such agreement.

If the department enters into a multistate proportional registration agreement which prescribes procedures applicable to vehicles not specifically described in chapter 46.87 RCW, such as but not limited to "owner-operator" or "rental" vehicles, it shall promulgate rules taking exception to or accomplishing the procedures prescribed in such agreement.

It is the purpose and intent of this subsection to facilitate the membership in the International Registration Plan and at the same time allow the department to continue to participate in such agreements and compacts as may be necessary and desirable in addition to the International Registration Plan. [1987 c 244 § 10; 1982 c 227 § 19; 1981 c 222 § 2; 1977 ex.s. c 92 § 1; 1975-'76 2nd ex.s. c 34 § 137; 1967 c 32 § 113; 1963 c 106 § 3.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

Effective date—1982 c 227: See note following RCW 19.09.100.

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

46.85.040 Authority for reciprocity agreements—Provisions—Reciprocity standards. The department may enter into an agreement or arrangement with the duly authorized representatives of another jurisdiction, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdiction and for which evidence of compliance is supplied, benefits, privileges, and exemptions from the payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this state. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this state when operated upon highways of such other jurisdiction shall receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this state. Each such agreement or arrangement shall, in the judgment of the department, be in the best interest of this state and the citizens thereof and shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce. [1985 c 173 § 3; 1982 c 227 § 20; 1963 c 106 § 4.]

Effective date—1982 c 227: See note following RCW 19.09.100.

46.85.050 Base state registration reciprocity. An agreement or arrangement entered into, or a declaration issued under the authority of chapter 46.87 RCW or this chapter may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits, and privileges extended

by such agreement, arrangement, or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction. [1987 c 244 § 11; 1963 c 106 § 5.]

46.85.060 Declarations of extent of reciprocity, when—Exemptions, benefits, and privileges—Rules. In the absence of an agreement or arrangement with another jurisdiction, the department may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the department, be in the best interest of this state and the citizens thereof and which shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce. Declarations of exemptions, benefits, and privileges issued by the department shall include at least the following exemptions:

(1) Nonresident persons not employed in this state may operate a vehicle in this state that is currently licensed in another jurisdiction for a period not to exceed six months in any continuous twelve-month period.

(2) Nonresident persons employed in this state may operate vehicles not to exceed twelve thousand pounds registered gross vehicle weight that are currently licensed in another jurisdiction if no permanent, temporary, or part-time residence is maintained in this state for a period greater than six months in any continuous twelve-month period.

(3) A vehicle or a combination of vehicles, not exceeding a registered gross or combined gross vehicle weight of twelve thousand pounds, which is properly base licensed in another jurisdiction and registered to a bona fide business in that jurisdiction is not required to obtain Washington vehicle license registration except when such vehicle is owned or operated by a business or branch office of a business located in Washington.

(4) The department of licensing, after consultation with the department of revenue, shall adopt such rules as it deems necessary for the administration of these exemptions, benefits, and privileges. [1987 c 142 § 4; 1985 c 353 § 3; 1982 c 227 § 21; 1963 c 106 § 6.]

Effective date—1982 c 227: See note following RCW 19.09.100.

46.85.070 Extension of reciprocal privileges to lessees authorized. An agreement, or arrangement entered into, or a declaration issued under the authority of this chapter, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration. [1963 c 106 § 7.]

46.85.080 Automatic reciprocity, when. On and after July 1, 1963, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as

authorized by this chapter, any vehicle properly registered or licensed in such other jurisdiction and for which evidence of compliance is supplied shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdiction to vehicles properly registered in this state. Reciprocity extended under this section shall apply to commercial vehicles only when engaged exclusively in interstate commerce. [1963 c 106 § 8.]

46.85.090 Suspension of reciprocity benefits. Agreements, arrangements or declarations made under the authority of this chapter may include provisions authorizing the department to suspend or cancel the exemptions, benefits, or privileges granted thereunder to an owner who violates any of the conditions or terms of such agreements, arrangements, or declarations or who violates the laws of this state relating to motor vehicles or rules and regulations lawfully promulgated thereunder. [1987 c 244 § 12; 1963 c 106 § 9.]

46.85.100 Agreements to be written, filed, and available for distribution. All agreements, arrangements, or declarations or amendments thereto shall be in writing and shall be filed with the department. Upon becoming effective, they shall supersede the provisions of RCW 46.16.030, chapter 46.87 RCW, or this chapter to the extent that they are inconsistent therewith. The department shall provide copies for public distribution upon request. [1987 c 244 § 13; 1982 c 227 § 22; 1967 c 32 § 114; 1963 c 106 § 10.]

Effective date—1982 c 227: See note following RCW 19.09.100.

46.85.110 Reciprocity agreements in effect at time of act. All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles in force and effect at the time this chapter becomes effective shall continue in force and effect at the time this chapter becomes effective and until specifically amended or revoked as provided by law or by such agreements or arrangements. [1963 c 106 § 11.]

Effective date—1963 c 106: See RCW 46.85.930.

46.85.900 Chapter part of and supplemental to motor vehicle registration law. This chapter shall be, and construed as, a part of and supplemental to the motor vehicle registration law of this state. [1963 c 106 § 30.]

46.85.910 Constitutionality. If any phrase, clause, subsection or section of this chapter shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this chapter without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the chapter shall not be affected as a result of said part being held unconstitutional or invalid. [1963 c 106 § 31.]

46.85.920 Repeal and saving. The following acts or parts of acts and RCW sections are hereby repealed:

(1) Sections 46.84.010, 46.84.030, 46.84.040, 46.84.050, 46.84.060, 46.84.070, 46.84.080, 46.84.090 and 46.84.100, chapter 12, Laws of 1961 and RCW 46.84.010, 46.84.030, 46.84.040, 46.84.050, 46.84.060, 46.84.070, 46.84.080, 46.84.090 and 46.84.100;

(2) Section 46.84.020, chapter 12, Laws of 1961 as amended by section 37, chapter 21, Laws of 1961 extraordinary session and RCW 46.84.020;

(3) Sections 1, 2, 3, and 4, chapter 266, Laws of 1961 and RCW 46.84.110, 46.84.120, 46.84.130 and 46.84.140; and

(4) Sections 38, 39, and 40, chapter 21, Laws of 1961 extraordinary session and RCW 46.84.150, 46.84.160 and 46.84.170.

Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder, nor the term of office or appointment or employment of any person appointed or employed thereunder. [1963 c 106 § 32.]

46.85.930 Effective date—1963 c 106. This chapter shall take effect and be in force on and after July 1, 1963. [1963 c 106 § 33.]

46.85.940 Section captions not a part of the law. Section captions as used in this chapter shall not constitute any part of the law. [1963 c 106 § 34.]

Chapter 46.87

PROPORTIONAL REGISTRATION (Formerly: International Registration Plan)

Sections	
46.87.010	Applicability—Implementation.
46.87.020	Definitions.
46.87.025	Vehicles titled in owner's name.
46.87.030	Part-year registration—Credit for unused fees.
46.87.040	Purchase of additional gross weight.
46.87.050	Deposit of fees.
46.87.060	Apportionment of fees, formula.
46.87.070	License plate, registration, which state.
46.87.080	Cab cards, validation tabs, special license plates— Design, procedures—Issuance, refusal, revocation.
46.87.090	Apportioned vehicle license plates, cab card, validation tabs—Replacement—Fees.
46.87.120	Mileage data for applications—Nonmotor vehicles.
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46.87.210	Refusal of application from nonreciprocal jurisdiction.
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46.87.240	Relationship of department with other jurisdictions.
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46.87.260	Alteration or forgery of cab card or letter of authority—Penalty.
46.87.270	Gross weight on vehicle.
46.87.280	Effect of other registration.
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46.87.310	Preservation of application records—Contents—Audit by department—Additional assessments, penalties, refunds.
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46.87.340	Assessments—Lien for nonpayment.
46.87.350	Delinquent obligations—Notice—Restriction on credits or property—Default judgments.
46.87.360	Delinquent obligations—Collection by department—Seizure of property, notice, sale.
46.87.370	Warrant for final assessments—Lien on property.
46.87.380	Delinquent obligations—Collection by attorney general.
46.87.390	Remedies cumulative.
46.87.400	Civil immunity.
46.87.900	Severability—1985 c 380.
46.87.901	Effective date—1986 c 18; 1985 c 380.
46.87.910	Short title.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.020 Definitions. Terms used in this chapter have the meaning given to them in the International Registration Plan (IRP), the Uniform Vehicle Registration, Proration, and Reciprocity Agreement (Western Compact), chapter 46.04 RCW, or as otherwise defined in this section. Definitions given to terms by the IRP and the Western Compact, as applicable, shall prevail unless given a different meaning in this chapter or in rules adopted under authority of this chapter.

(1) "Apportionable vehicle" has the meaning given by the IRP, except that it does not include vehicles with a declared gross weight of twelve thousand pounds or less. Apportionable vehicles include trucks, tractors, truck tractors, road tractors, buses, converter gears (auxiliary axles), trailers, semitrailers, and pole trailers, each as separate and licensable vehicles.

(2) "Cab card" is a certificate of registration issued for a vehicle by the registering jurisdiction under the Western Compact. Under the IRP, it is a certificate of registration issued by the base jurisdiction for a vehicle upon which is disclosed the jurisdictions and registered gross weights in such jurisdictions for which the vehicle is registered.

(3) "Commercial vehicle" is a term used by the Western Compact and means any vehicle, except recreational vehicles, vehicles displaying restricted plates, and government owned or leased vehicles, that is operated and registered in more than one jurisdiction and is used or maintained for the transportation of persons for hire, compensation, or profit, or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a motor vehicle having a declared gross weight in excess of twenty-six thousand pounds; or

(b) Is a motor vehicle having three or more axles with a declared gross weight in excess of twelve thousand pounds; or

(c) Is a motor vehicle, trailer, pole trailer, or semitrailer used in combination when the declared gross weight of the combination exceeds twenty-six thousand pounds combined gross weight; or

(d) Is a converter gear (auxiliary axle).

Although a two-axle motor vehicle, trailer, pole trailer, semitrailer, or any combination of such vehicles with a declared gross weight or declared combined gross weight exceeding twelve thousand pounds but not more than twenty-six thousand is not considered to be a commercial vehicle, at the option of the owner, such vehicles may be considered as "commercial vehicles" for the purpose of proportional registration.

Commercial vehicles include trucks, tractors, truck tractors, road tractors, buses, converter gear (auxiliary axles), trailers, pole trailers, and semitrailers, each as separate and licensable vehicles.

(4) "Credentials" means cab cards, apportioned plates (for Washington-based fleets), and validation tabs issued for proportionally registered vehicles.

(5) "Declared combined gross weight" means the total unladen weight of any combination of vehicles plus the

46.87.010 Applicability—Implementation. This chapter applies to proportional registration and reciprocity granted under the provisions of the International Registration Plan (IRP) and the Uniform Vehicle Registration, Proration, and Reciprocity Agreement (Western Compact). This chapter shall become effective and be implemented beginning with the 1988 registration year; however, if Washington is not then registering vehicles under the provisions of the IRP, the effective date and implementation date for the IRP shall both be delayed until such time as Washington begins registering vehicles under the provisions of the IRP.

(1) Provisions and terms of the IRP and the Western Compact, as applicable, shall prevail unless given a different meaning in chapter 46.04 RCW, this chapter, or in rules adopted under the authority of this chapter.

(2) The director may adopt and enforce rules deemed necessary to implement and administer this chapter.

(3) Beginning with the first registration year in which the state of Washington begins registering fleets under provisions of the IRP, owners having a fleet of apportionable vehicles operating in two or more IRP member jurisdictions may elect to proportionally register the vehicles of the fleet under the provisions of the IRP and this chapter in lieu of full or temporary registration as provided for in chapters 46.16 or 46.88 RCW.

(4) Owners having a fleet of commercial vehicles operating and registered in at least one Western Compact member jurisdiction other than Washington may elect to proportionally register the vehicles of the fleet under provisions of the Western Compact and this chapter in lieu of full or temporary registration as provided for in chapter 46.16 or 46.88 RCW.

(5) If a due date or an expiration date established under authority of this chapter falls on a Saturday, Sunday, or a state legal holiday, such period is automatically extended through the end of the next business day. [1987 c 244 § 15; 1986 c 18 § 22; 1985 c 380 § 1.]

weight of the maximum load to be carried on the combination of vehicles as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid.

(6) "Declared gross weight" means the total unladen weight of any vehicle plus the weight of the maximum load to be carried on the vehicle as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid. In the case of a bus, auto stage, or a passenger-carrying for hire vehicle with a seating capacity of more than six, the declared gross weight shall be determined by multiplying the average load factor of one hundred and fifty pounds by the number of seats in the vehicle, including the driver's seat, and add this amount to the unladen weight of the vehicle. If the resultant gross weight is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

(7) "Department" means the department of licensing.

(8) "Fleet" means one or more commercial vehicles in the Western Compact and one or more apportionable vehicles in the IRP.

(9) "In-jurisdiction miles" means the total miles accumulated in a jurisdiction during the preceding year by vehicles of the fleet while they were a part of the fleet.

(10) "IRP" means the International Registration Plan.

(11) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign county, and a state or province of a foreign country.

(12) "Owner" means a person or business firm who holds the legal title to a vehicle, or if a vehicle is the subject of an agreement for its conditional sale with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or if a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or if a mortgagor of a vehicle is entitled to possession, then the owner is deemed to be the person or business firm in whom is vested right of possession or control.

(13) "Preceding year" means the period of twelve consecutive months immediately prior to July 1st of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought.

(14) "Properly registered," as applied to the place of registration under the provisions of the Western Compact, means:

(a) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which the vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from that place of business, and the vehicle has been assigned to that place of business; or

(b) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by that jurisdiction.

In case of doubt or dispute as to the proper place of registration of a commercial vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected.

(15) "Prorate percentage" is the factor that is applied to the total proratable fees and taxes to determine the apportionable or prorate fees required for registration in a particular jurisdiction. It is determined by dividing the in-jurisdiction miles for a particular jurisdiction by the total miles. This term is synonymous with the term "mileage percentage."

(16) "Registrant" means a person, business firm, or corporation in whose name or names a vehicle or fleet of vehicles is registered.

(17) "Registration year" means the twelve-month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction. The "registration year" for Washington is the period from January 1st through December 31st of each calendar year.

(18) "Total miles" means the total number of miles accumulated in all jurisdictions during the preceding year by all vehicles of the fleet while they were a part of the fleet. Mileage accumulated by vehicles of the fleet that did not engage in interstate operations is not included in the fleet miles.

(19) "Western Compact" means the Uniform Vehicle Registration, Proration, and Reciprocity Agreement. [1987 c 244 § 16; 1985 c 380 § 2.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.025 Vehicles titled in owner's name. All vehicles being added to an existing Washington-based fleet or those vehicles that make up a new Washington-based fleet shall be titled in the name of the fleet owner at time of registration, or evidence of filing application for title for such vehicles in the name of the owner shall accompany the application for proportional registration. [1987 c 244 § 17.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.030 Part-year registration—Credit for unused fees. (1) When application to register an apportionable or commercial vehicle is made after March 31st of a registration year, the Washington prorated fees may be reduced by one-twelfth for each full registration month that has elapsed at the time a temporary authorization permit (TAP) was issued or if no TAP was issued, at such time as an application for registration is received in the department. The filing of any application with the department incurs liability for the fees and taxes applicable to the vehicles contained in the application. If a vehicle is being added to a currently registered fleet, the prorated percentage previously established for

the fleet for such registration year shall be used in the computation of the proportional fees and taxes due.

(2) If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under this chapter, the registrant of the fleet shall notify the department on appropriate forms prescribed by the department. The department may require the registrant to surrender credentials that were issued to the vehicle. If a motor vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the fleet registrant, the unused portion of the licensing fee paid under RCW 46.16.070 with respect to the vehicle reduced by one-twelfth for each calendar month and fraction thereof elapsing between the first day of the month of the current registration year in which the vehicle was registered and the date the notice of withdrawal, accompanied by such credentials as may be required, is received in the department, shall be credited to the fleet proportional registration account of the registrant. Credit shall be applied against the licensing fee liability for subsequent additions of motor vehicles to be proportionally registered in the fleet during such registration year or for additional licensing fees due under RCW 46.16.070 or to be due upon audit under RCW 46.87.310. If any credit is less than fifteen dollars, no credit will be entered. In lieu of credit, the registrant may choose to transfer the unused portion of the licensing fee for the motor vehicle to the new owner, in which case it shall remain with the motor vehicle for which it was originally paid. In no event may any amount be credited against fees other than those for the registration year from which the credit was obtained nor is any amount subject to refund. [1987 c 244 § 18; 1986 c 18 § 23; 1985 c 380 § 3.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.040 Purchase of additional gross weight. Additional gross weight may be purchased for proportionally registered motor vehicles to the limits authorized under chapter 46.44 RCW. Reregistration at the higher gross weight (maximum gross weights under this chapter are forty thousand pounds for a solo three-axle truck or eighty thousand pounds for a combination) for the balance of the registration year, including the full registration month in which the vehicle is initially licensed at the higher gross weight. The apportionable or proportional fee initially paid to the state of Washington, reduced for the number of full registration months the license was in effect, will be deducted from the total fee to be paid to this state for licensing at the higher gross weight for the balance of the registration year. No credit or refund will be given for a reduction of gross weight. [1987 c 244 § 19; 1985 c 380 § 4.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.050 Deposit of fees. Each day the department shall forward to the state treasurer the fees collected under this chapter, and within ten days of the end of each registration quarter, a detailed report identifying

the amount to be deposited to each account for which fees are required for the licensing of proportionally registered vehicles. Such fees shall be deposited pursuant to RCW 46.68.035, 82.44.110, and 82.44.170. [1987 c 244 § 20; 1985 c 380 § 5.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.060 Apportionment of fees, formula. The apportionment of fees to IRP member jurisdictions shall be in accordance with the provisions of the IRP agreement based on the apportionable fee multiplied by the prorate percentage for each jurisdiction in which the fleet will be registered or is currently registered. [1987 c 244 § 21; 1985 c 380 § 6.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.070 License plate, registration, which state. Any trailer, semitrailer, converter gear (auxiliary axles), or pole trailer being pulled by a motor vehicle that is proportionally registered under the terms of this chapter shall display a valid vehicle license plate issued by the base jurisdiction and be registered in this state. [1987 c 244 § 22; 1985 c 380 § 7.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.080 Cab cards, validation tabs, special license plates—Design, procedures—Issuance, refusal, revocation. (1) Upon making satisfactory application and payment of applicable fees and taxes for proportional registration under this chapter, the department shall issue a cab card and validation tab for each vehicle, and to vehicles of Washington-based fleets, two distinctive apportionable license plates for each motor vehicle and one such plate for each trailer, semitrailer, pole trailer, or converter gear listed on the application. License plates shall be displayed on vehicles as required by RCW 46.16.240. The number and plate shall be of a design, size, and color determined by the department. The plates shall be treated with reflectorized material and clearly marked with the words "WASHINGTON" and "APPORTIONED," both words to appear in full and without abbreviation.

(2) The cab card serves as the certificate of registration for a proportionally registered vehicle. The face of the cab card shall contain the name and address of the registrant as contained in the records of the department, the license plate number assigned to the vehicle by the base jurisdiction, the vehicle identification number, and such other description of the vehicle and data as the department may require. The cab card shall be signed by the registrant, or a designated person if the registrant is a business firm, and shall at all times be carried in or on the vehicle to which it was issued. In the case of nonpowered vehicles, the cab card may be carried in or on the vehicle supplying the motive power instead of in or on the nonpowered vehicle.

(3) The apportioned license plates are not transferrable from vehicle to vehicle and shall be used only on the vehicle to which they are assigned by the department for

as long as they are legible or until such time as the department requires them to be removed and returned to the department.

(4) A distinctive validation tab of a design, size, and color determined by the department shall be affixed to the apportioned license plate as prescribed by the department to indicate the year for which the vehicle is registered. Foreign-based vehicles proportionally registered in this state under the provisions of the Western Compact shall display the validation tab on a backing plate or as otherwise prescribed by the department.

(5) Renewals shall be effected by the issuance and display of such tab after making satisfactory application and payment of applicable fees and taxes.

(6) Fleet vehicles so registered and identified shall be deemed to be fully licensed and registered in this state for any type of movement or operation. However, in those instances in which a grant of authority is required for interstate or intrastate movement or operation, no such vehicle may be operated in interstate or intrastate commerce in this state unless the owner has been granted interstate operating authority by the interstate commerce commission in the case of interstate operations or intrastate operating authority by the Washington utility and transportation commission in the case of intrastate operations and unless the vehicle is being operated in conformity with that authority.

(7) The department may issue temporary authorization permits (TAPs) to qualifying operators for the operation of vehicles pending issuance of license identification. A fee of one dollar plus a one dollar filing fee shall be collected for each permit issued. The permit fee shall be deposited in the motor vehicle fund, and the filing fee shall be deposited in the highway safety fund. The department may adopt rules for use and issuance of the permits.

(8) The department may refuse to issue any license or permit authorized by subsection (1) or (7) of this section to any person: (a) Who formerly held any type of license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, 82.37, or 82.38 RCW that has been revoked for cause, which cause has not been removed; or (b) who is a subterfuge for the real party in interest whose license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, 82.37, or 82.38 RCW and has been revoked for cause, which cause has not been removed; or (c) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, 82.37, or 82.38 RCW which has been revoked for cause, which cause has not been removed; or (d) who has an unsatisfied debt to the state assessed under either chapter 46.16, 46.85, 46.87, 82.36, 82.37, 82.38, or 82.44 RCW.

(9) The department may revoke the license or permit authorized by subsection (1) or (7) of this section issued to any person for any of the grounds constituting cause for denial of licenses or permits set forth in subsection (8) of this section.

(10) Before such refusal or revocation under subsection (8) or (9) of this section, the department shall grant the applicant a hearing and at least ten days written notice of the time and place of the hearing. [1987 c 244 § 23; 1985 c 380 § 8.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.090 Apportioned vehicle license plates, cab card, validation tabs—Replacement—Fees. (1) To replace an apportioned vehicle license plate(s), cab card, or validation tab(s) due to loss, defacement, or destruction, the registrant shall apply to the department on forms furnished for that purpose. The application, together with proper payment and other documentation as indicated, shall be filed with the department as follows:

(a) Apportioned plate(s) – a fee of ten dollars shall be charged for vehicles required to display two apportioned plates or five dollars for vehicles required to display one apportioned plate. The cab card of the vehicle for which a plate is requested shall accompany the application. The department shall issue a new apportioned plate(s) with validation tab(s) and a new cab card upon acceptance of the completed application form, old cab card, and the required replacement fee.

(b) Cab card – a fee of two dollars shall be charged for each card. If this is a duplicate cab card, it will be noted thereon.

(c) Validation tab(s) – a fee of two dollars shall be charged for each vehicle.

(2) If available, backing plates may be purchased from the department for a fee of two dollars each. These plates are used on vehicles registered under provisions of the Western Compact to display validation tabs issued by the prorate jurisdictions as evidence of proportional registration for each vehicle so registered.

(3) All fees collected under this section shall be deposited to the motor vehicle fund. [1987 c 244 § 24; 1986 c 18 § 24; 1985 c 380 § 9.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.120 Mileage data for applications—Non-motor vehicles. (1) The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If no operations were conducted with the fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in each of the jurisdictions in which operation is contemplated. The registrant shall determine the in-jurisdiction and total miles to be used in computing the fees and taxes due for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to its correctness.

(2) When the nonmotor vehicles of a fleet are operated in jurisdictions in addition to those in which the motor vehicles of the fleet are operated, or when the nonmotor vehicles of a fleet are operated with motor vehicles that are not part of the fleet, the registrant shall place such nonmotor vehicles in a separate fleet.

(3) When operations of a Washington-based fleet is materially changed through merger, acquisition, or extended authority, the registrant shall notify the department, which shall then require the filing of an amended application setting forth the proposed operation by use of estimated mileage for all jurisdictions. The department may adjust the estimated mileage by audit or otherwise to an actual travel basis to insure proper fee payment. The actual travel basis may be used for determination of fee payments until such time as a normal mileage year is available under the new operation. Under the provisions of the Western Compact, this subsection applies to any fleet proportionally registered in Washington irrespective of the fleet's base jurisdiction. [1987 c 244 § 25.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.130 Vehicle transaction fee. In addition to all other fees prescribed for the proportional registration of vehicles under this chapter, the department shall collect a vehicle transaction fee each time a vehicle is added to a Washington-based fleet, and each time the proportional registration of a Washington-based vehicle is renewed. The transaction fee is also applicable to all foreign-based vehicles for which this state calculates and assesses fees/taxes for the state of Washington. The exact amount of the vehicle transaction fee shall be fixed by rule but shall not exceed ten dollars. This fee shall be deposited in the motor vehicle fund. [1987 c 244 § 26.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.140 Application—Filing, contents—Fees and taxes—Assessments, due date. (1) Any owner engaged in interstate operations of one or more fleets of apportionable or commercial vehicles may, in lieu of registration of the vehicles under chapter 46.16 RCW, register and license the vehicles of each fleet under this chapter by filing a proportional registration application for each fleet with the department. The application shall contain the following information and such other information pertinent to vehicle registration as the department may require:

(a) A description and identification of each vehicle of the fleet. If the fleet contains both power units and nonpower units, the power units shall be listed first on the application, followed by the nonpower units. However, if the nonpower units are occasionally pulled by power units which are not part of this fleet, the nonpower units shall be placed in a separate fleet.

(b) If registering under the provisions of the IRP, the registrant shall also indicate member jurisdictions in which registration is desired and furnish such other information as those member jurisdictions require.

(c) An original or renewal application shall also be accompanied by a mileage schedule.

(2) Each application shall, at the time and in the manner required by the department, be supported by payment of a fee computed as follows:

(a) Divide the in-jurisdiction miles by the total miles and carry the answer to the nearest thousandth of a

percent (three places beyond the decimal, e.g. 10.543%). This factor is known as the prorate percentage.

(b) Determine the total proratable fees and taxes required for each vehicle in the fleet for which registration is requested, based on the regular annual fees and taxes or applicable fees and taxes for the unexpired portion of the registration year under the laws of each jurisdiction for which fees or taxes are to be calculated. Applicable fees and taxes for vehicles of Washington-based fleets are those prescribed under RCW 46.16.070, 46.16.085, 82.38.075, and 82.44.020, as applicable.

(c) Multiply the total, proratable fees or taxes for each vehicle by the prorate percentage applicable to the desired jurisdiction and round the results to the nearest cent.

(d) Add the total fees and taxes determined in subsection (2)(c) of this section for each vehicle to the nonproratable fees required under the laws of the jurisdiction for which fees are being calculated. Nonproratable fees required for vehicles of Washington-based fleets are the administrative fee required by RCW 82.38.075, if applicable, and the vehicle transaction fee pursuant to the provisions of RCW 46.87.130.

(e) Add the total fees and taxes determined in subsection (2)(d) of this section for each vehicle listed on the application. Assuming the fees and taxes calculated were for Washington, this would be the amount due and payable for the application under the provisions of the Western Compact. Under the provisions of the IRP, the amount due and payable for the application would be the sum of the fees and taxes referred to in subsection (2)(d) of this section, calculated for each member jurisdiction in which registration of the fleet is desired.

(3) All assessments for proportional registration fees are due and payable in United States funds on the date presented or mailed to the registrant at the address listed in the proportional registration records of the department. The registrant may petition for reassessment of the fees or taxes due under this section within thirty days of the date of original service as provided for in this chapter. [1987 c 244 § 27.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.150 Overpayment, underpayment—Refund, additional charge. Whenever a person has been required to pay a fee or tax pursuant to this chapter that amounts to an overpayment of five dollars or more, the person is entitled to a refund of the entire amount of such overpayment, regardless of whether or not a refund of the overpayment has been requested. Nothing in this subsection precludes anyone from applying for a refund of such overpayment if the overpayment is less than five dollars. Conversely, if the department or its agents has failed to charge and collect the full amount of fees or taxes pursuant to this chapter, which underpayment is in the amount of five dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the fees and taxes due. [1987 c 244 § 28.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.160 Quarterly fee payment. (1) Washington-based fleets may pay Washington proportional registration licensing fees on a quarterly basis at the option of the registrant, if the following criteria are met and maintained:

(a) The fleet has a Washington prorate percentage of sixty percent or more;

(b) The fleet contains a minimum of three motor vehicles;

(c) All motor vehicles in the fleet are licensed in Washington for at least sixty-eight thousand pounds combined gross weight.

(2) Quarterly licensing is based on calendar quarters and expires at midnight on the last day of each quarter: March 31st, June 30th, September 30th, and December 31st. It shall be renewed each quarter for each motor vehicle in the fleet that has not been permanently removed from the fleet.

(3) Quarterly licensing renewal fees shall be paid before the beginning of the quarter for which the fees are due. No letters of authority may be issued in the case of late renewals.

(4) Failure to comply with the requirements of this section is cause for suspension or cancellation of the registrant's quarterly licensing privileges. Upon cancellation of these privileges, licensing fees for the remainder of the registration year become immediately due and payable for all motor vehicles in the fleet.

(5) In addition to the quarterly licensing fee due for each motor vehicle in the fleet each quarter, the department shall collect a fee of two dollars. This fee shall be deposited in the motor vehicle fund. [1987 c 244 § 29.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.170 Recalculation of prorate percentage—Additional fees and taxes. If the department determines that a Washington-based carrier has proportionally registered a fleet in this state under provisions of the Western Compact and this chapter and has not fully or proportionally registered the fleet in another member jurisdiction(s) after indicating their intent to do so in their application to this state, the mileage traveled in such jurisdiction(s) shall be added to the Washington in-jurisdiction miles. The department shall then recalculate the carrier's Washington prorate percentage and shall assess and bill the registrant for the additional fees and taxes due the state of Washington. [1987 c 244 § 30.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.180 Conditions on fleet vehicles. The privileges and benefits of proportional registration of fleet vehicles extended by this chapter, or by any contract, agreement, arrangement, or declaration made under the authority of chapter 46.85 RCW or this chapter are subject to the conditions that:

(1) Each vehicle of the fleet proportionally registered under the authority of this chapter is also fully or proportionally registered in at least one other jurisdiction

during the period for which it is proportionally registered in this state; and

(2) A fleet consists of the same vehicles in each jurisdiction in which the fleet is proportionally registered. [1987 c 244 § 31.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.190 Suspension or cancellation of benefits. The department may suspend or cancel the exemptions, benefits, or privileges granted under chapter 46.85 RCW or this chapter to any person or business firm who violates any of the conditions or terms of the IRP, Western Compact, or declarations, or who violates the laws of this state relating to the operation or registration of vehicles or rules lawfully adopted thereunder. [1987 c 244 § 32.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.200 Refusal of registration—Federal heavy vehicle use tax. The department may refuse registration of a vehicle if the applicant has failed to furnish proof, acceptable to the department, that the federal heavy vehicle use tax imposed by section 4481 of the internal revenue code of 1954 has been suspended or paid. The department may adopt rules as deemed necessary to administer this section. [1987 c 244 § 33.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.210 Refusal of application from nonreciprocal jurisdiction. The department may refuse to accept proportional registration applications for the registration of vehicles based in another jurisdiction if the department finds that the other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state. [1987 c 244 § 34.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.220 Gross weight computation. The gross weight in the case of a motor truck, tractor, or truck tractor is the scale weight of the motor truck, tractor, or truck tractor, plus the scale weight of any trailer, semi-trailer, converter gear, or pole trailer to be towed by it, to which shall be added the weight of the maximum load to be carried on it or towed by it as set forth by the licensee in the application providing it does not exceed the weight limitations prescribed by chapter 46.44 RCW.

The gross weight in the case of a bus, auto stage, or for hire vehicle, except a taxicab, with a seating capacity over six, is the scale weight of the bus, auto stage, or for hire vehicle plus the seating capacity, including the operator's seat, computed at one hundred and fifty pounds per seat.

If the resultant gross weight, according to this section, is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

A motor vehicle or combination of vehicles found to be loaded beyond the licensed gross weight of the motor vehicle registered under this chapter shall be cited and

handled under RCW 46.16.140 and 46.16.145. [1987 c 244 § 35.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.230 Responsibility for unlawful acts or omissions. Whenever an act or omission is declared to be unlawful under chapter 46.12, 46.16, or 46.44 RCW or this chapter, and if the operator of the vehicle is not the owner or lessee of the vehicle but is so operating or moving the vehicle with the express or implied permission of the owner or lessee, then the operator and the owner or lessee are both subject to this chapter, with the primary responsibility to be that of the owner or lessee.

If the person operating the vehicle at the time of the unlawful act or omission is not the owner or the lessee of the vehicle, that person is fully authorized to accept the citation or notice of infraction and execute the promise to appear on behalf of the owner or lessee. [1987 c 244 § 36.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.240 Relationship of department with other jurisdictions. Under the provisions of the IRP, the department may act in a quasi-agency relationship with other jurisdictions. The department may collect and forward applicable registration fees and taxes and applications to other jurisdictions on behalf of the applicant or another jurisdiction and may take other action that facilitates the administration of the plan. [1987 c 244 § 37.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.250 Authority of chapter. This chapter constitutes complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as expressly provided in this chapter. [1987 c 244 § 38.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.260 Alteration or forgery of cab card or letter of authority—Penalty. Any person who alters or forges or causes to be altered or forged any cab card, letter of authority, or other temporary authority issued by the department under this chapter or holds or uses a cab card, letter of authority, or other temporary authority, knowing the document to have been altered or forged, is guilty of a felony. [1987 c 244 § 39.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.270 Gross weight on vehicle. Every motor vehicle registered under this chapter shall have the maximum gross weight or maximum combined gross weight for which the vehicle is licensed in this state, painted or stenciled in letters or numbers of contrasting color not less than two inches in height in a conspicuous place on the right and left sides of the vehicle. It is unlawful for the owner or operator of any motor vehicle to display a maximum gross weight or maximum combined gross weight other than that shown on the current cab card of the vehicle. [1987 c 244 § 40.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.280 Effect of other registration. Nothing contained in this chapter relating to proportional registration of fleet vehicles requires any vehicle to be proportionally registered if it is otherwise registered for operation on the highways of this state. [1987 c 244 § 41.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.290 Refusal, cancellation of application, cab card—Procedures, penalties. If the director or the director's designee determines at any time that an applicant for proportional registration of a vehicle or a fleet of vehicles is not entitled to a cab card for a vehicle or fleet of vehicles, the director may refuse to issue the cab card(s) or to license the vehicle or fleet of vehicles and may for like reason, after notice, and in the exercise of discretion, cancel the cab card(s) and license plate(s) already issued. The notice shall be served personally or sent by certified mail (registered mail for Canadian addresses), return receipt requested. If sent by mail, service is deemed to have been accomplished on the date the notice was deposited in the United States mail, postage prepaid, addressed to the owner of the vehicle in question at the owner's address as it appears in the proportional registration records of the department. It is then unlawful for any person to remove, drive, or operate the vehicle(s) until a proper certificate(s) of registration or cab card(s) has been issued. Any person removing, driving, or operating the vehicle(s) after the refusal of the director or the director's designee to issue a cab card(s), certificate(s) of registration, license plate(s), or the revocation thereof is guilty of a gross misdemeanor. At the discretion of the director or the director's designee, a vehicle that has been moved, driven, or operated in violation of this section may be impounded by the Washington state patrol, county sheriff, or city police in a manner directed for such cases by the chief of the Washington state patrol until proper registration and license plate have been issued. [1987 c 244 § 42.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.300 Appeal of suspension, revocation, cancellation, refusal. The suspension, revocation, cancellation, or refusal by the director, or the director's designee, of a license plate(s), certificate(s) of registration, or cab card(s) provided for in this chapter is conclusive unless the person whose license plate(s), certificate(s) of registration, or cab card(s) is suspended, revoked, canceled, or refused appeals to the superior court of Thurston county, or at the person's option if a resident of Washington, to the superior court of his or her county of residence, for the purpose of having the suspension, revocation, cancellation, or refusal of the license plate(s), certificate(s) of registration, or cab card(s) set aside. Notice of appeal shall be filed within ten calendar days after service of the notice of suspension, revocation, cancellation, or refusal. Upon the filing of the appeal, the court shall issue an order to the director to show cause

why the license(s) should not be granted or reinstated. The director shall respond to the order within ten days after the date of service of the order upon the director. Service shall be in the manner prescribed for service of summons and complaint in other civil actions. Upon the hearing on the order to show cause, the court shall hear evidence concerning matters related to the suspension, revocation, cancellation, or refusal of the license plate(s), certificate(s) of registration, or cab card(s) and shall enter judgment either affirming or setting aside the suspension, revocation, cancellation, or refusal. [1987 c 244 § 43.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.310 Preservation of application records—**Contents**—**Audit by department**—**Additional assessments, penalties, refunds.** Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four years following the preceding year or period upon which the application is based. These records shall be complete and shall include, but not be limited to, the following: Copies of proportional registration applications and supplements for all jurisdictions in which the fleet is prorated; proof of proportional or full registration with other jurisdictions; vehicle license or trip permits; temporary authorization permits; documents establishing the latest purchase year and cost of each fleet vehicle in ready-for-the-road condition; weight certificates indicating the unladen, ready-for-the-road, weight of each vehicle in the fleet; periodic summaries of mileage by fleet and by individual vehicles; individual trip reports, driver's daily logs, or other source documents maintained for each individual trip that provide trip dates, points of origin and destinations, total miles traveled, miles traveled in each jurisdiction, routes traveled, vehicle equipment number, driver's full name, and all other information pertinent to each trip. Upon request of the department, the owner shall make the records available to the department at its designated office for audit as to accuracy of records, computations, and payments. The department shall assess and collect any unpaid fees and taxes found to be due the state and provide credits or refunds for overpayments of Washington fees and taxes as determined in accordance with formulas and other requirements prescribed in this chapter. If the owner fails to maintain complete records as required by this section, the department shall attempt to reconstruct or reestablish such records. However, if the department is unable to do so and the missing or incomplete records involve mileages accrued by vehicles while they are part of the fleet, the department may assess an amount not to exceed the difference between the Washington proportional fees and taxes paid and one hundred percent of the fees and taxes. Further, if the owner fails to maintain complete records as required by this section, or if the department determines that the owner should have registered more vehicles in this state under this chapter, the department may deny the owner

the right of any further benefits provided by this chapter until any final audit or assessment made under this chapter has been satisfied.

The department may audit the records of any owner and may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. No assessment for deficiency or claim for credit may be made for any period for which records are no longer required. Any fees, taxes, penalties, or interest found to be due and owing the state upon audit shall bear interest at twelve percent per annum from the date on which the deficiency is incurred until the date of payment. If the audit discloses a deliberate and willful intent to evade the requirements of payment under RCW 46.87.140, a penalty of ten percent shall also be assessed.

If the audit discloses that an overpayment to the state in excess of five dollars has been made, the department shall certify the overpayment to the state treasurer who shall issue a warrant for the overpayment to the vehicle operator. Overpayments shall bear interest at the rate of eight percent per annum from the date on which the overpayment is incurred until the date of payment. [1987 c 244 § 44.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.320 Departmental audits, investigations—**Subpoenas.** The department may initiate and conduct audits and investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this chapter or any rules adopted under it.

For the purpose of any audit, investigation, or proceeding under this chapter the director or any designee of the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, paper, correspondence, memoranda, agreements, or other documents or records that the department deems relevant or material to the inquiry.

In case of contumacy or refusal to obey a subpoena issued to any person, any court of competent jurisdiction upon application by the department, may issue an order requiring that person to appear before the director or the officer designated by the director to produce testimony or other evidence touching the matter under audit, investigation, or in question. Failure to obey an order of the court may be punishable by contempt. [1987 c 244 § 45.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.330 Assessments—**When due, penalties**—**Reassessment**—**Petition, notice, service**—**Injunctions, writs of mandate restricted.** An owner of proportionally registered vehicles against whom an assessment is made under RCW 46.87.140 or 46.87.310 may petition for reassessment thereof within thirty days after service of notice of the assessment upon the owner of the proportionally registered vehicles. If the petition is not

filed within the thirty-day period, the amount of the assessment becomes final at the expiration of that time period.

If a petition for reassessment is filed within the thirty-day period, the department shall reconsider the assessment and, if the petitioner has so requested in the petition, shall grant the petitioner an oral hearing and give the petitioner ten days notice of the time and place of the hearing. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the petitioner of notice of the decision.

Every assessment made under this chapter becomes due and payable at the time it is served on the owner. If the assessment is not paid in full when it becomes final, the department shall add a penalty of ten percent of the amount of the assessment.

Any notice of assessment, reassessment, oral hearing, or decision required by this section shall be served personally or by mail. If served by mail, service is deemed to have been accomplished on the date the notice was deposited in the United States mail, postage prepaid, addressed to the owner of the proportionally registered vehicles at the owner's address as it appears in the proportional registration records of the department.

No injunction or writ of mandate or other legal or equitable process may be issued in any suit, action, or proceeding in any court against any officer of the state to prevent or enjoin the collection under this chapter of any fee or tax or any amount of fee or tax required to be collected, except as specifically provided for in chapter 34.05 RCW. [1987 c 244 § 46.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.340 Assessments—Lien for nonpayment. If an owner of proportionally registered vehicles liable for the remittance of fees and taxes imposed by this chapter for which an assessment has become final fails to pay the fees and taxes, the amount thereof, including any interest, penalty, or addition to the fees and taxes together with any additional costs that may accrue, constitutes a lien in favor of the state upon all franchises, property, and rights to property, whether the property is employed by the person for personal or business use or is in the hands of a trustee, receiver, or assignee for the benefit of creditors, from the date the fees and taxes were due and payable until the amount of the lien is paid or the property is sold to pay the lien. The lien has priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that the lien is not valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached before the time the department has filed and recorded notice of the lien as provided in this chapter.

In order to avail itself of the lien created by this section, the department shall file with any county auditor a statement of claim and lien specifying the amount of delinquent fees and taxes, penalties, and interest claimed by the department. From the time of filing for record,

the amount required to be paid constitutes a lien upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by the person in the county. Any lien as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state is of no effect, however, until the lien or a copy of it has been filed with the county auditor in the county where the property is located. When a lien is filed in compliance with this section and with the secretary of state, the filing has the same effect as if the lien had been duly filed for record in the office of each county auditor of this state. [1987 c 244 § 47.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.350 Delinquent obligations—Notice—Restriction on credits or property—Default judgments. If an owner of proportionally registered vehicles for which an assessment has become final is delinquent in the payment of an obligation imposed under this chapter, the department may give notice of the amount of the delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to the vehicle owner or owing any debts to the owner, at the time of the receipt by them of the notice. Thereafter, a person so notified shall neither transfer nor make other disposition of those credits, personal property, or debts until the department consents to a transfer or other disposition. A person so notified shall, within twenty days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be, and shall forthwith deliver such credits, personal property, or debts to the department or its duly authorized representative to be applied to the indebtedness involved.

If a person fails to answer the notice within the time prescribed by this section, it is lawful for the court upon application of the department and after the time to answer the notice has expired, to render judgment by default against the person for the full amount claimed by the department in the notice to withhold and deliver, together with costs. [1987 c 244 § 48.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.360 Delinquent obligations—Collection by department—Seizure of property, notice, sale. Whenever the owner of proportionally registered vehicles is delinquent in the payment of an obligation imposed under this chapter, and the delinquency continues after notice and demand for payment by the department, the department may proceed to collect the amount due from the owner in the following manner: The department shall seize any property subject to the lien of the fees, taxes, penalties, and interest and sell it at public auction to pay the obligation and any and all costs that may have been incurred because of the seizure and sale. Notice of the intended sale and its time and place shall be given to the delinquent owner and to all persons appearing of record

to have an interest in the property. The notice shall be given in writing at least ten days before the date set for the sale by registered or certified mail addressed to the owner as appearing in the proportional registration records of the department and, in the case of any person appearing of record to have an interest in such property, addressed to that person at their last known residence or place of business. In addition, the notice shall be published at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper in the county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the property to be sold, a statement of the amount due under this chapter, the name of the owner of the proportionally registered vehicles, and the further statement that unless the amount due is paid on or before the time fixed in the notice the property will be sold in accordance with law.

The department shall then proceed to sell the property in accordance with law and the notice, and shall deliver to the purchaser a bill of sale or deed that vests title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state under this chapter from the delinquent owner, the excess shall be returned to the delinquent owner and his receipt obtained for it. The department may withhold payment of the excess to the delinquent owner if a person having an interest in or lien upon the property has filed with the department their notice of the lien or interest before the sale, pending determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the delinquent owner is not available, the department shall deposit the excess with the state treasurer as trustee for the delinquent owner. [1987 c 244 § 49.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.370 Warrant for final assessments—Lien on property. Whenever any assessment has become final in accordance with this chapter, the department may file with the clerk of any county within this state a warrant in the amount of fees, taxes, penalties, interest, and a filing fee of five dollars. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant the name of the delinquent owner of proportionally registered vehicles mentioned in the warrant, the amount of the fees, taxes, penalties, interest, and filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed constitutes a lien upon the title to, and interest in, all real and personal property of the named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. A warrant so docketed is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state

in the manner provided by law in the case of civil judgment wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. [1987 c 244 § 50.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.380 Delinquent obligations—Collection by attorney general. Whenever an owner of proportionally registered vehicles is delinquent in the payment of an obligation under this chapter the department may transmit notices of the delinquency to the attorney general who shall at once proceed to collect by appropriate legal action the amount due the state from the delinquent owner.

In a suit brought to enforce the rights of the state under this chapter, a certificate by the department showing the delinquency is prima facie evidence of the amount of the obligation, of the delinquency thereof, and of compliance by the department with all provisions of this chapter relating to the obligation. [1987 c 244 § 51.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.390 Remedies cumulative. The remedies of the state in this chapter are cumulative, and no action taken by the department may be construed to be an election on the part of the state or any of its officers to pursue any remedy under this chapter to the exclusion of any other remedy provided for in this chapter. [1987 c 244 § 52.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.400 Civil immunity. (1) The director, the state of Washington, and its political subdivisions are immune from civil liability arising from the issuance of a vehicle license to a nonroadworthy vehicle.

(2) No suit or action may be commenced or prosecuted against the director or the state of Washington by reason of any act done or omitted to be done in the administration of the duties and responsibilities imposed upon the director under this chapter. [1987 c 244 § 53.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.900 Severability—1985 c 380. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 380 § 26.]

46.87.901 Effective date—1986 c 18; 1985 c 380. Chapter 380, Laws of 1985 and this 1986 act shall take effect on January 1st 1987. The new fees required by RCW 46.16.070, 46.16.080, 46.16.090, and 46.16.085 shall be assessed beginning with the renewal of vehicle registrations with a December 1986 expiration date or later and all initial registrations that become effective on or after January 1, 1987. The director of the department of licensing may immediately take such steps as are necessary to insure that this act is implemented on its effective date. [1986 c 18 § 27; 1985 c 380 § 25.]

46.87.910 Short title. This chapter may be known and cited as "Proportional Registration." [1987 c 244 § 54.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

Chapter 46.88

**OUT-OF-STATE COMMERCIAL VEHICLES—
INTRASTATE PERMITS**

Sections

46.88.010 Commercial vehicles registered in another state—
Permits for intrastate operations.

46.88.010 Commercial vehicles registered in another state—Permits for intrastate operations. The owner of any commercial vehicle or vehicles lawfully registered in another state and who wishes to use such vehicle or vehicles in this state in intrastate operations for periods less than a year may obtain permits for such operations upon application to the department. Such permits may be issued for thirty, sixty, or ninety day periods. The cost of each such permit shall be one-twelfth of the fees provided for in RCW 46.16.070 or 46.16.085, as appropriate, and 82.44.020 for each thirty days' operations provided for in the permit. [1986 c 18 § 25; 1979 c 158 § 202; 1969 ex.s. c 281 § 32.]

Effective date—1986 c 18: See RCW 46.87.901.

Effective date—1969 ex.s. c 281: "This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and except for sections 32 and 54 of this 1969 amendatory act shall take effect immediately. Sections 32 and 54 of this 1969 amendatory act shall take effect January 1, 1970." [1969 ex.s. c 281 § 63.]

Reviser's note: Section 32 is codified as RCW 46.88.010, section 54 as RCW 46.16.070.

Chapter 46.90

WASHINGTON MODEL TRAFFIC ORDINANCE

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46.90.005 Purpose of this chapter. The purpose of this chapter is to encourage highway safety and uniform traffic laws by providing a comprehensive compilation of sound, uniform traffic laws to serve as a guide which local authorities may adopt by reference or any part thereof, including all future amendments or additions thereto. Any local authority which adopts this chapter by reference may at any time exclude any section or sections from this chapter which it does not desire to include in its local traffic ordinance. This chapter is not intended to deny any local authority its legislative power, but rather to enhance safe and efficient movement of traffic throughout the state by having current, uniform traffic laws available. [1975 1st ex.s. c 54 § 1.]

46.90.010 Amendments to this chapter automatically included. The addition of any new section to, or amendment or repeal of any section in, this chapter by the legislature shall be deemed to amend any city, town, or county, ordinance which has adopted by reference this chapter or any part thereof, and it shall not be necessary for the legislative authority of any city, town, or county to take any action with respect to such addition, amendment, or repeal notwithstanding the provisions of RCW 35.21.180, 35A.12.140, 35A.13.180, and 36.32.120(7). [1975 1st ex.s. c 54 § 2.]

46.90.100 Chapter 46.04 RCW (Definitions) adopted by reference. All sections of chapter 46.04 RCW as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full. [1975 1st ex.s. c 54 § 3.]

46.90.103 Abandoned vehicle. "Abandoned vehicle" means any vehicle or automobile hulk left within the right of way of any highway or on the property of another without the consent of the owner of such property for a period of twenty-four hours, or longer: *Provided*, That a vehicle or hulk shall not be considered abandoned if it is lawfully parked for a period not exceeding seventy-two hours: *Provided further*, That a vehicle or hulk

shall not be considered abandoned if its owner or operator is unable to remove it from the place where it is located and so notifies law enforcement officials and requests assistance. [1975 1st ex.s. c 54 § 4.]

46.90.106 Automobile hulk. "Automobile hulk" means any portion or portions of a motor vehicle which is inoperative and cannot be made mechanically operative without additional vital parts and a substantial amount of labor. [1975 1st ex.s. c 54 § 5.]

46.90.109 Bus. "Bus" means every motor vehicle designed for carrying more than ten passengers and used for transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. [1975 1st ex.s. c 54 § 6.]

46.90.112 Bus stop. "Bus stop" means a fixed portion of the highway parallel and adjacent to the curb to be reserved exclusively for buses for layover in operating schedules or while waiting for, loading, or unloading passengers: *Provided*, That such bus provides regularly scheduled service within the jurisdiction of the local authority. [1975 1st ex.s. c 54 § 7.]

46.90.115 City. "City" means every incorporated city and town. [1975 1st ex.s. c 54 § 8.]

46.90.118 Demolish. "Demolish" means to destroy completely by use of a hydraulic baler and shears, or a shredder. [1975 1st ex.s. c 54 § 9.]

46.90.121 Department. "Department" means the department of licensing unless otherwise specified in this chapter. [1979 c 158 § 203; 1975 1st ex.s. c 54 § 10.]

46.90.124 Garage keeper. "Garage keeper" means a person, firm, partnership, association, or corporation whose business it is to store vehicles for compensation. [1975 1st ex.s. c 54 § 11.]

46.90.127 Holidays. "Holidays" include the first day of January, commonly called New Year's Day; the third Monday of February, being celebrated as the anniversary of the birth of George Washington; the thirtieth day of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the fourth Thursday in November, to be known as Thanksgiving Day; the twenty-fifth day of December, commonly called Christmas Day; and any other day specified by ordinance by the local authority to be a holiday.

Whenever any holiday falls upon a Sunday, the following Monday shall be a holiday. [1975 1st ex.s. c 54 § 12.]

46.90.130 Hulk hauler. "Hulk hauler" means any person who deals in vehicles for the sole purpose of transporting and/or selling them to a licensed motor vehicle wrecker or scrap processor in substantially the

same form in which they are obtained and who may not sell second-hand motor vehicle parts to anyone other than a licensed scrap processor or licensed wrecker. [1975 1st ex.s. c 54 § 13.]

46.90.133 Loading zone. "Loading zone" means a space reserved for the exclusive use of vehicles during the loading or unloading of property or passengers. [1975 1st ex.s. c 54 § 14.]

46.90.136 Official time standard. "Official time standard" means, whenever certain hours are named, standard time or daylight saving time as may be in current use within the jurisdiction of the local authority. [1975 1st ex.s. c 54 § 15.]

46.90.139 Ordinance. "Ordinance" means a city or town ordinance or a county ordinance or resolution. [1975 1st ex.s. c 54 § 16.]

46.90.142 Parking meter. "Parking meter" means any mechanical device or meter placed or erected adjacent to a parking meter space, for the purpose of regulating or controlling the period of time of occupancy of such parking meter space by any vehicle. Each parking meter installed shall indicate by proper legend the legal parking time and when operated shall at all times indicate the balance of legal parking time, and at the expiration of such period shall indicate illegal or overtime parking. Each meter shall bear a legend indicating the days and hours when the requirement to deposit coins therein shall apply, the value of the coins to be deposited, and the limited period of time for which parking is lawfully permitted in the parking meter space in which such meter is located. [1975 1st ex.s. c 54 § 17.]

46.90.145 Parking meter space. "Parking meter space" means any space within a parking meter zone, adjacent to a parking meter and which is duly designated for the parking of a single vehicle by appropriate markings on the pavement and/or the curb. [1975 1st ex.s. c 54 § 18.]

46.90.148 Parking meter zone. "Parking meter zone" means any highway or part thereof or any off-street parking lot on which parking meters are installed and in operation. [1975 1st ex.s. c 54 § 19.]

46.90.151 Passenger loading zone. "Passenger loading zone" means a place reserved for the exclusive use of vehicles while receiving or discharging passengers. [1975 1st ex.s. c 54 § 20.]

46.90.154 Planting strip. "Planting strip" means that portion of a highway lying between the constructed curb, or edge of the roadway, and the property line exclusive of the sidewalk area. [1975 1st ex.s. c 54 § 21.]

46.90.157 Police or police officer. "Police or police officer" includes the police officers of a city, a town marshal, or the sheriff and his deputies of a county whichever is applicable, but when the term sheriff is

used in this chapter, it shall only mean the sheriff. [1975 1st ex.s. c 54 § 22.]

46.90.160 Police chief or chief of police. "Police chief or chief of police" includes the police chief or chief police officer of a city, a town marshal, or the sheriff of a county, whichever is applicable, but when the term sheriff is used in this chapter, it shall only mean the sheriff. [1975 1st ex.s. c 54 § 23.]

46.90.163 Police department. "Police department" includes the police department of a city or town or the sheriff's office of a county whichever is applicable, but when the term sheriff is used in this chapter, it shall only mean the sheriff. [1975 1st ex.s. c 54 § 24.]

46.90.166 Registered disposer. "Registered disposer" means any tow truck operator or garage keeper properly registered pursuant to *RCW 46.52.108, who has and who displays at all times in a place conspicuous to the public a valid certificate of registration evidencing his authorization from the department to dispose of abandoned vehicles. [1975 1st ex.s. c 54 § 25.]

*Reviser's note: RCW 46.52.108 was repealed by 1985 c 377 § 29, effective January 1, 1986.

46.90.169 School bus zone. "School bus zone" means a designated portion of the highway along the curb reserved for loading and unloading school buses during designated hours. [1975 1st ex.s. c 54 § 26.]

46.90.172 Service parking. "Service parking" means the use of a parking meter space while rendering service in cleaning, painting, adjusting, or making minor repairs or replacements in or to buildings or building equipment or to public utilities. [1975 1st ex.s. c 54 § 27.]

46.90.175 Street. "Street" means a "city street". [1975 1st ex.s. c 54 § 28.]

46.90.178 Taxicab. "Taxicab" means a motor vehicle for hire used for the transportation of persons for compensation, and not operated exclusively over a fixed route or between fixed termini. [1975 1st ex.s. c 54 § 29.]

46.90.181 Taxicab stand. "Taxicab stand" means a fixed portion of a highway set aside for taxicabs to stand or wait for passengers. [1975 1st ex.s. c 54 § 30.]

46.90.184 Tow truck operator. "Tow truck operator" means a person, firm, partnership, association, or corporation which, in its course of business, provides towing services for vehicles and automobile hulks. [1975 1st ex.s. c 54 § 31.]

46.90.187 Traffic division. "Traffic division" means the traffic division of the police department of the local authority, or in the event a traffic division is not established, then said term whenever used in this chapter shall be deemed to refer to the police department of the local authority. [1975 1st ex.s. c 54 § 32.]

46.90.190 U turn. "U turn" means turning a vehicle so as to proceed in the opposite direction on the same roadway. [1975 1st ex.s. c 54 § 33.]

46.90.200 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 16.24.065, 16.24.070, 46.08.030, 46.10.010, 46.10.090, 46.10.100, 46.10.110, 46.10.120, 46.10.130, and 46.10.190. [1983 c 30 § 1; 1980 c 65 § 1; 1975 1st ex.s. c 54 § 34.]

46.90.205 Public employees to obey traffic regulations. The provisions of this chapter shall apply to the drivers of all vehicles owned or operated by the United States, the state, or any county, city, town, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter. [1975 1st ex.s. c 54 § 35.]

46.90.210 Police administration. There is established in the police department of the local authority a traffic division to be under the control of a police officer appointed by, and directly responsible to, the chief of police. [1975 1st ex.s. c 54 § 36.]

46.90.215 Duty of traffic division. It shall be the duty of the traffic division with such aid as may be rendered by other members of the police department to enforce the traffic regulations of the local authority, to make arrests for traffic violations, to investigate accidents and to cooperate with the traffic engineer and other officers of the local authority in the administration of the traffic laws and in developing ways and means to improve traffic conditions, and to carry out those duties specially imposed upon the said division by this chapter and the traffic ordinances of the local authority. [1975 1st ex.s. c 54 § 37.]

46.90.220 Authority of police and fire department officials. (1) Officers of the police department or such officers as are assigned by the chief of police are authorized to direct all traffic by voice, hand, or signal in conformance with law: *Provided*, That in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the provisions of law.

(2) Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity. [1975 1st ex.s. c 54 § 38.]

46.90.225 Records of traffic violations. (1) The police department or the traffic division thereof shall keep a record of all violations of the traffic ordinances of the local authority or of the state motor vehicle laws of which any person has been charged, with the exception of illegal parking or standing violations, together with a record of the final disposition of all such alleged

offenses. Such records shall be so maintained as to show all types of violations and the total of each. Such records shall accumulate during at least a five year period, and from that time on the records shall be maintained complete for at least the most recent five year period.

(2) All forms for records of violations and notices of violations shall be serially numbered. For each month and year a written record of all such forms shall be kept.

(3) Records and reports concerning a person shall be available upon request only to that particular person requesting such record or report concerning himself, or the legal guardian thereof, the parent of a minor, or any authorized representative of such interested party, or the attorney or insurer thereof. [1975 1st ex.s. c 54 § 39.]

46.90.230 Traffic division to investigate accidents. It shall be the duty of the traffic division, assisted by other members of the police department, to investigate traffic accidents, to arrest, and to assist in the prosecution of those persons charged with violations of law causing or contributing to such accidents. [1975 1st ex.s. c 54 § 40.]

46.90.235 Traffic accident studies. Whenever the accidents at any particular location become numerous, the traffic division shall cooperate with the traffic engineer in conducting studies of such accidents and in determining remedial measures. [1975 1st ex.s. c 54 § 41.]

46.90.240 Traffic accident reports. The traffic division shall maintain a suitable system of filing traffic accident reports. Accident reports or cards referring to them shall be filed alphabetically by location. Such reports shall be available for the use and the information of the traffic engineer. [1975 1st ex.s. c 54 § 42.]

46.90.245 Traffic division to submit annual traffic safety report. The traffic division shall annually prepare a traffic report which shall be filed with the appointing authority of the local authority. Such report shall contain information on traffic matters in the local authority as follows:

(1) The number of traffic accidents, the number of persons killed, the number of persons injured, and other pertinent traffic accident data;

(2) The number of traffic accidents investigated and other pertinent data on the safety activities of the police;

(3) The plans and recommendations of the division for future traffic safety activities. [1975 1st ex.s. c 54 § 43.]

46.90.250 Police department to administer bicycle licenses. The police department or some other office or department designated by the local authority shall administer the bicycle license regulations required by this chapter. [1975 1st ex.s. c 54 § 44.]

46.90.255 Police department to regulate parking meters. The police department shall be responsible for the regulation, control, operation, and use of parking meters installed in all parking meter zones. [1975 1st ex.s. c 54 § 45.]

46.90.260 Traffic engineer. (1) The office of traffic engineer is established: *Provided*, That if there is no traffic engineer, then the engineer of the local authority shall serve as traffic engineer in addition to his other functions, and shall exercise the powers and duties with respect to traffic as provided in this chapter: *Provided further*, That if there is no engineer in the local authority, then the appointing authority shall designate a person to exercise such powers and duties.

(2) It shall be the general duty of the traffic engineer to determine the installation and maintenance of traffic control devices, to conduct engineering analysis of traffic accidents and to devise remedial measures, to conduct engineering investigations of traffic conditions, to plan the operation of traffic on the highways of the local authority, to cooperate with other officials in the development of ways and means to improve traffic conditions, and to carry out the additional powers and duties imposed by any ordinances of the local authority. [1975 1st ex.s. c 54 § 46.]

46.90.265 Traffic engineer—Authority. The traffic engineer is authorized:

(1) To place and maintain official traffic control devices when and as required under the traffic ordinances or resolutions of the local authority to make effective the provisions of said ordinances or resolutions, and may place and maintain such additional official traffic control devices as he may deem necessary to regulate, warn, or guide traffic under the traffic ordinances or resolutions of the local authority;

(2) To place and maintain official traffic control devices as he may deem necessary to regulate, warn, or guide traffic for construction, detours, emergencies, and special conditions;

(3) To designate and maintain, by appropriate devices, marks, or lines upon the surface of the roadway, crosswalks at intersections where in his opinion there is particular danger to pedestrians crossing the roadway, and in such other places as he may deem necessary;

(4) To establish safety zones of such kind and character and at such places as he may deem necessary for the protection of pedestrians;

(5) To mark traffic lanes upon the roadway of any highway where a regular alignment of traffic is necessary;

(6) To regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner;

(7) To place official traffic control devices within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, in accordance with the provisions of this chapter, and such course to be traveled as so indicated may conform to or be other than as prescribed by law;

(8) To determine those intersections at which drivers of vehicles shall not make a right, left, or U turn, and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which

event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted;

(9) To erect and maintain stop signs, yield signs, or other official traffic control devices to designate arterial highways or to designate intersections or other roadway junctions at which vehicular traffic on one or more of the roadways shall yield or stop and yield before entering the intersection or junction, except as provided in RCW 46.61.195;

(10) To issue special permits to authorize the backing of a vehicle to the curb for the purpose of loading or unloading property subject to the terms and conditions of such permit. Such permits may be issued either to the owner or lessee of real property alongside the curb or to the owner of the vehicle and shall grant to such person the privilege as therein stated and authorized by this section;

(11) To erect signs indicating no parking upon both sides of a highway when the width of the improved roadway does not exceed twenty feet, or upon one side of a highway as indicated by such signs when the width of the improved roadway is between twenty and twenty-eight feet;

(12) To determine when standing or parking may be permitted upon the left-hand side of any roadway when the highway includes two or more separate roadways and traffic is restricted to one direction upon any such roadway and to erect signs giving notice thereof;

(13) To determine and designate by proper signs places not exceeding one hundred feet in length in which the stopping, standing, or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic;

(14) To determine the location of loading zones, passenger loading zones, and tow-away zones and shall place and maintain appropriate signs or curb markings supplemented with the appropriate words stenciled on the curb indicating the same and stating the hours during which the provisions of this chapter are applicable;

(15) To establish bus stops, bus stands, taxicab stands, and stands for other for hire vehicles on such highways in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public, and every such bus stop, bus stand, taxicab stand, or other stand shall be designated by appropriate signs or by curb markings supplemented with the appropriate words stenciled on the curb;

(16) To erect and maintain official traffic control devices on any highway or part thereof to impose gross weight limits on the basis of an engineering and traffic investigation;

(17) To erect and maintain official traffic control devices on any highway or part thereof to prohibit the operation of trucks exceeding ten thousand pounds gross weight on the basis of an engineering and traffic investigation: *Provided*, That such devices shall not prohibit necessary local operation on such highways for the purpose of making a pickup or delivery;

(18) To erect and maintain official traffic control devices on any highway or part thereof to impose vehicle

size restrictions on the basis of an engineering and traffic investigation;

(19) To determine and designate those heavily traveled highways upon which shall be prohibited any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic on the basis of an engineering and traffic investigation and shall erect appropriate official traffic control devices giving notice thereof;

(20) To install parking meters in the established parking meter zones upon the curb adjacent to each designated parking space;

(21) To designate the parking space adjacent to each parking meter for which such meter is to be used by appropriate markings upon the curb and/or the pavement of the highway;

(22) To post appropriate signs making it unlawful for pedestrians to cross highways in certain crosswalks when such crossing would endanger either pedestrian or vehicular traffic using the highway;

(23) To test new or proposed traffic control devices under actual conditions of traffic. [1975 1st ex.s. c 54 § 47.]

46.90.270 Local authority—Authority. After an engineering and traffic investigation by the traffic engineer, the local authority may by resolution:

(1) Decrease maximum speed limits pursuant to RCW 46.61.415;

(2) Increase maximum speed limits pursuant to RCW 46.61.415;

(3) Determine and declare the maximum speed limits on arterial highways pursuant to RCW 46.61.415;

(4) Determine and declare upon what highways angle parking shall be permitted pursuant to RCW 46.61.575(3);

(5) Prohibit, regulate, or limit, stopping, standing, or parking of vehicles on any highway at all times or during such times as shall be indicated by official traffic control devices;

(6) Determine and declare parking meter zones upon those highways or parts thereof where the installation of parking meters will be necessary to regulate parking;

(7) Close any highway or part thereof temporarily to any or all traffic;

(8) Determine and declare one-way highways pursuant to RCW 46.61.135;

(9) Determine and declare arterial highways pursuant to RCW 46.61.195 and 46.61.435. [1975 1st ex.s. c 54 § 48.]

46.90.275 Traffic safety commission—Powers and duties. (1) There is established a traffic safety commission to serve without compensation, consisting of the traffic engineer, the chief of police, or, in his discretion as his representative, the chief of the traffic division or other cognizant member of the police department, one representative each from the engineer's office and the attorney's office, and such number of other officers of

the local authority and representatives of unofficial bodies as may be determined and appointed by the appointing authority of the local authority. The chairman of the commission shall be appointed by such appointing authority and may be removed by such authority.

(2) It shall be the duty of the traffic safety commission, and to this end it shall have authority within the limits of the funds at its disposal, to coordinate traffic activities, to supervise the preparation and publication of traffic reports, to receive complaints having to do with traffic matters, and to recommend to the legislative body of the local authority and to the traffic engineer, the chief of the traffic division, and other officials, ways and means for improving traffic conditions and the administration and enforcement of traffic regulations. [1975 1st ex.s. c 54 § 49.]

46.90.300 Certain RCW sections adopted by reference. (Effective until April 1, 1992.) The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.260, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, 46.12.380, 46.16.010, 46.16.011, 46.16.025, 46.16.028, 46.16.030, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.381, 46.16.390, 46.16.500, 46.16.505, 46.16.710, 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, 46.20.336, 46.20.342, 46.20.343, 46.20.344, 46.20.391, 46.20.394, 46.20.410, 46.20.416, 46.20.420, 46.20.430, 46.20.435, 46.20.440, 46.20.500, 46.20.510, 46.20.550, 46.20.599, 46.20.750, 46.29.605, 46.29.625, 46.32.060, 46.32.070, 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.425, 46.37.430, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.100, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, 46.48.170, 46.52.010, 46.52.020, 46.52.030, 46.52.040, 46.52.070, 46.52.080, 46.52.088, 46.52.090, 46.52.100, 46.65.090, 46.79.120, and 46.80-.010. [1988 c 24 § 1; 1987 c 30 § 1; 1986 c 24 § 1; 1985 c 19 § 1. Prior: 1984 c 154 § 6; 1984 c 108 § 1; 1983 c

30 § 2; 1982 c 25 § 1; 1980 c 65 § 2; 1977 ex.s. c 60 § 1; 1975 1st ex.s. c 54 § 50.]

Intent—Application—Severability—1984 c 154: See notes following RCW 46.16.381.

46.90.300 Certain RCW sections adopted by reference. (Effective April 1, 1992.) The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.260, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, 46.12.380, 46.16.010, 46.16.011, 46.16.025, 46.16.028, 46.16.030, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.381, 46.16.390, 46.16.500, 46.16.505, 46.16.710, 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, 46.20.336, 46.20.342, 46.20.343, 46.20.344, 46.20.391, 46.20.394, 46.20.410, 46.20.416, 46.20.420, 46.20.430, 46.20.435, 46.20.500, 46.20.510, 46.20.550, 46.20.599, 46.20.750, 46.29.605, 46.29.625, 46.32.060, 46.32.070, 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.425, 46.37.430, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.100, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, 46.48.170, 46.52.010, 46.52.020, 46.52.030, 46.52.040, 46.52.070, 46.52.080, 46.52.088, 46.52.090, 46.52.100, 46.65.090, 46.79.120, and 46.80.010. [1989 c 178 § 28; 1988 c 24 § 1; 1987 c 30 § 1; 1986 c 24 § 1; 1985 c 19 § 1. Prior: 1984 c 154 § 6; 1984 c 108 § 1; 1983 c 30 § 2; 1982 c 25 § 1; 1980 c 65 § 2; 1977 ex.s. c 60 § 1; 1975 1st ex.s. c 54 § 50.]

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Intent—Application—Severability—1984 c 154: See notes following RCW 46.16.381.

46.90.335 Owner of record presumed liable for costs when vehicle abandoned—Exception. (1) The abandonment of any vehicle or automobile hulk shall constitute a prima facie presumption that the last owner of

record is responsible for such abandonment and thus liable for any costs incurred in removing, storing, and disposing of any abandoned vehicle.

(2) A registered owner transferring a vehicle shall be relieved from personal liability under this section if within five days of the transfer he transmits to the department a seller's report of sale on a form prescribed by the director. [1983 c 3 § 124; 1975 1st ex.s. c 54 § 52.]

46.90.340 Contract with registered disposer to dispose of vehicles and hulks—Compliance required. (1) The local authority may contract with any tow truck operator who is engaged in removing and storing of vehicles and who is registered as a registered disposer by the department for the purpose of disposing of certain automobile hulks, abandoned junk motor vehicles, and abandoned vehicles.

(2) Any registered disposer under contract to the local authority for the removing and storing of vehicles or hulks shall comply with the administrative regulations relative to the handling and disposing of vehicles or hulks as may be promulgated by the local authority or the director. [1975 1st ex.s. c 54 § 53.]

46.90.345 Stolen and abandoned vehicles—Reports of—Recovery, report required, penalty—Disposition. It shall be the duty of the chief of police to report immediately to the chief of the Washington state patrol all motor vehicles reported to them as stolen or recovered, upon forms to be provided by the chief of the Washington state patrol.

In the event that any motor vehicle reported as stolen has been recovered, failure of the person so reporting the same as stolen to report the recovery thereof to the chief of police to whom such motor vehicle was reported as stolen is a traffic infraction.

It shall be the duty of the chief of police to report to the chief of the Washington state patrol all vehicles or automobile hulks found abandoned on a highway or at any other place and the same shall, at the direction of a law enforcement officer, be placed in the custody of a registered disposer. [1979 ex.s. c 136 § 100; 1975 1st ex.s. c 54 § 54.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.90.375 Disposition of abandoned junk motor vehicles. (1) Notwithstanding any other provision of law, the chief of police on his own volition, or upon request from a private person having the right to possession of property upon which an abandoned junk motor vehicle has been left, shall inspect and may authorize the disposal of an abandoned junk motor vehicle. The chief of police shall record the make of such vehicle, the serial number if available, and shall also detail the damaged or missing equipment to substantiate a fair market value as scrap only. He shall prepare in duplicate for each such abandoned junk motor vehicle an authorization to dispose on a form provided by the director. He shall issue the original copy of such authorization to dispose to any licensed hulk hauler, motor vehicle wrecker, or scrap processor

for the purpose of acquiring an abandoned junk motor vehicle: *Provided*, That such acquisition is for the purpose of ultimate transfer to and demolition by a licensed scrap processor.

(2) Any moneys arising from the disposal of abandoned junk motor vehicles shall be deposited in the county general fund. [1975 1st ex.s. c 54 § 60.]

46.90.400 Provisions of chapter refer to vehicles upon highway—Exceptions. The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(1) Where a different place is specifically referred to in a given section;

(2) The provisions of RCW 46.52.010, 46.52.020, 46.52.030, 46.52.070, 46.52.080, 46.52.090, and 46.61.500 through 46.61.515 shall apply upon highways and elsewhere throughout the jurisdiction of the local authority. [1975 1st ex.s. c 54 § 62.]

46.90.403 Required obedience to traffic ordinance. It is unlawful for any person to do any act forbidden or fail to perform any act required by this chapter. [1975 1st ex.s. c 54 § 63.]

46.90.406 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.55.010, 46.55.020, 46.55.030, 46.55.040, 46.55.050, 46.55.060, 46.55.070, 46.55.080, 46.55.085, 46.55.090, 46.55.100, 46.55.110, 46.55.113, 46.55.120, 46.55.130, 46.55.140, 46.55.150, 46.55.160, 46.55.170, 46.55.230, 46.55.240, 46.61.015, 46.61.020, 46.61.021, 46.61.022, 46.61.025, 46.61.030, 46.61.035, 46.61.050, 46.61.055, 46.61.060, 46.61.065, 46.61.070, 46.61.072, 46.61.075, and 46.61.080. [1988 c 24 § 2; 1986 c 24 § 2; 1980 c 65 § 3; 1977 ex.s. c 60 § 2; 1975 1st ex.s. c 54 § 64.]

46.90.409 Traffic control devices required—Stopping, standing, and parking. No prohibition, regulation, or limitation relating to stopping, standing, or parking imposed under this chapter or any ordinance of the local authority for which traffic control devices are required shall be effective unless official traffic control devices are erected and in place at the time of any alleged offense. [1975 1st ex.s. c 54 § 65.]

46.90.412 Crossing new pavement and markings. No person shall ride or drive any animal, bicycle, or vehicle, across any newly made pavement or freshly applied markings on any highway when a sign, cone marker, or other warning device is in place warning persons not to drive across such pavement or marking. [1975 1st ex.s. c 54 § 66.]

46.90.415 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby

adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.085, 46.61.100, 46.61.105, 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, 46.61.135, 46.61.140, 46.61.145, 46.61.150, 46.61.155, 46.61.160, 46.61.180, 46.61.185, 46.61.190, 46.61.195, 46.61.200, 46.61.202, 46.61.205, 46.61.210, 46.61.215, 46.61.230, 46.61.235, 46.61.240, 46.61.261, 46.61.264, 46.61.266, and 46.61.269. [1977 ex.s. c 60 § 3; 1975 1st ex.s. c 54 § 67.]

46.90.418 Prohibited crossing. No pedestrian shall cross a roadway except an alley other than in a crosswalk in any business district. [1975 1st ex.s. c 54 § 68.]

46.90.421 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.245, 46.61.250, 46.61.255, 46.61.260, 46.61.290, and 46.61.295. [1975 1st ex.s. c 54 § 69.]

46.90.427 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.300, 46.61.305, 46.61.310, 46.61.315, 46.61.340, 46.61.345, 46.61.350, 46.61.355, 46.61.365, 46.61.370, 46.61.375, 46.61.385, 46.61.400, 46.61.415, 46.61.425, 46.61.427, 46.61.428, 46.61.435, 46.61.440, 46.61.445, 46.61.450, 46.61.455, 46.61.460, 46.61.465, 46.61.470, 46.61.475, 46.61.500, 46.61.502, 46.61.504, 46.61.506, 46.61.515, 46.61.519, 46.61.5191, 46.61.5195, 46.61.525, 46.61.530, 46.61.535, 46.61.540, 46.61.560, 46.61.570, and 46.61.575. [1988 c 24 § 3; 1985 c 19 § 2; 1984 c 108 § 2; 1982 c 25 § 2; 1980 c 65 § 4; 1977 ex.s. c 60 § 4; 1975 1st ex.s. c 54 § 71.]

46.90.430 Obedience to angle-parking signs or markings. Upon those highways which have been signed or marked for angle-parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings. [1975 1st ex.s. c 54 § 72.]

46.90.433 Parking not to obstruct traffic. (1) No person shall park a vehicle upon a highway in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic.

(2) No person shall stop, stand, or park a vehicle within an alley in such position as to block the driveway entrance to any abutting property. [1975 1st ex.s. c 54 § 73.]

46.90.436 Parking for certain purposes unlawful. (1) No person shall park any vehicle upon any highway for the principal purpose of:

- (a) Displaying advertising;
- (b) Displaying such vehicle for sale;

(c) Selling merchandise from such vehicle, except when authorized.

(2) No person shall park any vehicle upon any roadway for the principal purpose of washing, greasing, or repairing such vehicle except repairs necessitated by an emergency. [1975 1st ex.s. c 54 § 74.]

46.90.439 Standing in passenger loading zone. No person shall stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger loading zone during hours when the regulations applicable to the loading zone are effective, and then only for a period not to exceed three minutes. [1975 1st ex.s. c 54 § 75.]

46.90.442 Standing in loading zone. (1) No person shall stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious unloading and delivery or pickup and loading of property in any place marked as a loading zone during hours when the provisions applicable to such zone are in effect. In no case shall the stop for loading and unloading of property exceed thirty minutes.

(2) The driver of a vehicle may stop temporarily at a loading zone for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any vehicle which is waiting to enter or about to enter such zone to load or unload property. [1975 1st ex.s. c 54 § 76.]

46.90.445 Standing in a tow-away zone. No person shall stop, stand, or park a vehicle in a place marked as a tow-away zone during hours when the provisions applicable to such zone are in effect. [1975 1st ex.s. c 54 § 77.]

46.90.448 Violating permits for loading or unloading at an angle to the curb. It shall be unlawful for any permittee or other person to violate any of the special terms or conditions of any permit issued by the traffic engineer for the backing of a vehicle to the curb for the purpose of loading or unloading property. [1975 1st ex.s. c 54 § 78.]

46.90.451 Standing or parking on one-way roadways. In the event a highway includes two or more separate roadways, no person shall stand or park a vehicle upon the left-hand side of such one-way roadway unless signs are erected to permit such standing or parking. [1975 1st ex.s. c 54 § 79.]

46.90.454 Stopping, standing, and parking of buses and taxicabs regulated. (1) The operator of a bus shall not stand or park such vehicle upon any highway at any place other than a designated bus stop. This provision shall not prevent the operator of a bus from temporarily stopping in accordance with other stopping, standing, or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers or their baggage.

(2) The operator of a bus shall enter a bus stop or passenger loading zone on a highway in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not farther than eighteen inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(3) The operator of a taxicab shall not stand or park such vehicle upon any highway at any place other than in a designated taxicab stand. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping, standing, or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers. [1975 1st ex.s. c 54 § 80.]

46.90.457 Restricted use of bus stops and taxicab stands. No person shall stop, stand, or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately signed, except the driver of a passenger vehicle may temporarily stop there for the purpose of or while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus, or taxicab waiting to enter or about to enter such stop or stand. [1975 1st ex.s. c 54 § 81.]

46.90.460 Right of way for parking. The driver of any vehicle who first begins driving or maneuvering his vehicle into a vacant parking space shall have a prior right of way to park in such place, and it shall be unlawful for another driver to attempt to deprive him thereof by blocking his access or otherwise. For the purpose of establishing right of way in this section it shall be considered proper to back into any but a front-in angle parking space. [1975 1st ex.s. c 54 § 82.]

46.90.463 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.581, 46.61.582, 46.61.583, 46.61.590, 46.61.600, 46.61.605, 46.61.606, 46.61.608, 46.61.610, 46.61.611, 46.61.612, 46.61.614, 46.61.615, 46.61.620, 46.61.625, 46.61.630, 46.61.635, 46.61.640, 46.61.645, 46.61.655, 46.61.660, 46.61.665, 46.61.670, 46.61.675, 46.61.680, 46.61.685, 46.61.687, 46.61.688, and 46.61.690. [1987 c 30 § 2; 1985 c 19 § 3. Prior: 1984 c 154 § 7; 1984 c 108 § 3; 1980 c 65 § 5; 1977 ex.s. c 60 § 5; 1975 1st ex.s. c 54 § 83.]

Intent—Application—Severability—1984 c 154: See notes following RCW 46.16.381.

46.90.466 Funeral processions. (1) A funeral procession shall proceed to the place of interment by the most direct route which is both legal and practicable.

(2) A funeral procession shall be accompanied by adequate escort vehicles for traffic control purposes as determined by the chief of police.

(3) All motor vehicles in a funeral procession shall be identified by having their headlights turned on or by such other method as may be determined and designated by the chief of police.

(4) All motor vehicles in a funeral procession shall be operated as near to the right-hand edge of the roadway as is practicable and shall follow the vehicle ahead as close as is practicable and safe. [1975 1st ex.s. c 54 § 84.]

46.90.469 When permits required for parades and processions. With the exception of funeral processions and parades of the armed forces of the United States, the military forces of this state, and the forces of the police and fire departments, no processions or parades shall be conducted on the highways within the jurisdiction of the local authority except in accordance with a permit issued by the chief of police and such other regulations as are set forth in this chapter which may be applicable. [1975 1st ex.s. c 54 § 85.]

46.90.472 Interfering with processions. (1) No person shall unreasonably interfere with a procession.

(2) No person shall operate a vehicle that is not part of a procession between the vehicles of the procession. This provision shall not apply at intersections where traffic is controlled by traffic control devices unless a police officer is present at such intersections to direct traffic so as to preserve the continuity of the procession. [1975 1st ex.s. c 54 § 86.]

46.90.475 Boarding or alighting from vehicles. No person shall board or alight from any vehicle while such vehicle is in motion. [1975 1st ex.s. c 54 § 87.]

46.90.478 Unlawful riding. No person shall ride upon any portion of a vehicle not designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty, or to persons riding within truck bodies in space intended for merchandise. [1975 1st ex.s. c 54 § 88.]

46.90.481 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.700, 46.61.710, 46.61.720, 46.61.730, 46.61.750, 46.61.755, 46.61.760, 46.61.765, 46.61.770, 46.61.775, and 46.61.780. [1984 c 108 § 4; 1980 c 65 § 6; 1975 1st ex.s. c 54 § 89.]

46.90.500 Bicycle license required. No person who resides within the jurisdiction of the local authority shall ride or propel a bicycle on any highway or upon any public path set aside for the exclusive use of bicycles unless such bicycle has been licensed and a license plate or decal is attached thereto as provided in RCW 46.90-.500 through 46.90.540. [1975 1st ex.s. c 54 § 90.]

46.90.505 Bicycle license application. Application for a bicycle license and license plate or decal shall be made

upon a form provided by and to the chief of police. An annual license fee as prescribed by the local authority shall be paid to the local authority before each license or renewal thereof is granted. Duplicate license plates or decals may be supplied for the same cost as the original plate or decal in the event of loss of the plate or decal. [1975 1st ex.s. c 54 § 91.]

46.90.510 Issuance of bicycle license. (1) The chief of police upon receiving proper application therefor is authorized to issue a bicycle license which shall be effective for one calendar year.

(2) The chief of police shall not issue a license for any bicycle when he knows or has reasonable grounds to believe that the applicant is not the owner of, or entitled to the possession of, such bicycle.

(3) The chief of police shall keep a record of the number of each license, the date issued, the name and address of the person to whom issued, and a record of all bicycle license fees collected by him. [1975 1st ex.s. c 54 § 92.]

46.90.515 Attachment of bicycle license plate or decal. (1) The chief of police, upon issuing a bicycle license, shall also issue a license plate or decal bearing the license number assigned to the bicycle, and the name of the local authority.

(2) Such license plate or decal shall be firmly attached to the rear mudguard or frame of the bicycle for which issued in such position as to be plainly visible from the rear.

(3) No person shall remove a license plate or decal from a bicycle during the period for which issued except upon a transfer of ownership or in the event the bicycle is dismantled and no longer operated upon any highway within the jurisdiction of the local authority. [1975 1st ex.s. c 54 § 93.]

46.90.520 Inspection of bicycles. The chief of police, or an officer assigned such responsibility, may inspect each bicycle before licensing the same and may refuse a license for any bicycle which he determines is in unsafe mechanical condition. [1975 1st ex.s. c 54 § 94.]

46.90.525 Renewal of bicycle license. Upon the expiration of any bicycle license, the same may be renewed upon application and payment of the same fee as upon an original application. [1975 1st ex.s. c 54 § 95.]

46.90.530 Transfer of ownership. Upon the sale or other transfer of a licensed bicycle, the licensee shall remove the license plate or decal and shall either surrender the same to the chief of police or may upon proper application, but without payment of additional fee, have such plate or decal assigned to another bicycle owned by the applicant. [1975 1st ex.s. c 54 § 96.]

46.90.535 Rental agencies. A rental agency shall not rent or offer any bicycle for rent unless the bicycle is licensed and a license plate or decal is attached thereto as provided herein and such bicycle is equipped with the

equipment required by RCW 46.61.780. [1975 1st ex.s. c 54 § 97.]

46.90.540 Bicycle dealers. Every person engaged in the business of buying or selling new or second-hand bicycles shall make a report to the chief of police of every bicycle purchased or sold by such dealer, giving the name and address of the person from whom purchased or to whom sold, a description of such bicycle by name or make, the frame number thereof, and number of license plate or decal, if any, found thereon. [1975 1st ex.s. c 54 § 98.]

46.90.545 Bicycles—Obedience to traffic control devices. (1) Any person operating a bicycle shall obey the instructions of official traffic control devices applicable to vehicles, unless otherwise directed by a police officer.

(2) Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no person operating a bicycle shall disobey the directions of any such sign, except where such person dismounts from the bicycle at the right-hand curb or as close as is practicable to the right edge of the right-hand shoulder to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians. [1975 1st ex.s. c 54 § 99.]

46.90.550 Bicycles—Parking. No person shall park a bicycle upon a highway other than:

- (1) Off the roadway except in designated areas;
- (2) Upon the sidewalk in a rack to support the bicycle;
- (3) Against a building; or
- (4) In such manner as to afford the least obstruction to pedestrian traffic. [1975 1st ex.s. c 54 § 100.]

46.90.555 Bicycles—Riding on sidewalks. (1) No person shall ride a bicycle upon a sidewalk in a business district.

(2) A person may ride a bicycle on any other sidewalk or any roadway unless restricted or prohibited by traffic control devices.

(3) Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right of way to any pedestrian. [1975 1st ex.s. c 54 § 101.]

46.90.560 Bicycles—Penalties. Violation of any provision of RCW 46.90.500 through 46.90.540 is a traffic infraction. [1979 ex.s. c 136 § 101; 1975 1st ex.s. c 54 § 102.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.90.565 Unclaimed bicycles. All unclaimed bicycles in the custody of the police department shall be disposed of as provided in chapter 63.32 RCW. [1975 1st ex.s. c 54 § 103.]

46.90.600 Parking meter spaces. No person shall park a vehicle in any designated parking meter space

during the restricted or regulated time applicable to the parking meter zone in which such meter is located so that any part of such vehicle occupies more than one such space or protrudes beyond the markings designating such space, except that a vehicle which is of a size too large to be parked within a single designated parking meter space shall be permitted to occupy two adjoining parking meter spaces when coins shall have been deposited in the parking meter for each space so occupied as is required for the parking of other vehicles in such spaces. [1975 1st ex.s. c 54 § 104.]

46.90.610 Parking meters—Deposit of coins and time limits. (1) No person shall park a vehicle in any parking meter space alongside of and next to which a parking meter has been installed during the restricted and regulated time applicable to the parking meter zone in which such meter is located unless a United States coin or coins of the appropriate denomination as indicated on the parking meter shall have been deposited therein, or shall have been previously deposited therein for an unexpired interval of time, and said meter has been placed in operation.

(2) No person shall permit a vehicle within his control to be parked in any parking meter space during the restricted and regulated time applicable to the parking meter zone in which such meter is located while the parking meter for such space indicates by signal that the lawful parking time in such space has expired. This provision shall not apply to the act of parking or the necessary time which is required to deposit immediately thereafter a coin or coins in such meter.

(3) No person shall park a vehicle in any parking meter space for a consecutive period of time longer than that limited period of time for which parking is lawfully permitted in the parking meter zone in which such meter is located, irrespective of the number or amounts of the coins deposited in such meter.

(4) The provisions of this section shall not relieve any person from the duty to observe other and more restrictive provisions of this chapter prohibiting or limiting the stopping, standing, or parking of vehicles in specified places or at specified times. [1975 1st ex.s. c 54 § 105.]

46.90.620 Parking meters—Use of slugs prohibited. No person shall deposit or attempt to deposit in any parking meter any bent coin, slug, button, or any other device or substance as substitutes for United States coins. [1975 1st ex.s. c 54 § 106.]

46.90.630 Tampering with parking meter. No person shall deface, injure, tamper with, open, or wilfully break, destroy, or impair the usefulness of any parking meter. [1975 1st ex.s. c 54 § 107.]

46.90.640 Parking meters—Rule of evidence. The parking or standing of any motor vehicle in a parking space, at which space the parking meter displays the sign or signal indicating illegal parking, shall constitute a prima facie presumption that the vehicle has been parked or allowed to stand in such space for a period

longer than permitted by this chapter. [1975 1st ex.s. c 54 § 108.]

46.90.650 Parking meters—Application of proceeds. (1) The coins required to be deposited in parking meters are levied and assessed as fees to cover the regulation and control of parking upon highways, the costs of parking meters, their installation, inspection, supervision, operation, repair, and maintenance, control and use of parking spaces, and regulating the parking of vehicles in parking meter zones; and the costs of acquiring, establishing, improving, maintaining, and operating public off-street parking facilities.

(2) The coins deposited in parking meters shall be collected by the duly authorized agents of the local authority and shall be deposited by them as directed by the local authority.

(3) The local authority shall pay from the moneys collected from parking meters the costs of any parking meters purchased and installed as provided herein, and expenses incurred for their installation, inspection, service, supervision, repair, and maintenance, for making collections from such parking meters, and for the enforcement of provisions herein applicable to parking meter zones. The net proceeds derived from the operation of parking meters after the payment of such costs and expenses, may be used for parking studies and for the acquisition, establishment, improvement, maintenance, and operation of public off-street parking facilities. [1975 1st ex.s. c 54 § 109.]

46.90.660 Service parking. The chief of police is authorized to issue a permit for service parking upon payment of the fee prescribed by the local authority and upon the following conditions:

(1) Application shall be made to the chief of police on such forms as the chief of police shall prescribe. The applicant shall set forth the applicant's business and the necessity for such permit. The chief of police shall investigate the facts as necessary.

(2) If it appears that a necessity exists, the chief of police may authorize the issuance of such permit under the conditions prescribed in this section.

(3) Upon issuance of the permit, the permittee shall be issued a hood to use in covering any parking meter. As many hoods may be issued upon payment of the prescribed fee as the chief of police deems necessary or convenient for the applicant. The hood shall be provided with a padlock, two keys, and an identification card attached with a blank space thereon.

(4) Upon entering any parking meter space available, the permittee shall place the hood over the parking meter and lock the same and shall indicate in such blank space the exact place where the service work is being rendered.

(5) The permittee shall not place the hood over any meter when the space is occupied by another vehicle, and shall before vacating the space at the conclusion of the work remove the hood. The hood shall not be allowed to remain in place for over one hour when the space is not occupied by an authorized vehicle, nor shall

it be allowed to remain in place after 6 p.m. on any weekday or on any Sunday or holiday. It shall not be used during hours when parking or stopping in the parking meter space is prohibited. No vehicle licensed as a passenger car shall be parked in the space covered by the hooded parking meter.

(6) The chief of police may revoke any permit if the service parking hood is used for any purpose other than that authorized in this section or for any violation of this chapter. Upon revocation, the hood shall immediately be returned to the police department and all fees paid shall be forfeited. Police officers finding such hood in use shall investigate the use being made thereof, and if it is found in violation of this section shall report the facts to the chief of police.

(7) Any permit issued under this section shall unless revoked be valid for a period of one year.

(8) The permittee shall also pay a deposit in an amount prescribed by the local authority at the time of issuance of the hood, padlock, and keys, which shall remain the property of the local authority. In case a hood, a padlock, or key becomes lost or destroyed or so defaced that it is no longer usable, the permittee shall forfeit such deposit. [1975 1st ex.s. c 54 § 110.]

46.90.700 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.64.010, 46.64.015, 46.64.020, 46.64.025, 46.64.030, 46.64.035, and 46.64.048. [1988 c 24 § 4; 1980 c 65 § 7; 1977 ex.s. c 60 § 6; 1975 1st ex.s. c 54 § 111.]

46.90.705 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.63.010, 46.63.020, 46.63.030, 46.63.040, 46.63.060, 46.63.070, 46.63.080, 46.63.090, 46.63.100, 46.63.110, 46.63.120, 46.63.130, 46.63.140, and 46.63.151. [1982 c 25 § 3; 1980 c 65 § 8.]

46.90.710 Penalties. Unless another penalty is expressly provided by law, any person found to have committed an act designated a traffic infraction under the provisions of this chapter shall be punished by a penalty of not more than two hundred fifty dollars. [1980 c 128 § 15; 1975 1st ex.s. c 54 § 112.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

46.90.720 Citation on illegally parked vehicle. Whenever any motor vehicle without driver is found parked, standing, or stopped in violation of this chapter, the officer finding such vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall

conspicuously affix to such vehicle a traffic citation. [1975 1st ex.s. c 54 § 113.]

46.90.730 Failure to comply with traffic citation attached to parked vehicle. If a violator of any provision of this chapter on stopping, standing, or parking does not appear in response to a traffic citation affixed to such motor vehicle within a period of five days, the clerk of the traffic court shall send to the owner of the motor vehicle to which the traffic citation was affixed a letter informing him of the violation and warning him that in the event such letter is disregarded for a period of five days, a warrant of arrest will be issued. [1975 1st ex.s. c 54 § 114.]

46.90.740 Presumption in reference to illegal parking. (1) In any prosecution charging a violation of any law or regulation governing the stopping, standing, or parking of a vehicle, proof that the particular vehicle described in the complaint was stopping, standing, or parking in violation of any such law or regulation, together with proof that the defendant named in the complaint was at the time of such violation, the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(2) The foregoing stated presumption shall apply only when the procedure as prescribed in RCW 46.90.720 and 46.90.730 has been followed. [1975 1st ex.s. c 54 § 115.]

46.90.900 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.98.020, 46.98.030, 46.98.040, 47.36.060, 47.36.110, 47.36.180, 47.36.200, 47.36.220, 47.52.010, 47.52.011, 47.52.040, 47.52.110, 47.52.120, 66.44.240, 66.44.250, 70.84.020, 70.84.040, and 70.93.060. [1984 c 108 § 5; 1975 1st ex.s. c 54 § 116.]

46.90.910 Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those local authorities which enact it. [1975 1st ex.s. c 54 § 117.]

46.90.920 Short title. This chapter may be known and cited as the "Washington Model Traffic Ordinance." [1975 1st ex.s. c 54 § 118.]

46.90.930 Chapter not retroactive. This chapter shall not have a retroactive effect and shall not apply to any traffic accident, to any cause of action arising out of a traffic accident or judgment arising therefrom, or to any violation of a traffic ordinance of the local authority, occurring prior to the effective date of this chapter. [1975 1st ex.s. c 54 § 119.]

46.90.940 Severability—1975 1st ex.s. c 54. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 54 § 120.]

46.90.950 Effect of headings. Section headings contained in this chapter shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or extent of the provisions of any section hereof. [1975 1st ex.s. c 54 § 121.]

Chapter 46.94

MOTORCYCLE DEALERS' FRANCHISE ACT

(Revised November 3, 1988, pursuant to the Washington Supreme Court decision in cause number 53755-1 entitled Washington State Motorcycle Dealers Association, Et al, v. The State of Washington, which declared invalid the five item vetoes to chapter 472, Laws of 1985; Engrossed Substitute Senate Bill 3333. The Governor exercised his veto power by attempting to excise parts of sections 3, 4, 5, 8, 10. The vetoed matter is herein restored as parts of RCW 46.94.010, 46.94.020, 46.94.030, 46.94.040, and 46.94.060.)

Sections

46.94.001	Short title.
46.94.005	Legislative intent.
46.94.010	Definitions.
46.94.020	Prohibited trade practices.
46.94.030	Succession to business by designated family member.
46.94.040	Compensation for warranty, delivery, preparation expenses.
46.94.050	Prohibited financial practices.
46.94.060	Civil remedies.
46.94.900	Severability—1985 c 472.

46.94.001 Short title. This chapter shall be known as the motorcycle dealers' franchise act. [1985 c 472 § 1.]

46.94.005 Legislative intent. The legislature recognizes it is in the best public interest for manufacturers and dealers of motorcycles to conduct business with each other in a fair, efficient, and competitive manner. The legislature declares the public interest is best served by dealers being assured of the ability to manage their business enterprises under a contractual obligation with manufacturers where dealers do not experience unreasonable interference, receive adequate allocations of merchandise in a timely manner at competitive prices, and transfer ownership of their business without undue constraints. It is the intent of the legislature to impose a regulatory scheme and to regulate competition in the motorcycle industry to the extent necessary to balance fairness and efficiency. These actions will assure the public that motorcycle dealers will devote their best competitive efforts and resources to the sale and service of the manufacturer's products which the dealer has been granted the right to sell and service. [1985 c 472 § 2.]

46.94.010 Definitions. As used in this chapter:

(1) "Department" means the department of licensing.

(2) "Designated family member" means (a) an heir as defined in RCW 11.02.005(6) if the motorcycle dealer dies intestate or (b) a legatee or devisee as used in Title 11 RCW if the deceased motorcycle dealer leaves a will. A Motorcycle dealer also may name in a notarized statement any person as the designated family member for the purposes of receiving an interest in the motorcycle dealership. Title 11 RCW applies to this chapter. However, in cases of conflict, the notarized inter vivos designation prevails over testamentary and intestate succession. Notarized inter vivos designations under this subsection are not codicils to wills.

(3) "Distributor" means a person, whether a resident or nonresident, other than a manufacturer, who sells, leases, or distributes motorcycles to motorcycle dealers, or controls any other person, other than a manufacturer, who sells, leases, or distributes motorcycles to motorcycle dealers.

(4) "Distributor branch" means a branch office maintained by the distributor or wholesaler.

(5) "Distributor representative" means a representative employed by a distributor or wholesaler for the purpose of selling or promoting the sale or lease of the distributor's or wholesaler's motorcycles to motorcycle dealers, or for the purpose of supervising or contacting dealers.

(6) "Factory branch" means a branch office maintained by a manufacturer in order to direct and supervise the representatives of the manufacturer.

(7) "Factory representative" means a person employed by a manufacturer for the purpose of making or promoting the sale or lease of the manufacturer's motorcycles to dealers, distributors, or prospective motorcycle dealers.

(8) "Franchise" means an oral or written contract, to include a dealer agreement, either expressed or implied, between a franchisor and a motorcycle dealer which purports to fix the legal rights and liabilities between the parties and under which (a) the dealer is granted the right to purchase and resell motorcycles manufactured, distributed, or imported by the franchisor; (b) the dealer's business is associated with the trademark, trade name, commercial symbol, or advertisement designating the franchisor or the products distributed by the franchisor; and (c) the dealer's business relies on the franchisor for a continued supply of motorcycles, parts, and accessories.

(9) "Franchisor" means any person who enters into a franchise with a motorcycle dealer.

(10) "Manufacturer" means any person, firm, association, corporation, or trust that manufactures or provides assemblies for motorcycles.

(11) "Motorcycle" means any motor vehicle which has an unladen weight of less than fifteen hundred pounds, including any parts, accessories, equipment, or special tools designated or intended for use on or with those motor vehicles, and (a) which is self-propelled and capable of use and operation on the public highways and streets; or (b) which is a self-propelled, off-road vehicle, tired or nontired, capable of transporting individuals on

or off public highways and streets. "Motorcycle" excludes farm tractors, golf carts, firefighting equipment, any motor vehicle designed solely for industrial purposes, and lawnmowers.

(12) "Motorcycle dealer" or "dealer" means a person operating under a dealer agreement or franchise with a franchisor who is engaged regularly in the business of buying, selling, exchanging, offering, brokering, or leasing with an option to purchase new or used motorcycles in the state, with a place of business in the state.

(13) "New motorcycle" means a motorcycle that has been sold or transferred to a motorcycle dealer and that has not been used for other than demonstration purposes, and on which the original title has not been issued from the motorcycle dealer. The term includes motorcycles not of the current model year comprising part of the dealer's inventory.

(14) "Person" means any natural person, partnership, stock company, corporation, trust, agency, or other legal entity, as well as any individual officers, directors, or other persons in active control of the activities of the entity.

(15) "Place of business" means a permanent, enclosed commercial building, situated within the state, and the real property on which it is located, at which the business of a motorcycle dealer, including the display and repair of motorcycles, may be lawfully conducted in accordance with the terms of all applicable laws and in the building the public may contact the motorcycle dealer or his or her employees at all reasonable times.

(16) "Relevant market area" means a ten-mile radius around a proposed place of business. [1985 c 472 § 3.]

Reviser's note: See note at beginning of chapter digest.

46.94.020 Prohibited trade practices. Acts or conduct described in this section constitute prohibited trade practices that cannot be waived. It is a prohibited trade practice for a franchisor or its manufacturers, distributors, subsidiaries, or other agents:

(1) To require, coerce or attempt to require, or coerce, either directly or indirectly, any motorcycle dealer to:

(a) Accept, buy, or order any motorcycle, part or accessory, or any other commodity or service not voluntarily ordered, or requested, or to buy, order, or pay anything of value for such items in order to obtain any motorcycle part, accessory, or other commodity which has been voluntarily ordered or requested;

(b) Order or accept delivery of any motorcycle with special features, accessories, or equipment not included in the list price of the motorcycle as advertised by the manufacturer, except items which have been voluntarily requested or ordered by the dealer, and except items required by law;

(c) Enter into any agreement or understanding resulting in a reduction of the dealer's allocation of motorcycles for reasons other than reduced production levels causing uniformly and proportionally applied reductions to all dealers;

(d) Enter into any agreement or sales promotion program by threatening to terminate the franchise of the dealer;

(e) Refrain from participation in the management, investment, acquisition, or sale of any other related product or product line of motor vehicles, parts, or accessories;

(f) Enter into any agreement violating this chapter; or

(g) Enter into an agreement by which the franchisor, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative can directly solicit the dealer's customers.

(2) To terminate, refuse to renew, fail to extend, or fail to renew any franchise without good cause. Good cause includes but is not limited to:

(a) The amount of business transacted by the dealer as compared to the amount of business available to the dealer;

(b) The investment necessarily made and obligations necessarily incurred by the dealer in the performance of the franchise;

(c) The degree of the dealer's investment, including but not limited to the dealer's purchase or lease of real property for the dealership, the training given to the dealer's employees, and the amount of equipment purchased for the dealership;

(d) The adequacy of the dealer's new motorcycle sales and service facilities, equipment, and parts;

(e) The qualifications and performance of the management, sales, and service personnel to provide the consumer with reasonably good service and care of new motorcycles;

(f) The failure of the dealer to substantially comply in good faith with the reasonable requirements of the franchise;

(g) The adequacy of the franchisor's actual quantities delivered of motorcycles, parts, and accessories compared to quantities promised by the franchisor;

(h) The effect on the retail motorcycle business and the consuming public in the dealer's market area;

(i) Whether the dealer has exercised prudent business judgment.

The dealer shall be notified, in writing, not less than ninety days before termination or nonrenewal with reasons for the actions. If the termination or nonrenewal is based on termination or discontinuance of the product line, the dealer shall be notified not less than one hundred eighty days prior to termination or nonrenewal. All existing franchises shall continue operation under a newly appointed distributor upon the termination of an existing distributor unless a mutual agreement of termination is filed between the new distributor and the affected dealer.

(3) To require a change in capital structure, or means of financing, if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer, franchisor, or distributor;

(4) To prevent or attempt to prevent a dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed if the dealer meets the reasonable, written, and uniformly applied capital requirements determined by the manufacturer, franchisor, or distributor;

(5) To unreasonably require a change in the location of the dealership or any substantial alterations to the place of business;

(6) To condition renewal or extension of the franchise on substantial renovation of the existing place of business or on the construction, purchase, acquisition, or lease of a new place of business unless written notice is first provided one hundred eighty days prior to the date of renewal or extension and the franchisor demonstrates the reasonableness of the requested actions. The franchisor shall agree to supply the dealer with an adequate quantity of motorcycles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial renovation, construction, acquisition, or lease of a new place of business;

(7) To adopt, establish, or implement a plan or system, or to modify an existing plan or system, for the distribution or allocation of motorcycles which is arbitrary, in bad faith, or unconscionable and which damages the dealer or the dealer's customers;

(8) To fail or refuse to disclose to the dealer, after written request, the basis upon which new motorcycles of the same line are currently or will in the future be allocated or distributed to dealers;

(9) To fail or refuse to disclose to dealers, after written request, the total number of new motorcycles of a given model which the manufacturer, franchisor, or distributor has sold during the current model year within the dealer's marketing district, zone, or region;

(10) To refuse or fail to deliver any motorcycle, part, or accessory in reasonable quantities, and within a reasonable time after receipt of the order from the dealer, that is specifically advertised as being immediately available. It is not a prohibited trade practice when the failure to deliver is caused by an act of God, strike, material shortage, or other cause over which the manufacturer, distributor, or franchisor has no control;

(11) To offer a renewal, replacement, or succeeding franchise containing terms substantially modifying the sales and service obligations or capital requirements of the motorcycle dealer, other than as provided for in this chapter;

(12) To sell or lease or offer to sell or lease to a dealer a new motorcycle, including any motorcycle under a sales promotion plan, at a lower price than offered or sold to another similarly situated dealer for the same model, except where the dealer is offered, sold, or leased a new motorcycle at a discount in exchange for providing valuable services to the franchisor, manufacturer, or distributor and except in those instances where a dealer orders motorcycles in sufficient numbers to qualify for volume discounts and as long as discounts are available to all dealers;

(13) To prevent, attempt to prevent, or unreasonably disapprove any motorcycle dealer from changing executive management control of the dealer's motorcycle business, unless the change results in control by a person not of good moral character or who does not meet the manufacturer, distributor, or franchisor's existing and reasonable, written, and uniformly applied capital standards. The dealer shall be given written notice of the

reasons for rejection within thirty days of receipt of notice from the dealer of a proposed change;

(14) To reject, prevent, or attempt to prevent any person from selling or transferring a controlling interest to any other person unless the buyer or transferee does not qualify under appropriate state law as a licensed dealer, is not of good moral character, does not meet the manufacturer, distributor, or franchisor's existing and reasonable, written, and uniformly applied capital standards, or does not meet the written and uniformly applied manufacturer, distributor, or franchisor business experience standards for the market area. The dealer shall be given written notice setting forth the reasons for rejection of the proposed sale or transfer within thirty days of notice by the dealer of the sale or transfer;

(15) To fail to hold harmless and indemnify any motorcycle dealer against losses, including lawsuits and court costs, arising from: (a) The manufacture or performance of any motorcycle, part, or accessory if the lawsuit involves representations by the manufacturer, distributor, or franchisor on the manufacture or performance of a motorcycle without negligence on the part of the motorcycle dealer; (b) damage to merchandise in transit where the manufacturer, distributor, or franchisor specifies the carrier; (c) the manufacturer, distributor, or franchisor's failure to jointly defend product liability suits concerning the motorcycle, part, or accessory provided to the dealer; or (d) any other act performed by the manufacturer, distributor, or franchisor;

(16) To unfairly prevent or attempt to prevent a motorcycle dealer from receiving reasonable compensation for the value of a motorcycle;

(17) To release confidential information provided by the motorcycle dealer to the manufacturer, distributor, or franchisor without the written prior consent of the dealer;

(18) To fail to pay to a motorcycle dealer, within a reasonable time following receipt of a valid claim, any payment agreed to be made by the manufacturer, distributor, or franchisor on grounds that a new motorcycle, or a prior year's model, is in the dealer's inventory at the time of introduction of new model motorcycles;

(19) To deny any dealer the right of free association with any other dealer for any lawful purpose;

(20) To artificially and intentionally create a shortage of any motorcycle make, model, or series that results in the inequitable distribution of the make, model, or series to dealers;

(21) To charge increased prices without having given written notice to the dealers at least fifteen days prior to the effective date of the price increases;

(22) To permit factory authorized warranty service to be performed upon motorcycles or accessories by persons other than their franchised motorcycle dealers;

(23) To unreasonably interfere with a dealer's performance under the franchise agreement's sale quota by withholding sufficient deliveries of motorcycles; or

(24) To own, operate, or control any motorcycle dealer or place of business selling at retail in the state. [1985 c 472 § 4.]

Reviser's note: See note at beginning of chapter digest.

46.94.030 Succession to business by designated family member. (1) The manufacturer, distributor, or franchisor shall not prevent, attempt to prevent, refuse to give effect to, attempt to refuse to give effect to, or in any way hinder the succession to the ownership, management, control, or continuance of a dealer's motorcycle business by a designated family member upon the death or incapacity of the dealer, except as otherwise provided in this chapter.

(2) A designated family member, at his or her discretion, may succeed the dealer in ownership or management control under the existing agreement. The designated family member shall provide notice to the franchisor, in writing, of the intention to succeed to the franchise within one hundred twenty days after the dealer's death or incapacity. The designated family member shall agree to be bound by the terms of the original franchise. The designated family member shall meet the reasonable, written, and uniformly applied conditions applied by the franchisor under the existing franchise.

(3) A designated family member may only be rejected for succession on reasonable grounds. The franchisor shall provide written notice to the designated family member within sixty days of receipt of notice of the intention to succeed. The notice shall state the specific grounds for refusal, termination, or nonrenewal of the franchise and shall not take effect less than ninety days after receipt of the notice by the designated family member. If notice is not served within the designated time period, the franchise shall continue in effect with the designated family member.

(4) The designated family member may appeal to the appropriate court within ninety days of receipt of notice of refusal, termination, or nonrenewal. The franchisor has the burden of proving reasonable grounds. A designated family member prevailing in such action shall recover reasonable costs and attorney's fees.

(5) A dealer may designate any person as the recipient of the franchise by making a notarized statement in accordance with section 3(2) of this act. The statement shall be filed with the franchisor. The statement shall be controlling and binding on all heirs and testamentary successors. The recipient shall agree to be bound by the terms of the original franchise. The recipient shall meet the reasonable, written, and uniformly applied conditions applied by the franchisor under the existing franchise. [1985 c 472 § 5.]

Reviser's note: See note at beginning of chapter digest.

46.94.040 Compensation for warranty, delivery, preparation expenses. (1) The manufacturer, distributor, or franchisor shall compensate the dealer for labor, parts, and other expenses incurred to comply with the manufacturer, distributor, or franchisor's warranty agreements, and for work and services performed in connection with delivery and preparation of motorcycles received from the manufacturer, distributor, or franchisor. The compensation shall not be less than the rates reasonably charged by the dealer for like services and parts to retail customers.

(2) All claims for compensation made by the dealer shall be paid within thirty days after approval and shall be approved or disapproved within thirty days of their receipt by the manufacturer, distributor, or franchisor.

Any denial of claim shall be in writing and shall set forth the specific grounds for denial.

(3) A claim that has been approved and paid shall not be charged back to the dealer unless it is established the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim. [1985 c 472 § 8.]

Reviser's note: See note at beginning of chapter digest.

46.94.050 Prohibited financial practices. No manufacturer, distributor, or franchisor shall require or coerce any dealer to sell, assign, or transfer a retail sales installment contract, or require the dealer to act as an agent for any manufacturer, distributor, or franchisor in the securing of a promissory note, a security agreement given in connection with the sale of a motorcycle, or securing of a policy of insurance for a motorcycle. The manufacturer, distributor, or franchisor may not condition delivery of motorcycles, parts, or accessories upon the dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies. [1985 c 472 § 9.]

46.94.060 Civil remedies. Any person injured by a violation of this chapter may bring a civil action in a court of competent jurisdiction to enjoin further violations or to recover damages. Injunctive relief may be granted in an action brought under this chapter without the dealer being required to post a bond if, in the opinion of the court, there exists a likelihood the dealer may prevail upon the merits. [1985 c 472 § 10.]

Reviser's note: See note at beginning of chapter digest.

46.94.900 Severability—1985 c 472. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 472 § 14.]

Chapter 46.96

MANUFACTURERS' AND DEALERS' FRANCHISE AGREEMENTS

Sections

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46.96.010 Legislative findings. The legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affect the general economy of the state and the public interest and public welfare, that provision for warranty service to motor vehicles is of substantial concern to the people of this state, that the maintenance of fair competition among dealers and others is in the public interest, and that the maintenance of strong and sound dealerships is essential to provide continuing and necessary reliable services to the consuming public in this state and to provide stable employment to the citizens of this state. The legislature further finds that there is a substantial disparity in bargaining power between automobile manufacturers and their dealers, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate the relationship between motor vehicle dealers and motor vehicle manufacturers, importers, distributors, and their representatives doing business in this state, not only for the protection of dealers but also for the benefit for the public in assuring the continued availability and servicing of automobiles sold to the public.

The legislature recognizes it is in the best interest for manufacturers and dealers of motor vehicles to conduct business with each other in a fair, efficient, and competitive manner. The legislature declares the public interest is best served by dealers being assured of the ability to manage their business enterprises under a contractual obligation with manufacturers where dealers do not experience unreasonable interference and are assured of the ability to transfer ownership of their business without undue constraints. It is the intent of the legislature to impose a regulatory scheme and to regulate competition in the motor vehicle industry to the extent necessary to balance fairness and efficiency. These actions will permit motor vehicle dealers to better serve consumers and allow dealers to devote their best competitive efforts and resources to the sale and services of the manufacturer's products to consumers. [1989 c 415 § 1.]

46.96.020 Definitions. In addition to the definitions contained in RCW 46.70.011, which are incorporated by reference into this chapter, the definitions set forth in this section apply only for the purposes of this chapter.

(1) A "new motor vehicle" is a vehicle that has not been titled by a state and ownership of which may be transferred on a manufacturer's statement of origin (MSO).

(2) "New motor vehicle dealer" means a motor vehicle dealer engaged in the business of buying, selling, exchanging, or otherwise dealing in new motor vehicles or new and used motor vehicles at an established place of business, under a franchise, sales and service agreement, or contract with the manufacturer of the new motor vehicles. However, the term "new motor vehicle dealer"

does not include a miscellaneous vehicle dealer as defined in RCW 46.70.011(3)(c) or a motorcycle dealer as defined in chapter 46.94 RCW.

(3) "Franchise" means one or more agreements, whether oral or written, between a manufacturer and a new motor vehicle dealer, under which the new motor vehicle dealer is authorized to sell, service, and repair new motor vehicles, parts, and accessories under a common name, trade name, trademark, or service mark of the manufacturer.

"Franchise" includes an oral or written contract and includes a dealer agreement, either expressed or implied, between a manufacturer and a new motor vehicle dealer that purports to fix the legal rights and liabilities between the parties and under which (a) the dealer is granted the right to purchase and resell motor vehicles manufactured, distributed, or imported by the manufacturer; (b) the dealer's business is associated with the trademark, trade name, commercial symbol, or advertisement designating the franchisor or the products distributed by the manufacturer; and (c) the dealer's business relies on the manufacturer for a continued supply of motor vehicles, parts, and accessories.

(4) "Good faith" means honesty in fact and fair dealing in the trade as defined and interpreted in RCW 62A.2-103.

(5) "Designated successor" means:

(a) The spouse, biological or adopted child, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will or similar document, and if there is no such will or similar document, then under applicable intestate laws;

(b) A qualified person experienced in the business of a new motor vehicle dealer who has been nominated by the owner of a new motor vehicle dealership as the successor in a written, notarized, and witnessed instrument submitted to the manufacturer; or

(c) In the case of an incapacitated owner of a new motor vehicle dealership, the person who has been appointed by a court as the legal representative of the incapacitated owner's property.

(6) "Owner" means a person holding an ownership interest in the business entity operating as a new motor vehicle dealer and who is the designated dealer in the new motor vehicle franchise agreement.

(7) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity. [1989 c 415 § 2.]

46.96.030 Termination, cancellation, nonrenewal of franchise restricted. Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, no manufacturer may terminate, cancel, or fail to renew a franchise with a new motor vehicle dealer, unless the manufacturer has complied with the notice requirements of RCW 46.96.070 and an administrative law judge has determined, if requested in writing by the new motor

vehicle dealer within the applicable time period specified in RCW 46.96.070 (1), (2), or (3), after hearing, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith, as defined in this chapter, regarding the termination, cancellation, or nonrenewal. [1989 c 415 § 3.]

46.96.040 Determination of good cause, good faith—Petition, notice, decision, appeal. A new motor vehicle dealer who has received written notification from the manufacturer of the manufacturer's intent to terminate, cancel, or not renew the franchise may file a petition with the department for a determination as to the existence of good cause and good faith for the termination, cancellation, or nonrenewal of a franchise. The petition shall contain a short statement setting forth the reasons for the dealer's objection to the termination, cancellation, or nonrenewal of the franchise. Upon the filing of the petition and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely petition has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The franchise in question shall continue in full force and effect pending the administrative law judge's decision. If the decision of the administrative law judge terminating, canceling, or failing to renew a dealer's franchise is appealed by a dealer, the franchise in question shall continue in full force and effect until the appeal to superior court is finally determined or until the expiration of one hundred eighty days from the date of issuance of the administrative law judge's written decision, whichever is less. Nothing in this section precludes a manufacturer or dealer from petitioning the superior court for a stay or other relief pending judicial review. [1989 c 415 § 4.]

46.96.050 Determination of good cause, good faith—Hearing, decision, procedures—Judicial review. (1) The administrative law judge shall conduct the hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred eighty days after a petition is filed. If the termination, cancellation, or nonrenewal is under RCW 46.96.070(2), the administrative law judge shall give the proceeding priority consideration and shall render a final decision not later than sixty days after a petition is filed.

(2) The administrative law judge shall conduct the hearing as an adjudicative proceeding in accordance with the procedures provided for in the Administrative Procedure Act, chapter 34.05 RCW. The administrative law judge shall render the final decision and shall enter a final order. Except as otherwise provided in RCW 34.05.446 and 34.05.449, all hearing costs shall be borne on an equal basis by the parties to the hearing.

(3) A party to a hearing under this chapter may be represented by counsel. A party to a hearing aggrieved by the final order of the administrative law judge concerning the termination, cancellation, or nonrenewal of a franchise may seek judicial review of the order in the

superior court in the manner provided for in RCW 34.05.510 through 34.05.598. A petitioner for judicial review need not exhaust all administrative appeals or administrative review processes as a prerequisite for seeking judicial review under this section. [1989 c 415 § 5.]

46.96.060 Good cause, what constitutes—Burden of proof. (1) Notwithstanding the terms of a franchise or the terms of a waiver, and except as otherwise provided in RCW 46.96.070(2) (a) through (d), good cause exists for termination, cancellation, or nonrenewal when there is a failure by the new motor vehicle dealer to comply with a provision of the franchise that is both reasonable and of material significance to the franchise relationship, if the new motor vehicle dealer was notified of the failure within one hundred eighty days after the manufacturer first acquired knowledge of the failure and the new motor vehicle dealer did not correct the failure after being requested to do so.

If, however, the failure of the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales, service, or level of customer satisfaction, good cause is the failure of the new motor vehicle dealer to comply with reasonable performance standards determined by the manufacturer in accordance with uniformly applied criteria, and:

(a) The new motor vehicle dealer was advised, in writing, by the manufacturer of the failure;

(b) The notice under this subsection stated that notice was provided of a failure of performance under this section;

(c) The manufacturer provided the new motor vehicle dealer with specific, reasonable goals or reasonable performance standards with which the dealer must comply, together with a suggested timetable or program for attaining those goals or standards, and the new motor vehicle dealer was given a reasonable opportunity, for a period not less than one hundred eighty days, to comply with the goals or standards; and

(d) The new motor vehicle dealer did not substantially comply with the manufacturer's performance standards during that period and the failure to demonstrate substantial compliance was not due to market or economic factors within the new motor vehicle dealer's relevant market area that were beyond the control of the dealer.

(2) The manufacturer has the burden of proof of establishing good cause and good faith for the termination, cancellation, or nonrenewal of the franchise under this section. [1989 c 415 § 6.]

46.96.070 Notice of termination, cancellation, or nonrenewal. Before the termination, cancellation, or nonrenewal of a franchise, the manufacturer shall give written notification to both the department and the new motor vehicle dealer. The notice shall be by certified mail or personally delivered to the new motor vehicle dealer and shall state the intention to terminate, cancel, or not renew the franchise, the reasons for the termination, cancellation, or nonrenewal, and the effective date

of the termination, cancellation, or nonrenewal. The notice shall be given:

(1) Not less than ninety days before the effective date of the termination, cancellation, or nonrenewal;

(2) Not less than fifteen days before the effective date of the termination, cancellation, or nonrenewal with respect to any of the following that constitute good cause for termination, cancellation, or nonrenewal:

(a) Insolvency of the new motor vehicle dealer or the filing of any petition by or against the new motor vehicle dealer under bankruptcy or receivership law;

(b) Failure of the new motor vehicle dealer to conduct sales and service operations during customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

(c) Conviction of the new motor vehicle dealer, or principal operator of the dealership, of a felony punishable by imprisonment; or

(d) Suspension or revocation of a license that the new motor vehicle dealer is required to have to operate the new motor vehicle dealership where the suspension or revocation is for a period in excess of thirty days;

(3) Not less than one hundred eighty days before the effective date of termination, cancellation, or nonrenewal, where the manufacturer intends to discontinue sale and distribution of the new motor vehicle line. [1989 c 415 § 7.]

46.96.080 Payments by manufacturer to dealer for inventory, equipment, etc. (1) Upon the termination, cancellation, or nonrenewal of a franchise by the manufacturer under this chapter, the manufacturer shall pay the new motor vehicle dealer, at a minimum:

(a) Dealer cost plus any charges by the manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the dealer by the manufacturer, of unused, undamaged, and unsold new motor vehicles in the new motor vehicle dealer's inventory that were acquired from the manufacturer or another new motor vehicle dealer of the same line make within the previous twelve months;

(b) Dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that in the case of sheet metal, a comparable substitute for original packaging may be used, if the supply, part, or accessory was acquired from the manufacturer or from another new motor vehicle dealer ceasing operations as a part of the new motor vehicle dealer's initial inventory as long as the supplies, parts, and accessories appear in the manufacturer's current parts catalog, list, or current offering;

(c) Dealer cost for all unused, undamaged, and unsold inventory, whether vehicles, parts, or accessories, the purchase of which was required by the manufacturer;

(d) The fair market value of each undamaged sign owned by the new motor vehicle dealer that bears a common name, trade name, or trademark of the manufacturer, if acquisition of the sign was recommended or required by the manufacturer and the sign is in good and usable condition less reasonable wear and tear, and

has not been depreciated by the dealer more than fifty percent of the value of the sign;

(e) The fair market value of all equipment, furnishings, and special tools owned or leased by the new motor vehicle dealer that were acquired from the manufacturer or sources approved by the manufacturer and that were recommended or required by the manufacturer and are in good and usable condition, less reasonable wear and tear. However, if the equipment, furnishings, or tools are leased by the new motor vehicle dealer, the manufacturer shall pay the new motor vehicle dealer such amounts that are required by the lessor to terminate the lease under the terms of the lease agreement; and

(f) The cost of transporting, handling, packing, and loading of new motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

To the extent the franchise agreement provides for payment or reimbursement to the new motor vehicle dealer in excess of that specified in this section, the provisions of the franchise agreement shall control.

(2) The manufacturer shall pay the new motor vehicle dealer the sums specified in subsection (1) of this section within ninety days after the tender of the property, if the new motor vehicle dealer has clear title to the property and is in a position to convey that title to the manufacturer. [1989 c 415 § 8.]

46.96.090 Payments by manufacturer for dealership facilities. (1) In the event of a termination, cancellation, or nonrenewal under this chapter, except for termination, cancellation, or nonrenewal under RCW 46.96.070(2), the manufacturer shall, at the request and option of the new motor vehicle dealer, also pay to the new motor vehicle dealer:

(a) A sum equivalent to rent for the unexpired term of the lease or one year, whichever is less, or such longer term as provided in the franchise, if the new motor vehicle dealer is leasing the new motor vehicle dealership facilities from a lessor other than the manufacturer; or

(b) A sum equivalent to the reasonable rental value of the new motor vehicle dealership facilities for one year or until the facilities are leased or sold, whichever is less, if the new motor vehicle dealer owns the new motor vehicle dealership facilities.

(2) The rental payment required under subsection (1) of this section is only required to the extent that the facilities were used for activities under the franchise and only to the extent the facilities were not leased for unrelated purposes. If payment under subsection (1) of this section is made, the manufacturer is entitled to possession and use of the new motor vehicle dealership facilities for the period rent is paid. [1989 c 415 § 9.]

46.96.100 Mitigation of damages. RCW 46.96.030 through 46.96.090 do not relieve a new motor vehicle dealer from the obligation to mitigate the dealer's damages upon termination, cancellation, or nonrenewal of the franchise. [1989 c 415 § 10.]

46.96.110 Designated successor to franchise ownership. (1) Notwithstanding the terms of a franchise, an

owner may appoint a designated successor to succeed to the ownership of the new motor vehicle dealer franchise upon the owner's death or incapacity.

(2) Notwithstanding the terms of a franchise, a designated successor of a deceased or incapacitated owner of a new motor vehicle dealer franchise may succeed to the ownership interest of the owner under the existing franchise, if:

(a) In the case of a designated successor who meets the definition of a designated successor under RCW 46.96.020(5)(a), but who is not experienced in the business of a new motor vehicle dealer, the person will employ an individual who is qualified and experienced in the business of a new motor vehicle dealer to help manage the day-to-day operations of the motor vehicle dealership; or in the case of a designated successor who meets the definition of a designated successor under RCW 46.96.020(5) (b) or (c), the person is qualified and experienced in the business of a new motor vehicle dealer and meets the normal, reasonable, and uniformly applied standards for grant of an application as a new motor vehicle dealer by the manufacturer; and

(b) The designated successor furnishes written notice to the manufacturer of his or her intention to succeed to the ownership of the new motor vehicle dealership within sixty days after the owner's death or incapacity; and

(c) The designated successor agrees to be bound by all terms and conditions of the franchise.

(3) The manufacturer may request, and the designated successor shall promptly provide, such personal and financial information as is reasonably necessary to determine whether the succession should be honored.

(4) A manufacturer may refuse to honor the succession to the ownership of a new motor vehicle dealer franchise by a designated successor if the manufacturer establishes that good cause exists for its refusal to honor the succession. If the designated successor of a deceased or incapacitated owner of a new motor vehicle dealer franchise fails to meet the requirements set forth in subsections (2) (a), (b), and (c) of this section, good cause for refusing to honor the succession is presumed to exist. If a manufacturer believes that good cause exists for refusing to honor the succession to the ownership of a new motor vehicle dealer franchise by a designated successor, the manufacturer shall serve written notice on the designated successor and on the department of its refusal to honor the succession no earlier than sixty days from the date the notice is served. The notice must be served not later than sixty days after the manufacturer's receipt of:

(a) Notice of the designated successor's intent to succeed to the ownership interest of the new motor vehicle dealer's franchise; or

(b) Any personal or financial information requested by the manufacturer.

(5) The notice in subsection (4) of this section shall state the specific grounds for the refusal to honor the succession. If the notice of refusal is not timely and properly served, the designated successor may continue the franchise in full force and effect, subject to termination only as otherwise provided under this chapter.

(6) Within twenty days after receipt of the notice or within twenty days after the end of any appeal procedure provided by the manufacturer, whichever is greater, the designated successor may file a petition with the department protesting the refusal to honor the succession. The petition shall contain a short statement setting forth the reasons for the designated successor's protest. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer shall not terminate or otherwise discontinue the existing franchise until the administrative law judge has held a hearing and has determined that there is good cause for refusing to honor the succession. If an appeal is taken, the manufacturer shall not terminate or discontinue the franchise until the appeal to superior court is finally determined or until the expiration of one hundred eighty days from the date of issuance of the administrative law judge's written decision, whichever is less. Nothing in this section precludes a manufacturer or dealer from petitioning the superior court for a stay or other relief pending judicial review.

(7) The manufacturer has the burden of proof to show that good cause exists for the refusal to honor the succession.

(8) The administrative law judge shall conduct the hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred eighty days after a protest is filed.

(9) The administrative law judge shall conduct any hearing concerning the refusal to the succession as provided in RCW 46.96.050(2) and all hearing costs shall be borne as provided in that subsection. A party to such a hearing aggrieved by the final order of the administrative law judge may appeal as provided and allowed in RCW 46.96.050(3).

(10) This section does not preclude the owner of a new motor vehicle dealer franchise from designating any person as his or her successor by a written, notarized, and witnessed instrument filed with the manufacturer. In the event of a conflict between such a written instrument that has not been revoked by written notice from the owner to the manufacturer and this section, the written instrument governs. [1989 c 415 § 11.]

46.96.120 Sale, transfer, or exchange of franchise.

(1) Notwithstanding the terms of a franchise, a manufacturer shall not unreasonably withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer who meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer or is capable of being licensed as a new motor vehicle dealer in the state of Washington. A decision or determination made by the administrative law judge as to whether a qualified buyer is capable of being licensed as a new motor vehicle dealer in the state of Washington is not conclusive or determinative of any ultimate determination made by

the department of licensing as to the buyer's qualification for a motor vehicle dealer license. A manufacturer's failure to respond in writing to a request for consent under this subsection within sixty days after receipt of a written request on the forms, if any, generally used by the manufacturer containing the information and reasonable promises required by a manufacturer is deemed to be consent to the request. A manufacturer may request, and, if so requested, the applicant for a franchise (a) shall promptly provide such personal and financial information as is reasonably necessary to determine whether the sale, transfer, or exchange should be approved, and (b) shall agree to be bound by all reasonable terms and conditions of the franchise.

(2) If a manufacturer refuses to approve the sale, transfer, or exchange of a franchise, the manufacturer shall serve written notice on the applicant, the transferring, selling, or exchanging new motor vehicle dealer, and the department of its refusal to approve the transfer of the franchise no later than sixty days after the date the manufacturer receives the written request from the new motor vehicle dealer. If the manufacturer has requested personal or financial information from the applicant under subsection (1) of this section, the notice shall be served not later than sixty days after the receipt of all of such documents. Service of all notices under this section shall be made by personal service or by certified mail, return receipt requested.

(3) The notice in subsection (2) of this section shall state the specific grounds for the refusal to approve the sale, transfer, or exchange of the franchise.

(4) Within twenty days after receipt of the notice of refusal to approve the sale, transfer, or exchange of the franchise by the transferring new motor vehicle dealer, the new motor vehicle dealer may file a petition with the department to protest the refusal to approve the sale, transfer, or exchange. The petition shall contain a short statement setting forth the reasons for the dealer's protest. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed, and the department shall arrange for a hearing with an administrative law judge as the presiding officer to determine if the manufacturer unreasonably withheld consent to the sale, transfer, or exchange of the franchise.

(5) In determining whether the manufacturer unreasonably withheld its approval to the sale, transfer, or exchange, the manufacturer has the burden of proof that it acted reasonably. A manufacturer's refusal to accept or approve a proposed buyer who otherwise meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer, or who otherwise is capable of being licensed as a new motor vehicle dealer in the state of Washington, is presumed to be unreasonable.

(6) The administrative law judge shall conduct a hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred twenty days after a protest is filed. Only the selling, transferring, or exchanging new motor vehicle dealer and the manufacturer may be parties to the hearing.

(7) The administrative law judge shall conduct any hearing as provided in RCW 46.96.050(2), and all hearing costs shall be borne as provided in that subsection. Only the manufacturer and the selling, transferring, or exchanging new motor vehicle dealer may appeal the final order of the administrative law judge as provided in RCW 46.96.050(3).

(8) This section and *RCW 46.96.030 through 46.96.110 apply to all franchises and contracts existing on July 23, 1989, between manufacturers and new motor vehicle dealers as well as to all future franchises and contracts between manufacturers and new motor vehicle dealers. [1989 c 415 § 18.]

*Reviser's note: 1989 c 415 § 18 referred to "sections 3 through 17 of this act." Sections 12 through 17 were vetoed by the governor, so no translation of those section numbers to RCW citations has been made.

46.96.130 Petition and hearing—Filing fee, costs, security. The department shall determine and establish the amount of the filing fee required in *RCW 46.96.040, 46.96.110, and 46.96.120. The fees shall be set in accordance with RCW 43.24.086.

The department may also require the petitioning or protesting party to give security, in such sum as the department deems proper but not in any event to exceed one thousand dollars, for the payment of such costs as may be incurred in conducting the hearing as required under this chapter. The security may be given in the form of a bond or stipulation or other undertaking with one or more sureties.

At the conclusion of the hearing, the department shall assess, in equal shares, each of the parties to the hearing for the cost of conducting the hearing. Upon receipt of payment of the costs, the department shall refund and return to the petitioning party such excess funds, if any, initially posted by the party as security for the hearing costs. If the petitioning party provided security in the form of a bond or other undertaking with one or more sureties, the bond or other undertaking shall then be exonerated and the surety or sureties under it discharged. [1989 c 415 § 19.]

*Reviser's note: 1989 c 415 § 19 referred to "sections 4, 11, 13, and 18 of this act." Section 13 was vetoed by the governor, so no translation of that section number to an RCW citation has been made.

46.96.900 Severability—1989 c 415. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 415 § 22.]

Chapter 46.98 CONSTRUCTION

Sections

46.98.010	Continuation of existing law.
46.98.020	Provisions to be construed in <i>pari materia</i> .
46.98.030	Title, chapter, section headings not part of law.
46.98.040	Invalidity of part of title not to affect remainder.
46.98.041	Severability—1963 ex.s. c 3.
46.98.042	Severability—1965 ex.s. c 170.
46.98.043	Severability—1969 ex.s. c 281.

46.98.050	Repeals and saving—1961 c 12.
46.98.060	Emergency—1961 c 12.

46.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 12 § 46.98.010.]

46.98.020 Provisions to be construed in *pari materia*. The provisions of this title shall be construed in *pari materia* even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title shall also be construed in *pari materia* with the provisions of Title 47 RCW, and with other laws relating to highways, roads, streets, bridges, ferries and vehicles. This section shall not operate retroactively. [1961 c 12 § 46.98.020.]

46.98.030 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 12 § 46.98.030.]

46.98.040 Invalidity of part of title not to affect remainder. If any provision of this title or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 12 § 46.98.040.]

46.98.041 Severability—1963 ex.s. c 3. See RCW 47.98.041.

46.98.042 Severability—1965 ex.s. c 170. See RCW 47.98.042.

46.98.043 Severability—1969 ex.s. c 281. See RCW 47.98.045.

46.98.050 Repeals and saving—1961 c 12. See 1961 c 12 § 46.98.050.

46.98.060 Emergency—1961 c 12. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing institutions and shall take effect immediately. [1961 c 12 § 46.98.060.]

Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

Chapters

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- 47.02** Department buildings.
- 47.04** General provisions.
- 47.05** Priority programming for highway development.
- 47.08** Highway funds.
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Chapter 47.01

DEPARTMENT OF TRANSPORTATION

- Sections
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- 47.01.021 Definitions.

- 47.01.031 Department created—Transfer of powers, duties, and functions.
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- 47.01.250 Consultation with designated state officials—Report to governor and legislature.
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generally: RCW 46.68.120.

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population, road cost, money need, computed—Allocation percentage adjustment, when: RCW 46.68.124.

Traffic safety commission, secretary of transportation member of: RCW 43.59.030.

Trails system, Washington state recreation, department of transportation participation: RCW 67.32.140.

47.01.011 Legislative declaration. The legislature hereby recognizes the following imperative needs within the state: To create a state-wide transportation development plan which identifies present status and sets goals for the future; to coordinate transportation modes; to promote and protect land use programs required in local, state and federal law; to coordinate transportation with the economic development of the state; to supply a broad framework in which regional, metropolitan, and local transportation needs can be related; to facilitate the supply of federal and state aid to those areas which will most benefit the state as a whole; to provide for public involvement in the transportation planning and development process; to administer programs within the jurisdiction of this title relating to the safety of the state's transportation systems; and to coordinate and implement national transportation policy with the state transportation planning program.

The legislature finds and declares that placing all elements of transportation in a single department is fully

consistent with and shall in no way impair the use of moneys in the motor vehicle fund exclusively for highway purposes.

Through this chapter, a unified department of transportation is created. To the jurisdiction of this department will be transferred the present powers, duties, and functions of the department of highways, the highway commission, the toll bridge authority, the aeronautics commission, and the canal commission, and the transportation related powers, duties, and functions of the *planning and community affairs agency. [1977 ex.s. c 151 § 1.]

*Reviser's note: "Planning and community affairs agency" means "department of community development." See RCW 43.63A.045.

47.01.021 Definitions. As used in this title unless the context indicates otherwise:

(1) "Department" means the department of transportation created in RCW 47.01.031;

(2) "Commission" means the transportation commission created in RCW 47.01.051;

(3) "Secretary" means the secretary of transportation as provided for in RCW 47.01.041. [1977 ex.s. c 151 § 2.]

Additional definitions: RCW 47.04.010.

47.01.031 Department created—Transfer of powers, duties, and functions. (1) There is created a department of state government to be known as the department of transportation.

(2) All powers, duties, and functions vested by law in the department of highways, the state highway commission, the director of highways, the Washington toll bridge authority, the aeronautics commission, the director of aeronautics, and the canal commission, and the transportation related powers, duties, and functions of the **planning and community affairs agency, are transferred to the jurisdiction of the department, except those powers, duties, and functions which are expressly directed elsewhere in *this or in any other act of the 1977 legislature.

(3) The board of pilotage commissioners is transferred to the jurisdiction of the department for its staff support and administration: *Provided*, That nothing in this section shall be construed as transferring any policy making powers of the board of pilotage commissioners to the transportation commission or the department of transportation. [1988 c 167 § 11; 1977 ex.s. c 151 § 3.]

Reviser's note: *(1) For contents of "this act" [1977 ex.s. c 151], see note following RCW 47.98.070.

** (2) "Planning and community affairs agency" means "department of community development."

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.01.041 Secretary of transportation—Appointment, salary, removal. The executive head of the department of transportation shall be the secretary of transportation, who shall be appointed by the transportation commission, and shall be paid a salary to be fixed by the governor in accordance with the provisions of

RCW 43.03.040. The secretary shall be an ex officio member of the commission without a vote. The secretary shall be the chief executive officer of the commission and be responsible to it, and shall be guided by policies established by it. The secretary shall serve until removed by the commission, but only for incapacity, incompetence, neglect of duty, malfeasance in office, or failure to carry out the commission's policies. Before a motion for dismissal shall be acted on by the commission, the secretary shall be granted a hearing on formal written charges before the full commission. An action by the commission to remove the secretary shall be final. [1983 1st ex.s. c 53 § 28; 1977 ex.s. c 151 § 4.]

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802.

47.01.051 Commission created—Appointment of members—Terms—Qualifications—Removal.

There is hereby created a transportation commission, which shall consist of seven members appointed by the governor, with the consent of the senate. The present five members of the highway commission shall serve as five initial members of the transportation commission until their terms of office as highway commission members would have expired. The additional two members provided herein for the transportation commission shall be appointed for initial terms to expire on June 30, 1982, and June 30, 1983. Thereafter all terms shall be for six years. No elective state official or state officer or state employee shall be a member of the commission, and not more than four members of the commission shall at the time of appointment or thereafter during their respective terms of office be members of the same major political party. At the time of appointment or thereafter during their respective terms of office, four members of the commission shall reside in the western part of the state and three members shall reside in the eastern part of the state as divided north and south by the summit of the Cascade mountains. No more than two members of the commission shall reside in the same county. Commissioners shall not be removed from office by the governor before the expiration of their terms unless for a disqualifying change of residence or for cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office by the superior court of the state of Washington in and for Thurston county upon petition and show cause proceedings duly brought therefor in said court and directed to the commissioner in question. No member shall be appointed for more than two consecutive terms. [1977 ex.s. c 151 § 5.]

47.01.061 Commission—Procedures and internal operations. The commission shall meet at such times as it deems advisable but at least once every month. It may adopt its own rules and regulations and may establish its own procedure. It shall act collectively in harmony with recorded resolutions or motions adopted by majority vote of at least four members. The commission may appoint an administrative secretary, and shall elect one of its

members chairman for a term of one year. The chairman shall be able to vote on all matters before the commission. The commission may from time to time retain planners, consultants, and other technical personnel to advise it in the performance of its duties.

The commission shall submit to each regular session of the legislature held in an odd-numbered year its own budget proposal necessary for the commission's operations separate from that proposed for the department.

Each member of the commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission, and actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested by a majority vote of the commission or by the secretary of transportation, but in no event shall a commissioner be compensated in any year for more than one hundred twenty days, except the chairman of the commission who may be paid compensation for not more than one hundred fifty days. Service on the commission shall not be considered as service credit for the purposes of any public retirement system. [1987 c 364 § 2; 1984 c 287 § 94; 1983 1st ex.s. c 53 § 29; 1981 c 59 § 1; 1977 ex.s. c 151 § 6.]

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

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802.

47.01.070 Director's and commissioner's prior assignments may be delegated. In all situations wherein the director of highways, the director of aeronautics or any one of their designees, or any member of the highway commission, the toll bridge authority, the aeronautics commission, or the canal commission or any one of their designees was on September 21, 1977, designated or serving as a member of any board, commission, committee, or authority, the chairman of the transportation commission or the chairman's designee who shall be an employee of the department of transportation, shall hereafter determine who shall serve as such member. [1977 ex.s. c 151 § 27; 1961 c 13 § 47.01.070. Prior: 1951 c 247 § 5. Formerly RCW 43.27.120.]

47.01.071 Commission—Functions, powers, and duties. The transportation commission shall have the following functions, powers, and duties:

(1) To propose policies to be adopted by the legislature designed to assure the development and maintenance of a comprehensive and balanced state-wide transportation system which will meet the needs of the people of this state for safe and efficient transportation services. Wherever appropriate the policies shall provide for the use of integrated, intermodal transportation systems to implement the social, economic, and environmental policies, goals, and objectives of the people of the state, and especially to conserve nonrenewable natural resources including land and energy. To this end the commission shall:

(a) Develop transportation policies which are based on the policies, goals, and objectives expressed and inherent in existing state laws;

(b) Inventory the adopted policies, goals, and objectives of the local and area-wide governmental bodies of the state and define the role of the state, regional, and local governments in determining transportation policies, in transportation planning, and in implementing the state transportation plan;

(c) Propose a transportation policy for the state, and after notice and public hearings, submit the proposal to the legislative transportation committee and the senate and house transportation committees by January 1, 1978, for consideration in the next legislative session;

(d) Establish a procedure for review and revision of the state transportation policy and for submission of proposed changes to the legislature;

(e) To integrate the state-wide transportation plan with the needs of the elderly and handicapped, and to coordinate federal and state programs directed at assisting local governments to answer such needs;

(2) To establish the policy of the department to be followed by the secretary on each of the following items:

(a) To provide for the effective coordination of state transportation planning with national transportation policy, state and local land use policies, and local and regional transportation plans and programs;

(b) To provide for public involvement in transportation designed to elicit the public's views both with respect to adequate transportation services and appropriate means of minimizing adverse social, economic, environmental, and energy impact of transportation programs;

(c) To provide for the administration of grants in aid and other financial assistance to counties and municipal corporations for transportation purposes;

(d) To provide for the management, sale, and lease of property or property rights owned by the department which are not required for transportation purposes;

(3) To direct the secretary to prepare and submit to the commission a comprehensive and balanced state-wide transportation plan which shall be based on the transportation policy adopted by the legislature and applicable state and federal laws. After public notice and hearings, the commission shall adopt the plan and submit it to the legislative transportation committee and to the house and senate standing committees on transportation before January 1, 1980, for consideration in the 1980 regular legislative session. The plan shall be reviewed and revised prior to each regular session of the legislature during an even-numbered year thereafter. A preliminary plan shall be submitted to such committees by January 1, 1979.

The plan shall take into account federal law and regulations relating to the planning, construction, and operation of transportation facilities;

(4) To propose to the governor and the legislature prior to the convening of each regular session held in an odd-numbered year a recommended budget for the operations of the commission as required by RCW 47.01.061;

(5) To approve and propose to the governor and to the legislature prior to the convening of each regular session during an odd-numbered year a recommended budget for the operation of the department and for carrying out the program of the department for the ensuing biennium. The proposed budget shall separately state the appropriations to be made from the motor vehicle fund for highway purposes in accordance with constitutional limitations and appropriations and expenditures to be made from the general fund, or accounts thereof, and other available sources for other operations and programs of the department;

(6) To review and authorize all departmental requests for legislation;

(7) To approve the issuance and sale of all bonds authorized by the legislature for capital construction of state highways, toll facilities, Columbia Basin county roads (for which reimbursement to the motor vehicle fund has been provided), urban arterial projects, and aviation facilities;

(8) To adopt such rules, regulations, and policy directives as may be necessary to carry out reasonably and properly those functions expressly vested in the commission by statute;

(9) To delegate any of its powers to the secretary of transportation whenever it deems it desirable for the efficient administration of the department and consistent with the purposes of this title;

(10) To exercise such other specific powers and duties as may be vested in the transportation commission by this or any other provision of law. [1981 c 59 § 2; 1980 c 87 § 45; 1977 ex.s. c 151 § 7.]

Powers, duties, and studies by legislative transportation committee: RCW 44.40.020.

47.01.081 Department—Organization—Assistant and deputy secretaries, management positions—Appointment, exempt from civil service, salaries. (1) Initially the department shall be organized into divisions, including the division of highways, the division of public transportation, the division of aeronautics, the division of marine transportation, and the division of transportation planning and budget.

(2) The secretary may reorganize divisions in order to attain the maximum possible efficiency in the operation of the department. Each division shall be headed by an assistant secretary to be appointed by the secretary. The secretary may also appoint a deputy secretary as may be needed for the performance of the duties and functions vested in the department and may also appoint up to twelve ferry system management positions as defined in RCW 47.64.011. The secretary may delegate to officers within the several divisions of the department authority to employ personnel necessary to discharge the responsibilities of the department.

(3) The officers appointed under this section shall be exempt from the provisions of the state civil service law and shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for officers exempt from the operation

of the state civil service law. [1984 c 48 § 1; 1977 ex.s. c 151 § 8.]

47.01.091 Advisory councils. The secretary shall establish such advisory councils as are necessary to carry out the purposes of *this 1977 amendatory act, and to insure adequate public participation in the planning and development of transportation facilities. Members of such councils shall serve at the pleasure of the secretary and may receive per diem and necessary expenses, in accordance with RCW 43.03.050 and 43.03.060, as now or hereafter amended. [1977 ex.s. c 151 § 9.]

***Reviser's note:** For codification of "this 1977 amendatory act" [1977 ex.s. c 151], see note following RCW 47.98.070.

47.01.101 Secretary—Authority and duties. The secretary shall have the authority and it shall be his or her duty, subject to policy guidance from the commission:

(1) To serve as chief executive officer of the department with full administrative authority to direct all its activities;

(2) To organize the department as he or she may deem necessary to carry out the work and responsibilities of the department effectively;

(3) To designate and establish such transportation district or branch offices as may be necessary or convenient, and to appoint assistants and delegate any powers, duties, and functions to them or any officer or employee of the department as deemed necessary to administer the department efficiently;

(4) To direct and coordinate the programs of the various divisions of the department to assure that they achieve the greatest possible mutual benefit, produce a balanced overall effort, and eliminate unnecessary duplication of activity;

(5) To adopt all department rules that are subject to the adoption procedures contained in the state administrative procedure act, except rules subject to adoption by the commission pursuant to statute;

(6) To maintain and safeguard the official records of the department, including the commission's recorded resolutions and orders;

(7) To provide full staff support to the commission to assist it in carrying out its functions, powers, and duties and to execute the policy established by the commission pursuant to its legislative authority;

(8) To execute and implement the biennial operating budget for the operation of the department in accordance with chapter 43.88 RCW and with legislative appropriation and, in such manner as prescribed therein, to make and report to the commission and the chairs of the transportation committees of the senate and house of representatives, including one copy to the staff of each of the committees, deviations from the planned biennial category A and H highway construction programs necessary to adjust to unexpected delays or other unanticipated circumstances.

(9) To exercise all other powers and perform all other duties as are now or hereafter provided by law. [1987 c

505 § 48; 1987 c 179 § 1; 1983 1st ex.s. c 53 § 30; 1977 ex.s. c 151 § 10.]

Reviser's note: This section was amended by 1987 c 179 § 1 and by 1987 c 505 § 48, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802.

Regulations governing parking facilities: RCW 46.61.577.

47.01.131 Continuation of state services to department. All state officials required to maintain contact with or provide services for any of the departments or agencies whose functions are transferred by RCW 47.01.031 shall continue to perform such services for the department of transportation unless otherwise directed by this title. [1977 ex.s. c 151 § 18.]

47.01.141 Biennial report. The department shall submit a biennial report to the governor and chairs of the transportation committees of the senate and house of representatives with a copy to the staff of each of the committees, including but not limited to operational and construction activities of the preceding fiscal period as the department deems important and recommendations for future operations of the department. [1987 c 505 § 49; 1984 c 7 § 75; 1977 c 75 § 68; 1973 2nd ex.s. c 12 § 1.]

Severability—1984 c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 7 § 389.]

Report to legislature on highway needs: RCW 47.01.220.

47.01.145 Study reports available to legislators upon request. Whenever a study report prepared by the department for the legislative transportation committee is made available to the committee or its members, the report shall, upon request, be made available to any member of the Washington state legislature. [1984 c 7 § 76; 1971 ex.s. c 195 § 6; 1967 ex.s. c 145 § 78.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1971 ex.s. c 195: See note following RCW 44.40.010.

Budget, plan for highway development: Chapter 47.05 RCW.

47.01.170 Right of entry. The department or its duly authorized and acting assistants, agents, or appointees have the right to enter upon any land, real estate, or premises in this state, whether public or private, for purposes of making examinations, locations, surveys, and appraisals for highway purposes. The making of any such entry for those purposes does not constitute any trespass by the department or by its duly authorized and acting assistants, agents, or appointees. [1984 c 7 § 77; 1961 c 13 § 47.01.170. Prior: 1945 c 176 § 1; Rem. Supp. 1945 § 6400-3f. Formerly RCW 43.27.030.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.01.180 Roads and bridges in state parks. The department is authorized at the request of, and upon plans approved by the state parks and recreation commission,

to construct and maintain vehicular roads, highways, and bridges within the limits of the several state parks. [1984 c 7 § 78; 1961 c 13 § 47.01.180. Prior: 1943 c 253 § 1; Rem. Supp. 1943 § 6402-35. Formerly RCW 43.27.040.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.01.190 State aid engineer. The secretary shall appoint, with the approval of the governor, a qualified assistant to be designated as "state aid engineer" whose duties shall consist of the administration of the program of state aid in the matter of county roads and city streets. [1984 c 7 § 79; 1961 c 13 § 47.01.190. Prior: 1949 c 220 § 2; Rem. Supp. 1949 § 4600-3g. Formerly RCW 43.27.050.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.01.210 Contract without bid or bond with public utilities and municipal corporations. It is lawful for the department to contract without advertising or bid, or performance bond, with any public utility, whether publicly or privately operated, or with any municipal corporation or political subdivision of the state, for the performance of any work or the furnishing of any service of a type ordinarily performed or furnished by such utility, or by such municipal corporation or political subdivision, whenever, in the opinion of the department, the interest of the public will be best served. [1984 c 7 § 80; 1961 c 13 § 47.01.210. Prior: 1955 c 84 § 1; 1953 c 100 § 1. Formerly RCW 43.27.105.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.01.220 Report to legislature on highway needs. The department shall report to the legislature through the legislative transportation committee and senate and house transportation committees on the highway needs of the state. [1984 c 7 § 81; 1977 ex.s. c 235 § 13; 1973 2nd ex.s. c 12 § 3; 1961 c 13 § 47.01.220. Prior: 1957 c 172 § 30. Formerly RCW 43.27.192.]

Severability—1984 c 7: See note following RCW 47.01.141.

Report to legislature and governor: RCW 47.01.141.

47.01.230 Powers relating to toll bridges and facilities and state ferries. See RCW 47.56.030.

47.01.240 Coordination of long-range needs studies. The department and the transportation improvement board shall coordinate their activities relative to long-range needs studies, in accordance with the provisions of chapter 47.05 RCW and RCW 47.26.170, respectively, in order that long-range needs data may be developed and maintained on an integrated and comparable basis. Needs data for county roads and city streets in nonurban areas shall be provided by the counties and cities to the department in such form and extent as requested by the department, after consultation with the county road administration board and the association of Washington cities, in order that needs data may be obtained on a comparable basis for all highways, roads, and streets in

Washington. [1988 c 167 § 12; 1984 c 7 § 82; 1971 ex.s. c 195 § 10.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1971 ex.s. c 195: See note following RCW 44.40.010.

47.01.250 Consultation with designated state officials—Report to governor and legislature. The chief of the Washington state patrol, the director of the traffic safety commission, the administration engineer of the county road administration board, and the director of licensing are designated as official consultants to the transportation commission so that the goals and activities of their respective agencies which relate to transportation are fully coordinated with other related responsibilities of the department of transportation. In this capacity, the chief of the Washington state patrol, the director of the traffic safety commission, the administration engineer of the county road administration board, and the director of licensing shall consult with the transportation commission and the secretary of transportation on the implications and impacts on the transportation related functions and duties of their respective agencies of any proposed comprehensive transportation plan, program, or policy.

In order to develop fully integrated, balanced, and coordinated transportation plans, programs, and budgets the chief of the Washington state patrol, the director of the traffic safety commission, the administration engineer of the county road administration board, and the director of licensing shall consult with the secretary of transportation on the matter of relative priorities during the development of their respective agencies' plans, programs, and budgets as they pertain to transportation activities. The secretary of transportation shall provide written comments to the governor and the legislature on the extent to which the state patrol's, the traffic safety commission's, the county road administration board's, and the department of licensing's final plans, programs, and budgets are compatible with the priorities established in the department of transportation's final plans, programs, and budgets. [1979 c 158 § 204; 1977 ex.s. c 151 § 26.]

47.01.260 Authority of department. (1) The department of transportation shall exercise all the powers and perform all the duties necessary, convenient, or incidental to the planning, locating, designing, constructing, improving, repairing, operating, and maintaining state highways, including bridges and other structures, culverts, and drainage facilities and channel changes necessary for the protection of state highways, and shall examine and allow or disallow bills for any work or services performed or materials, equipment, or supplies furnished.

(2) Subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against specific loss

or damages arising out of the performance of the contract.

(3) The department is authorized to acquire property as provided by law and to construct and maintain thereon any buildings or structures necessary or convenient for the planning, design, construction, operation, maintenance, and administration of the state highway system and to acquire property and to construct and maintain any buildings, structures, appurtenances, and facilities necessary or convenient to the health and safety and for the accommodation of persons traveling upon state highways.

(4) The department is authorized to engage in planning surveys and may collect, compile, and analyze statistics and other data relative to existing and future highways and highway needs throughout the state, and shall conduct research, investigations, and testing as it deems necessary to improve the methods of construction and maintenance of highways and bridges. [1983 c 29 § 1; 1979 ex.s. c 58 § 1.]

47.01.270 Radioactive or hazardous cargo, notice of prohibition. The department of transportation shall adopt regulations to establish procedures for giving notice to transporters of placarded radioactive or hazardous cargo of times when transportation of such cargo is prohibited. [1983 c 205 § 2.]

Transportation of radioactive or hazardous cargo, prohibited, when: RCW 47.48.050.

47.01.280 Application for improvements to existing highways. (1) Upon receiving an application for improvements to an existing state highway or highways pursuant to RCW 43.160.074 from the community economic revitalization board, the transportation commission shall, in a timely manner, determine whether or not the proposed state highway improvements:

- (a) Meet the safety and design criteria of the department of transportation;
- (b) Will impair the operational integrity of the existing highway system;
- (c) Will affect any other improvements planned by the department; and
- (d) Will be consistent with its policies developed pursuant to RCW 47.01.071.

(2) Upon completion of its determination of the factors contained in subsection (1) of this section and any other factors it deems pertinent, the transportation commission shall forward its approval, as submitted or amended or disapproval of the proposed improvements to the board, along with any recommendation it may wish to make concerning the desirability and feasibility of the proposed development. If the transportation commission disapproves any proposed improvements, it shall specify its reasons for disapproval.

(3) Upon notification from the board of an application's approval pursuant to RCW 43.160.074, the transportation commission shall direct the department of transportation to carry out the improvements in coordination with the applicant.

(4) The transportation commission shall notify the legislative transportation committee of all state highway improvements to be carried out pursuant to RCW 43.160.074 and this section.

(5) All state highway improvements that are approved pursuant to RCW 43.160.074 and this section shall be charged to the economic development account of the motor vehicle fund created by RCW 47.10.803. [1985 c 433 § 6.]

Nonseverability—1985 c 433: See note following RCW 43.160.074.

**Chapter 47.02
DEPARTMENT BUILDINGS**

Sections

47.02.010	Buildings on east capitol site authorized—Financing.
47.02.020	Issuance and sale of limited obligation bonds.
47.02.030	Bonds—Term—Terms and conditions.
47.02.040	Bonds—Signatures—Registration—Where payable—Negotiable instruments.
47.02.050	Bonds—Denominations—Manner and terms of sale—Legal investment for state funds.
47.02.060	Bonds—Bond proceeds—Deposit and use.
47.02.070	Bonds—Statement describing nature of obligation—Pledge of excise taxes.
47.02.080	Bonds—Designation of funds to repay bonds and interest.
47.02.090	Bonds—Repayment procedure—Highway bond retirement fund.
47.02.100	Bonds—Sums in excess of retirement requirements—Use.
47.02.110	Bonds—Appropriation from motor vehicle fund.

47.02.010 Buildings on east capitol site authorized—Financing. The department is authorized in accordance with the provisions of this chapter and RCW 79.24.500 through 79.24.600 to provide for the acquisition of land and the construction of buildings, laboratories, and facilities on the east capitol site for the use of the commission and the department and to finance payment thereof by bonds payable out of special funds from the proceeds of state excise taxes on motor vehicle fuels, or by gifts, bequests, or grants or by such additional funds as the legislature may provide. [1984 c 7 § 83; 1977 ex.s. c 235 § 14; 1965 ex.s. c 167 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.02.020 Issuance and sale of limited obligation bonds. In order to finance the immediate acquisition and construction of the buildings and facilities referred to in RCW 47.02.010 there shall be issued and sold limited obligation bonds of the state of Washington in the sum of four million dollars, or such amount thereof and at such times as determined to be necessary by the state highway commission. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary

for the orderly progress of said project. [1965 ex.s. c 167 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.02.030 Bonds—Term—Terms and conditions. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of its issuance with such reserved rights of prior redemption, bearing such interest, and such terms and conditions as the state finance committee may prescribe, to be specified therein. [1965 ex.s. c 167 § 3.]

47.02.040 Bonds—Signatures—Registration—Where payable—Negotiable instruments. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bond shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1965 ex.s. c 167 § 4.]

47.02.050 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of this chapter shall be legal investment for any of the funds of the state, except the permanent school fund. [1965 ex.s. c 167 § 5.]

47.02.060 Bonds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the acquisition of the land and construction of the buildings and facilities referred to in RCW 47.02-.010, and for payment of the expenses incurred in the drafting, printing, issuance and sale of any such bonds. [1965 ex.s. c 167 § 6.]

47.02.070 Bonds—Statement describing nature of obligation—Pledge of excise taxes. Bonds issued under the provisions of this chapter shall distinctly state that they are not a general obligation of the state but are

payable in the manner provided in this chapter from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of this chapter and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of this chapter. [1965 ex.s. c 167 § 7.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment, see chapter 82.38 RCW.

47.02.080 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay such bonds, or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 84; 1965 ex.s. c 167 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.02.090 Bonds—Repayment procedure—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under the provisions of this chapter when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1965 ex.s. c 167 § 9.]

47.02.100 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels payable into the highway bond retirement fund

shall prove more than is required for the payment of interest on bonds when due or current retirement of bonds, or in the event there is appropriated from time to time additional amounts to be placed in the said bond retirement fund, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1965 ex.s. c 167 § 10.]

47.02.110 Bonds—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1967, the sum of four million dollars, or so much thereof as may be necessary to carry out the provisions of this chapter, but no money shall be available under this appropriation from said fund unless a like amount of bonds provided for herein are sold and the money derived therefrom deposited to the credit of such fund. [1965 ex.s. c 167 § 11.]

**Chapter 47.04
GENERAL PROVISIONS**

Sections	
47.04.010	Definitions.
47.04.015	Change of meaning, certain terms.
47.04.020	Classification of highways.
47.04.040	Title to rights of way vested in state.
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47.04.082	Urban public transportation systems—Defined.
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47.04.140	Counties obtaining federal aid for construction, reconstruction, etc., of ferry boats or approaches.
47.04.150	Outstanding bonds—Savings.
47.04.160	Lewis and Clark bridge.
47.04.170	Federal agreements for public transportation, rail transportation.
47.04.180	Twenty-four hour headlight policy.

Mobile home movement permits and decals: RCW 46.44.170, 46.44.175.

47.04.010 Definitions. The following words and phrases, wherever used in this title, shall have the meaning as in this section ascribed to them, unless where used the context thereof shall clearly indicate to the contrary or unless otherwise defined in the chapter of which they are a part:

(1) "Alley." A highway within the ordinary meaning of alley not designated for general travel and primarily used as a means of access to the rear of residences and business establishments;

(2) "Arterial highway." Every highway, as herein defined, or portion thereof designated as such by proper authority;

(3) "Business district." The territory contiguous to and including a highway, as herein defined, when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway;

(4) "Center line." The line, marked or unmarked parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;

(5) "Center of intersection." The point of intersection of the center lines of the roadways of intersecting highways;

(6) "City street." Every highway as herein defined, or part thereof located within the limits of incorporated cities and towns, except alleys;

(7) "Combination of vehicles." Every combination of motor vehicle and motor vehicle, motor vehicle and trailer, or motor vehicle and semitrailer;

(8) "Commercial vehicle." Any vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire;

(9) "County road." Every highway as herein defined, or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway, or branch thereof;

(10) "Crosswalk." The portion of the roadway between the intersection area and a prolongation or connection of the farthest sidewalk line or in the event there are no sidewalks then between the intersection area and a line ten feet therefrom, except as modified by a marked crosswalk;

(11) "Intersection area." (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict;

(b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection;

(c) The junction of an alley with a street or highway shall not constitute an intersection;

(12) "Intersection control area." The intersection area as herein defined, together with such modification of the adjacent roadway area as results from the arc or curb corners and together with any marked or unmarked crosswalks adjacent to the intersection;

(13) "Laned highway." A highway the roadway of which is divided into clearly marked lanes for vehicular traffic;

(14) "Local authorities." Every county, municipal, or other local public board or body having authority to adopt local police regulations under the Constitution and laws of this state;

(15) "Marked crosswalk." Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface thereof;

(16) "Metal tire." Every tire, the bearing surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material;

(17) "Motor truck." Any motor vehicle, as herein defined, designed or used for the transportation of commodities, merchandise, produce, freight, or animals;

(18) "Motor vehicle." Every vehicle, as herein defined, which is in itself a self-propelled unit;

(19) "Multiple lane highway." Any highway the roadway of which is of sufficient width to reasonably accommodate two or more separate lanes of vehicular traffic in the same direction, each lane of which shall be not less than the maximum legal vehicle width, and whether or not such lanes are marked;

(20) "Operator." Every person who drives or is in actual physical control of a vehicle as herein defined;

(21) "Peace officer." Any officer authorized by law to execute criminal process or to make arrests for the violation of the statutes generally or of any particular statute or statutes relative to the highways of this state;

(22) "Pedestrian." Any person afoot;

(23) "Person." Every natural person, firm, copartnership, corporation, association, or organization;

(24) "Pneumatic tires." Every tire of rubber or other resilient material designed to be inflated with compressed air to support the load thereon;

(25) "Private road or driveway." Every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

(26) "Highway." Every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(27) "Railroad." A carrier of persons or property upon vehicles, other than street cars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

(28) "Railroad sign or signal." Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train;

(29) "Residence district." The territory contiguous to and including the highway, as herein defined, not comprising a business district, as herein defined, when the property on such highway for a continuous distance of three hundred feet or more on either side thereof is in the main improved with residences or residences and buildings in use for business;

(30) "Roadway." The paved, improved, or proper driving portion of a highway designed, or ordinarily used for vehicular travel;

(31) "Safety zone." The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by painted marks, signs, buttons, standards, or otherwise so as to be plainly discernible;

(32) "Sidewalk." That property between the curb lines or the lateral lines of a roadway, as herein defined, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a highway and dedicated to use by pedestrians;

(33) "Solid tire." Every tire of rubber or other resilient material which does not depend upon inflation with compressed air for the support of the load thereon;

(34) "State highway." Every highway as herein defined, or part thereof, which has been designated as a state highway, or branch thereof, by legislative enactment;

(35) "Street car." A vehicle other than a train, as herein defined, for the transporting of persons or property and operated upon stationary rails principally within incorporated cities and towns;

(36) "Traffic." Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highways for purposes of travel;

(37) "Traffic control signal." Any traffic device, as herein defined, whether manually, electrically, or mechanically operated, by which traffic alternately is directed to stop or proceed or otherwise controlled;

(38) "Traffic devices." All signs, signals, markings, and devices not inconsistent with this title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic;

(39) "Train." A vehicle propelled by steam, electricity, or other motive power with or without cars coupled thereto, operated upon stationary rails, except street cars;

(40) "Vehicle." Every device capable of being moved upon a highway and in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

Words and phrases used herein in the past, present, or future tense shall include the past, present, and future tenses; words and phrases used herein in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context thereof shall indicate to the contrary. [1975 c 62 § 50; 1967 ex.s. c 145 § 42; 1961 c 13 § 47.04.010. Prior: 1937 c 53 § 1; RRS § 6400-1.]

Severability—1975 c 62: See note following RCW 36.75.010.
Aeronautics, definitions relating to: RCW 47.68.020.
Canal, defined: RCW 47.72.060.
Department, commission, secretary—Defined: RCW 47.01.021.

Ferry workers, marine employees, definitions relating to: RCW 47.64.011.

Limited access facilities, definitions relating to: RCW 46.52.010, 46.52.011.

Signs and scenic vistas, definitions relating to: RCW 47.42.020.

Toll bridges, roads, definitions relating to: RCW 47.56.010.

Urban arterials, definitions relating to: RCW 47.26.040, 47.26.042, 47.26.043, 47.26.090, 47.26.100, 47.26.110.

47.04.015 Change of meaning, certain terms. Unless the language specifically indicates otherwise, or unless the context plainly requires a different interpretation:

Wherever in Title 47 RCW or in any provision in the Revised Code of Washington the term "Washington state highway commission", "the state highway commission", "the highway commission", "the commission" (when referring to the Washington state highway commission), "the department of highways", "Washington toll bridge authority", or "the authority" (when referring to the Washington toll bridge authority) is used, it shall mean the department of transportation created in RCW 47.01.031.

Wherever in Title 47 RCW or in any provision in the Revised Code of Washington the term "director of highways" is used, it shall mean the secretary of transportation, whose office is created in RCW 47.01.041. [1977 ex.s. c 151 § 23.]

47.04.020 Classification of highways. All public highways in the state of Washington, or portions thereof, outside incorporated cities and towns shall be divided and classified as state highways and county roads. All state highways and branches thereof shall be established by the legislature of the state of Washington by appropriate general location and termini. Any prior distinctions between highways as primary or secondary are hereby abolished. All powers granted to, or duties imposed upon, the department with regard to either primary or secondary state highways shall be construed to relate to all state highways. Whenever these terms are used, either jointly or independently, each shall be construed to include all state highways. All public highways in the state of Washington, or portions thereof, outside incorporated cities and towns, not established as state highways, are hereby declared to be county roads. [1984 c 7 § 85; 1967 ex.s. c 145 § 41; 1963 c 24 § 3; 1961 c 13 § 47.04.020. Prior: 1937 c 207 § 1; RRS § 6402-1; 1937 c 53 § 5; RRS § 6400-5; 1913 c 65 § 1; RRS § 6790.]

Severability—1984 c 7: See note following RCW 47.01.141.

Establishment of continuing system for designation of highways—Signs: RCW 47.36.095.

47.04.040 Title to rights of way vested in state. Upon and after April 1, 1937, all rights of way of any primary state highways, together with all appurtenances thereto, the right or interest in or to which was, or is, in any county, road district, township, local improvement district, or other highway or road district or political subdivision of the state of Washington shall be and the same is hereby transferred to and vested in the state of Washington for use in conjunction with such primary state highways under the department of transportation.

All public highways in the state of Washington which have been designated to be primary state highways or secondary state highways or classified as primary roads and which have been constructed and improved and maintained for a period of seven years prior to April 1, 1937, at the expense of the state shall operate to vest in the state of Washington all right, title, and interest to the right of ways thereof, including the roadway and ditches and existing drainage facilities, together with all appurtenances thereto and no informalities in the records of title to such public highways shall be construed to invalidate or vacate such public highways or to divest the state of Washington of any right, title and interest in the right of way thereof. [1979 ex.s. c 30 § 7; 1961 c 13 § 47.04.040. Prior: 1937 c 53 § 29; RRS § 6400-29.]

47.04.050 Acceptance of federal acts. The state of Washington hereby assents to the purposes, provisions, terms and conditions of the grant of money provided in an act of congress entitled: "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," approved July 11, 1916, and all acts, grants and appropriations amendatory and supplementary thereto and affecting the state of Washington. [1961 c 13 § 47.04.050. Prior: 1937 c 53 § 43; RRS § 6400-43; 1917 c 76 § 1; RRS § 6844.]

47.04.060 Administration of federal grants. The department is authorized and directed to act for and on behalf of the state of Washington, and any political subdivision of the state, in all things pertaining to the selection, construction, and maintenance of highways and roads under the provisions of the act of congress approved July 11, 1916, and any and all acts amendatory thereto; and to enter into such agreement with the secretary of transportation or other duly authorized agent of the United States as may from time to time be desirable or necessary to secure the money or aid for any section of state highway, county road, or city or town street selected by law for construction or improvement through an appropriation for the period in which the construction or improvement is to be made. The money shall be added to and expended in connection with the appropriation aforesaid; and shall apply thereto, as may be required, cooperative expenditures from the motor vehicle fund, which may have been appropriated by the state legislature, and from any highway, road, or street fund of any political subdivision, and which are available for the construction and maintenance of any section of state highway, county road, or city or town street selected as aforesaid for such aid and improvement. [1984 c 7 § 86; 1961 c 13 § 47.04.060. Prior: 1937 c 53 § 47; RRS § 6400-47; 1917 c 76 § 5, part; RRS § 6848, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.04.070 Conformity with federal requirements. In all matters relating to the cooperative construction or improvement of any state highway, county road, or city or town street for which federal funds or aid is secured under any act of congress, the department shall act in

the manner provided by state law relating to state highway construction from the motor vehicle fund, so far as the same may be consistent with the provisions of such act of congress and the rules and regulations made by the secretary of transportation or other authorized agent of the United States government pursuant to such act, to which the procedure shall be adapted by the department as may be necessary. [1984 c 7 § 87; 1961 c 13 § 47.04-.070. Prior: 1937 c 53 § 44; RRS § 6400-44; 1917 c 76 § 5, part; RRS § 6848, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.04.080 Joint action with other governments and agencies. The department is empowered to join financially or otherwise with any other state or any county, city, or town of any other state, or with any foreign country, or any province or district of any foreign country, or with the federal government or any agency thereof, or with any or all thereof, for the erecting, constructing, operating, or maintaining of any bridge, trestle, or any other structure, for the continuation or connection of any state highway across any stream, body of water, gulch, navigable water, swamp, or other topographical formation requiring any such structure and forming a boundary between the state of Washington and any other state or foreign country, and for the purchase or condemnation of right of way therefor. [1984 c 7 § 88; 1973 1st ex.s. c 151 § 11; 1961 c 13 § 47.04.080. Prior: 1937 c 53 § 47 1/2; RRS § 6400-47 1/2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.04.081 Urban public transportation systems—Participation in planning, development, and establishment. The department is empowered to join financially or otherwise with any public agency or any county, city, or town in the state of Washington or any other state, or with the federal government or any agency thereof, or with any or all thereof for the planning, development, and establishment of urban public transportation systems in conjunction with new or existing highway facilities. [1984 c 7 § 89; 1967 c 108 § 13; 1965 ex.s. c 170 § 63.]

Severability—1984 c 7: See note following RCW 47.01.141.

Urban public transportation system defined: RCW 47.04.082.

47.04.082 Urban public transportation systems—Defined. As used in this act the term "urban public transportation system" shall mean a system for the public transportation of persons or property by buses, street cars, trains, electric trolley coaches, other public transit vehicles, or any combination thereof operating in or through predominantly urban areas and owned and operated by the state, any city or county or any municipal corporation of the state, including all structures, facilities, vehicles and other property rights and interest forming a part of such a system. [1967 c 108 § 1.]

Reviser's note: The term "this act" refers to 1967 c 108, codified as RCW 47.04.082, 47.04.083, 47.98.044, and the 1967 amendments to RCW 47.04.081, 47.08.070, 47.12.010, 47.12.250, 47.28.140, 47.44-.010, 47.44.040, 47.48.010, 47.52.010, 47.52.090, and 47.56.256.

47.04.083 Urban public transportation systems—Declaration of public policy—Use of motor vehicle, city street, or county road funds. The separate and uncoordinated development of public highways and urban public transportation systems is wasteful of this state's natural and financial resources. It is the public policy of this state to encourage wherever feasible the joint planning, construction and maintenance of public highways and urban public transportation systems serving common geographical areas as joint use facilities. To this end the legislature declares it to be a highway purpose to use motor vehicle funds, city and town street funds or county road funds to pay the full proportionate highway, street or road share of the costs of design, right of way acquisition, construction and maintenance of any highway, street or road to be used jointly with an urban public transportation system. [1967 c 108 § 2.]

47.04.090 Penalty. It is a misdemeanor for any person to violate any of the provisions of this title unless specifically provided otherwise by this title or other law of this state.

Unless another penalty is provided in this title, every person convicted of a misdemeanor for violation of any provisions of this title shall be punished in accordance with chapter 9A.20 RCW. [1989 c 224 § 2; 1961 c 13 § 47.04.090. Prior: 1937 c 53 § 95; RRS § 6400-95.]

47.04.100 Temporary route pending construction of new highway—Streets, roads not to be maintained as. Unless otherwise provided, whenever by statute a new highway or extension is added to the state highway system, no existing city street or county road may be maintained or improved by the department as a temporary route of such new highway or extension pending the construction of the new highway or extension on the location adopted by the department. [1984 c 7 § 90; 1973 1st ex.s. c 151 § 12; 1965 ex.s. c 170 § 34.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.04.140 Counties obtaining federal aid for construction, reconstruction, etc., of ferry boats or approaches. Whenever a county that operates or proposes to operate ferries obtains federal aid for the construction, reconstruction, or modification of any ferry boat or approaches thereto under Title 23, United States Code, the following provisions apply to the county's operation of its ferries:

(1) The county shall obtain from the department a franchise authorizing the ferry operations. The county's application for a franchise or amended franchise shall designate all ferry routes it proposes to operate. The department shall issue the franchise or amended franchise for the operation of each route that it finds is not otherwise served by adequate transportation facilities. A county may terminate any ferry route without approval of the department.

(2) At least ninety days before applying for federal aid for the construction, reconstruction, or modification of any of its ferries or approaches thereto, and thereafter whenever new tolls or charges are proposed for use of its

ferries, the county shall file with the department, the current or proposed schedule of tolls and charges for use of its ferries. Such tolls and charges shall be deemed approved by the department unless it finds that the aggregate revenues to be derived from the county's ferry operations will exceed the amount required to pay the actual and necessary costs of operation, maintenance, administration, and repair of the county's ferries and their appurtenances. [1989 c 62 § 1; 1984 c 7 § 91; 1975-'76 2nd ex.s. c 65 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.04.150 Outstanding bonds—Savings. While any bonds, whether definitive, temporary, or interim, or warrants, certificates, or receipts of any denomination, with or without coupons attached heretofore issued by the state aeronautics commission, the toll bridge authority, the highway commission, or any of the other agencies whose functions are transferred to the department of transportation by RCW 47.01.031, remain outstanding, the powers and duties relating thereto of such agencies or of any official or employee thereof transferred by *RCW 47.01.111 to the department of transportation, or any powers and duties of any other state official or state agency with respect to such bonds, warrants, certificates, or receipts shall not be diminished or impaired in any manner that will adversely affect the interests and rights of the holders of such bonds, warrants, certificates, or receipts. The holder of any such bond, warrant, certificate, or receipt may by mandamus or other appropriate proceeding require the performance by the department of transportation, or other appropriate state official or agency, of any of the duties heretofore imposed upon any state department, official, or employee under the terms of any such prior bond, warrant, certificate, or receipt agreement or sale: *Provided*, That the enumeration of such rights and remedies herein shall not be deemed to exclude the exercise or prosecution of any other rights or remedies by the holders of such bonds, warrants, certificates, or receipts. [1977 ex.s. c 151 § 19.]

*Reviser's note: RCW 47.01.111 was decodified pursuant to 1985 c 6 § 26.

47.04.160 Lewis and Clark bridge. In commemoration of the 175th anniversary of captains Meriwether Lewis and William Clark's epic journey from Wood River, Illinois, to Cape Disappointment, Washington, and to fully honor the expedition's passing the present location of the city of Longview, Washington, in November, 1805, and to couple this commemoration with the dedication of the bridge from Longview, Washington, to Rainier, Oregon, on March 29, 1930, the official name of this bridge is changed from the Longview-Columbia bridge to the Lewis and Clark bridge. [1980 c 5 § 1.]

47.04.170 Federal agreements for public transportation, rail transportation. The department of transportation is authorized to enter into and perform agreements with federal agencies as may be necessary to secure federal grants, loans, or other assistance on its own behalf or on behalf of other public or private recipients for:

(1) Public transportation purposes, including but not limited to, bus transportation, specialized transportation services for the elderly and handicapped, and ride sharing activities; and

(2) Rail transportation. [1985 c 20 § 1.]

47.04.180 Twenty-four hour headlight policy. On the recommendation of their public works departments or designees, counties or cities can petition the department of transportation to create a "twenty-four hour headlight policy" on state highways in their respective jurisdictions. The department shall develop criteria for approval or disapproval, such as traffic volume, accident statistics, and costs of signs. The department shall notify all counties about this program.

A jurisdiction requesting such a policy shall periodically report to the department regarding its educational efforts. A jurisdiction may petition the department to remove such a policy.

The jurisdiction shall educate its citizens on the "twenty-four hour headlight policy." The department shall place and maintain appropriate signs along the designated highway. Participating jurisdictions shall share in the cost of signing in an amount as determined by the department.

The department shall periodically report to the legislative transportation committee regarding petitions and the subsequent accident statistics. By January 1, 1995, the department shall report to the legislature on the findings of the program. [1989 c 195 § 1.]

Chapter 47.05

PRIORITY PROGRAMMING FOR HIGHWAY DEVELOPMENT

Sections	
47.05.010	Declaration of purpose.
47.05.021	Functional classification of highways.
47.05.030	Six-year program and financial plan for improvements—Objectives—Categories—Allocation of funds.
47.05.035	Allocation of funds, factors—Program objectives.
47.05.040	Six-year comprehensive highway improvement program and financial plan—Adoption—Biennial revision—Apportionment.
47.05.051	Six-year comprehensive highway improvement program and financial plan—Priority selection criteria—Departure from criteria—Biennial revision.
47.05.055	Application of chapter 122, Laws of 1979 ex. sess.—Deviations from plans.
47.05.070	Budget recommendation to be presented to governor and legislature—Contents.
47.05.085	Delay of project for coordination with county-funded improvements.

State highway improvement projects in urban areas, priority programming to be accorded: RCW 47.26.070.

47.05.010 Declaration of purpose. The legislature finds that anticipated revenues available for state highways for the foreseeable future will fall substantially short of the amount required to satisfy all of the state highway needs. It is the purpose of this chapter to establish a policy of priority programming for highway development having as its basis the rational selection of

projects according to factual need, systematically scheduled to carry out defined objectives within limits of money and manpower, and fixed in advance with reasonable flexibility to meet changed conditions. [1969 ex.s. c 39 § 1; 1963 c 173 § 1.]

47.05.021 Functional classification of highways. (1)

The transportation commission is hereby directed to conduct periodic analyses of the entire state highway system, report thereon to the chairs of the transportation committees of the senate and house of representatives, including one copy to the staff of each of the committees, biennially and based thereon, to subdivide, classify, and subclassify according to their function and importance all designated state highways and those added from time to time and periodically review and revise the classifications into the following three functional classes:

(a) The "principal arterial system" shall consist of a connected network of rural arterial routes with appropriate extensions into and through urban areas, including all routes designated as part of the interstate system, which serve corridor movements having travel characteristics indicative of substantial state-wide and interstate travel;

(b) The "minor arterial system" shall, in conjunction with the principal arterial system, form a rural network of arterial routes linking cities and other activity centers which generate long distance travel, and, with appropriate extensions into and through urban areas, form an integrated network providing interstate and interregional service; and

(c) The "collector system" shall consist of routes which primarily serve the more important intercounty, intracounty, and intraurban travel corridors, collect traffic from the system of local access roads and convey it to the arterial system, and on which, regardless of traffic volume, the predominant travel distances are shorter than on arterial routes.

(2) Those state highways which perform no arterial or collector function, which serve only local access functions, and which lack essential state highway characteristics shall be designated "local access" highways.

(3) In making the functional classification the transportation commission shall adopt and give consideration to criteria consistent with this section and federal regulations relating to the functional classification of highways, including but not limited to the following:

(a) Urban population centers within and without the state stratified and ranked according to size;

(b) Important traffic generating economic activities, including but not limited to recreation, agriculture, government, business, and industry;

(c) Feasibility of the route, including availability of alternate routes within and without the state;

(d) Directness of travel and distance between points of economic importance;

(e) Length of trips;

(f) Character and volume of traffic;

(g) Preferential consideration for multiple service which shall include public transportation;

(h) Reasonable spacing depending upon population density; and

(i) System continuity. [1987 c 505 § 50; 1979 ex.s. c 122 § 1; 1977 ex.s. c 130 § 1.]

Severability—1979 ex.s. c 122: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 122 § 10.]

Effective dates—1977 ex.s. c 130: "Section 1 of this 1977 act modifying the functional classification of state highways shall apply to the long range plan for highway improvements and to the six year program for highway construction commencing July 1, 1979 and to the preparation thereof and shall take effect July 1, 1977. Section 2 of this 1977 act shall take effect July 1, 1979." [1977 ex.s. c 130 § 3.] "Section 1 of this 1977 act" is codified as RCW 47.05.021; "Section 2 of this 1977 act" repealed RCW 47.05.020.

47.05.030 Six-year program and financial plan for improvements—Objectives—Categories—Allocation of funds.

The transportation commission shall adopt and periodically revise, after consultation with the legislative transportation committee, a comprehensive six-year program and financial plan for highway improvements specifying program objectives for each of the highway categories, "A," "B," "C," and "H," defined in this section, and within the framework of estimated funds for such period. The program and plan shall be based upon the improvement needs for state highways as determined by the department from time to time.

With such reasonable deviations as may be required to effectively utilize the estimated funds and to adjust to unanticipated delays in programmed projects, the commission shall allocate the estimated funds among the following described categories of highway improvements, so as to carry out the commission's program objectives:

(1) Category A shall consist of those improvements necessary to sustain the structural, safety, and operational integrity of the existing state highway system (other than improvements to the interstate system to be funded with federal aid at the regular interstate rate under federal law and regulations, and improvements designated in subsections (2) through (4) of this section).

(2) Category B shall consist of improvements for the continued development of the interstate system to be funded with federal aid at the regular interstate rate under federal law and regulations.

(3) Category C shall consist of the development of major transportation improvements (other than improvements to the interstate system to be funded with federal aid at the regular interstate rate under federal law and regulations) including designated but unconstructed highways which are vital to the state-wide transportation network.

(4) Category H shall consist of those improvements necessary to sustain the structural and operational integrity of existing bridges on the highway system (other than bridges on the interstate system or bridge work included in another category because of its association with a highway project in such category).

Projects which are financed one hundred percent by federal funds or other agency funds shall, if the commission determines that such work will improve the state

highway system, be managed separately from the above categories. [1987 c 179 § 2; 1979 ex.s. c 122 § 2; 1977 ex.s. c 151 § 44; 1975 1st ex.s. c 143 § 1; 1973 2nd ex.s. c 12 § 4; 1969 ex.s. c 39 § 3; 1965 ex.s. c 170 § 33; 1963 c 173 § 3.]

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.035 Allocation of funds, factors—Program objectives. (1) The transportation commission, in preparing the comprehensive six-year program and financial plan for highway improvements, shall allocate the estimated funds among categories A, B, C, and H giving primary consideration to the following factors:

(a) The relative needs in each of the categories of improvements;

(b) The need to provide adequate funding for category A improvements to protect the state's investment in its existing highway system;

(c) The continuity of future highway development of all categories of improvements with those previously programmed; and

(d) The availability of special categories of federal funds for specific work.

(2) The commission in preparing the comprehensive six-year program and financial plan shall establish program objectives for each of the highway categories, A, B, C, and H. [1987 c 179 § 3; 1979 ex.s. c 122 § 3; 1975 1st ex.s. c 143 § 2.]

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.040 Six-year comprehensive highway improvement program and financial plan—Adoption—Biennial revision—Apportionment. (1) Prior to October 1st of each even-numbered year, the transportation commission as provided in subsections (2), (3), (4), and (5) of this section shall adopt and thereafter shall biennially revise, after consultation with the legislative transportation committee, the comprehensive six-year program and financial plan for highway improvements, including program objectives, as specified in RCW 47.05.030 as now or hereafter amended.

(2) The commission shall first allocate to category A improvements as a whole the estimated construction funds as will be necessary to accomplish the commission's program objectives for category A highway improvements throughout the state. The commission shall then apportion the allocated category A construction funds among the several transportation districts considering the improvement needs of each district in relation to such needs in all districts.

(3) The commission shall next allocate to category B improvements the estimated federal aid interstate funds and state matching funds as necessary to accomplish the commission's program objectives for category B highway improvements throughout the state.

(4) The commission shall next allocate to category H the federal bridge replacement funds and required state funds necessary to accomplish the commission's objectives for category H throughout the state.

(5) The commission shall then allocate to category C improvements the remaining estimated construction funds to accomplish the commission's program objectives for category C highway improvements throughout the state. [1987 c 179 § 4; 1979 ex.s. c 122 § 4; 1977 ex.s. c 235 § 15; 1975 1st ex.s. c 143 § 3; 1973 2nd ex.s. c 12 § 5; 1969 ex.s. c 39 § 4; 1963 c 173 § 4.]

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.051 Six-year comprehensive highway improvement program and financial plan—Priority selection criteria—Departure from criteria—Biennial revision. (1) The comprehensive six-year program and financial plan for each category of highway improvements shall be based upon a priority selection system within the program objectives established for each category. The commission using the criteria set forth in RCW 47.05.030, as now or hereafter amended, shall determine the category of each highway improvement.

(2) Selection of specific category A and H projects for the six-year program shall take into account the criteria set forth in subsection (4) of this section.

(3) Selection of specific category B projects for the six-year program shall be based on commission established priorities for completion and preservation of the interstate system.

(4) In selecting each category A and H project as provided in subsection (2) of this section, the following criteria (not necessarily in order of importance) shall be taken into consideration:

(a) Its structural ability to carry loads imposed upon it;

(b) Its capacity to move traffic at reasonable speeds without undue congestion;

(c) Its adequacy of alignment and related geometrics;

(d) Its accident experience; and

(e) Its fatal accident experience.

(5) The transportation commission in carrying out the provisions of this section may delegate to the department of transportation the authority to select category A, B, and H improvements to be included in the six-year program.

(6) Selection of specific category C projects for the six-year program shall be based on the priority of each highway section proposed to be improved in relation to other highway sections within the state with full regard to the structural, geometric, safety, and operational adequacy of the existing highway section taking into account the following:

(a) Continuity of development of the highway transportation network;

(b) Coordination with the development of other modes of transportation;

(c) The stated long range goals of the local area and its transportation plan;

(d) Its potential social, economic, and environmental impacts;

(e) Public views concerning proposed improvements;

(f) The conservation of energy resources and the capacity of the transportation corridor to move people and goods safely and at reasonable speeds; and

(g) Feasibility of financing the full proposed improvement.

(7) The commission in selecting any project for improvement in categories A, B, C, or H may depart from the priority of projects so established (a) to the extent that otherwise funds cannot be utilized feasibly within the program, (b) as may be required by a court judgment, legally binding agreement, or state and federal laws and regulations, (c) as may be required to coordinate with federal, local, or other state agency construction projects, (d) to take advantage of some substantial financial benefit that may be available, (e) for continuity of route development, or (f) because of changed financial or physical conditions of an unforeseen or emergent nature. The commission shall maintain in its files information sufficient to show the extent to which the commission has departed from the established priority of projects.

(8) The comprehensive six-year program and financial plan for highway improvements shall be revised biennially pursuant to RCW 47.05.040 as now or hereafter amended. The adopted program and plan shall be extended for an additional two years, to six years in the future, effective on July 1st of each odd-numbered year. [1987 c 179 § 5; 1979 ex.s. c 122 § 5; 1975 1st ex.s. c 143 § 4.]

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.055 Application of chapter 122, Laws of 1979 ex. sess.—Deviations from plans. The provisions of *this 1979 amendatory act modifying existing procedures for priority programming for highway development as set forth in chapter 47.05 RCW, shall first apply to the comprehensive six-year program and financial plan for highway improvements for the period 1981 to 1987. For the biennia ending June 30, 1979, and June 30, 1981, the commission may deviate from the existing long range plan and the six-year program to accommodate the modified procedures prescribed by *this 1979 amendatory act. [1979 ex.s. c 122 § 6; 1975 1st ex.s. c 143 § 6.]

*Reviser's note: This 1979 amendatory act [1979 ex.s. c 122] consisted of amendments to RCW 47.05.021, 47.05.030, 47.05.035, 47.05.040, 47.05.051, 47.05.055, 47.05.070, and 47.26.180 and the repeal of RCW 47.05.020.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.070 Budget recommendation to be presented to governor and legislature—Contents. The transportation commission shall approve and present to the governor and to the legislature prior to its convening, a recommended budget for the ensuing biennium. The biennial budget shall include details of proposed expenditures, and performance and public service criteria for construction, maintenance, and planning activities in consonance with the comprehensive six-year program and financial plan adopted under provisions of RCW

44.40.070 and 47.05.040. [1983 1st ex.s. c 53 § 31; 1979 ex.s. c 122 § 7; 1977 ex.s. c 151 § 45; 1973 2nd ex.s. c 12 § 7; 1963 c 173 § 7.]

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.085 Delay of project for coordination with county-funded improvements. The department may delay a highway improvement at the request of a county or service district to enable the county or district to develop local funding necessary to pay for additional highway improvements over and above those planned by the department so that the highway improvements may be done at the same time. [1985 c 400 § 4.]

County may fund improvements to state highways: RCW 36.75.035.

Chapter 47.08 HIGHWAY FUNDS

Sections

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47.08.130	Custody of federal funds—Disbursement.

Highway funds, constitutional limitations: State Constitution Art. 2, § 40 (Amendment 18).

47.08.010 Control of allocated funds. Whenever there is provided an allocation for the construction or improvement of state highways, the allocation shall be under the sole charge and direct control of the department. [1984 c 7 § 92; 1961 c 13 § 47.08.010. Prior: 1937 c 53 § 32, part; RRS § 6400-32, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.020 State to match federal funds. For the construction, alteration, repair and improvement of state highways, county roads, or city and town streets in the state of Washington which are part of the public highway system, the good faith of the state of Washington is hereby pledged to make available funds sufficient to equal the sums appropriated to the state by or under the

United States government during succeeding fiscal years and to use and expend the same within one year after the fiscal year for which appropriated, and in the manner and under the rules and regulations imposed by the secretary of commerce and to maintain, or cause to be maintained, the highways or roads constructed or improved with the aid of funds so appropriated, and to make adequate provisions for carrying out such maintenance. [1961 c 13 § 47.08.020. Prior: 1937 c 53 § 46; RRS § 6400-46; 1917 c 76 § 3; RRS § 6846.]

47.08.040 Contracts with United States as to state highway property. Whenever it is necessary or desirable for the federal government or any agency thereof to acquire an interest in or in any way damage any property or interest therein owned by the state of Washington and used in connection with any highway in the state of Washington in connection with any federal project for the development of any river within or partially within the state of Washington, the department is authorized, empowered, and directed to negotiate and enter into an agreement with the proper agency of the federal government as to the rights which shall be acquired, the compensation which shall be made therefor and the character of instruments by which the rights shall be conveyed, and as to any other matters which may be necessary in order to satisfy the requirements of the federal government. If the agreement is required to be reduced to writing, the writing shall be approved as to form by the attorney general of the state of Washington. [1984 c 7 § 93; 1961 c 13 § 47.08.040. Prior: 1937 c 113 § 1; RRS § 6450-91.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.050 Contracts with United States as to state highway property—Governor to execute instrument to the United States. Whenever the department has entered into an agreement under RCW 47.08.040 with the federal government or any agency thereof requiring the execution of any deed, flowage easement, or instrument of any nature, to the federal government or agency, and the instrument is approved as to form by the attorney general of the state of Washington, the governor of the state of Washington is authorized and directed without further authority and in the name of the state of Washington to execute and deliver to the proper agency of the federal government any such instrument or instruments which shall be, when attested by the secretary of state, binding upon the state of Washington. [1984 c 7 § 94; 1961 c 13 § 47.08.050. Prior: 1937 c 113 § 2; RRS § 6450-92.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.060 Contracts with United States as to state highway property—Disposal of funds from the United States. Whenever any moneys shall be realized by the state of Washington as a result of any agreement authorized by RCW 47.08.040, the same shall be deposited in the treasury of the state of Washington to the credit of the motor vehicle fund, and shall be available for

highway purposes only. [1967 ex.s. c 145 § 45; 1961 c 13 § 47.08.060. Prior: 1937 c 113 § 3; RRS § 6450-93.]

47.08.070 Cooperation in public works projects, urban public transportation systems. When it appears to the department that any state highway will be benefited or improved by the construction of any public works project, including any urban public transportation system, within the state of Washington by any of the departments of the state of Washington, by the federal government, or by any agency, instrumentality, or municipal corporation of either the state of Washington or the United States, the department is authorized to enter into cooperative agreements with any such state department, with the United States, or with any agency, instrumentality, or municipal corporation of either the state of Washington or the United States, wherein the state of Washington, acting through the department, will participate in the cost of the public works project in such amount as may be determined by the department to be the value of the benefits or improvements to the particular state highway derived from the construction of the public works project. Under any such agreement the department may contribute to the cost of the public works project by making direct payment to the particular state department, federal government, or to any agency, instrumentality, or municipal corporation of either the state or the United States, or any combination thereof, which may be involved in the project, from any funds appropriated to the department and available for highway purposes, or by doing a portion of the project either by day labor or by contract, or in any other manner as may be deemed advisable and necessary by the department. [1984 c 7 § 95; 1967 c 108 § 3; 1961 c 13 § 47.08.070. Prior: 1945 c 127 § 2; Rem. Supp. 1945 § 6400-121.]

Severability—1984 c 7: See note following RCW 47.01.141.
Urban public transportation system defined: RCW 47.04.082.

47.08.080 Funds when department is in charge of county road improvements. If any funds become available from the federal government or otherwise for expenditure in conjunction with county funds for the construction, alteration, repair, or improvement of any county road and the work is to be performed by the department, the state treasurer shall, upon notice from the department, set aside from any moneys in the motor vehicle fund credited to any such county, the cost thereof, together with the cost of engineering, supervision, and other proper items, or so much of the money in the state treasury to the credit of the county as may be necessary for use in conjunction with funds from the federal government to accomplish the work. The work shall then be performed by the department and paid from the money so set aside upon vouchers approved and submitted by the department in the same manner as payment is made for such work on state highways: *Provided*, That the legislative authority of any such county shall have, by proper resolution, filed in duplicate in the office of the department and approved by it, determined the county road construction, alteration, repair, or improvement to

be performed in such county and the same is found to conform in all respects to the requirements necessary for the use of such funds of the federal government. [1984 c 7 § 96; 1973 c 106 § 22; 1961 c 13 § 47.08.080. Prior: 1937 c 187 § 59; RRS § 6450-59.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.090 Funds when department is in charge of city street improvements. If any funds become available from the federal government or otherwise for expenditure in conjunction with funds accruing to any incorporated city or town for the construction, alteration, repair, or improvement of its city streets designated as forming a part of the route of any state highway through the incorporated city or town and the work is to be performed by the department, the state treasurer shall, upon notice from the department, set aside from any moneys in the motor vehicle fund credited to the incorporated city or town, the cost thereof or so much money in the state treasury to the credit of the incorporated city or town as may be necessary in conjunction with the funds from the federal government or otherwise to accomplish the work, the cost to be paid by the state treasurer from the money so set aside upon vouchers approved and submitted by the department in the same manner as payment is made for work on state highways. If any such incorporated city or town has agreed with the state of Washington or the federal government as a condition precedent to the acquiring of federal funds for construction on any city street of the incorporated city or town designated as forming a part of the route of any state highways, that the street will be maintained to a standard and the incorporated city or town fails to so maintain the city street, then the department may perform the maintenance, and the state treasurer is authorized to deduct the cost thereof from any funds credited or to be credited to the incorporated city or town and pay the same on vouchers approved and submitted by the department in the same manner as payment is made for work performed on state highways. [1984 c 7 § 97; 1973 c 106 § 23; 1961 c 13 § 47.08.090. Prior: 1937 c 187 § 65; RRS § 6450-65.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.100 Illegal use of county or city road funds—Procedure to correct. The department is authorized from time to time to investigate expenditures from the county road fund and the city street fund; and if it determines that unauthorized, illegal, or wrongful expenditures are being or have been made from the fund it is authorized to proceed as follows: If the county road fund is involved it shall notify in writing the county legislative authority and the county treasurer of its determination; and if the city street fund is involved it shall notify the city council or commission and the mayor and city treasurer of the city or town of its determination. In its determination the department is authorized to demand of those officials that the wrongful or illegal expenditures shall be stopped, adjusted, or remedied and that restitution of any wrongful or illegal diversion or

use shall be made; and it may notify the officials that if the wrong is not stopped, remedied, or adjusted, or restitution made to its satisfaction within a specified period fixed by it, it will direct the withholding of further payments to the county or city from the motor vehicle fund. The county or city shall have ten days after the notice is given within which to correct or remedy the wrong, or wrongful and illegal practices, to make restitution, or to adjust the matter to the satisfaction of the department.

If no correction, remedy, adjustment, or restitution is made within ten days to the satisfaction of the department, it has power to request in writing that the state treasurer withhold further payments from the motor vehicle fund to the county or city; and it is the duty of the state treasurer upon being so notified to withhold further payments from the motor vehicle fund to the county or city involved until the officials are notified in writing by the department that payments may be resumed.

The department is also authorized to notify in writing the prosecuting attorney of the county in which the violation occurs of the facts, and it is the duty of the prosecuting attorney to file charges and to criminally prosecute any and all persons guilty of any such violation. [1984 c 7 § 98; 1973 c 106 § 24; 1961 c 13 § 47.08.100. Prior: 1943 c 82 § 13, part; 1937 c 187 § 66, part; Rem. Supp. 1943 § 6450-66, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.110 Penalty for misuse of county or city road funds—General penalty. It shall be unlawful and a misdemeanor, unless the same is by this title or other law of this state declared to be a felony or gross misdemeanor, to divert or use, or authorize, permit or participate in the diversion or use of any moneys in the county road fund or in the city street fund for any other purpose or in any other manner than that authorized by law. [1961 c 13 § 47.08.110. Prior: 1943 c 82 § 13, part; 1937 c 187 § 66, part; Rem. Supp. 1943 § 6450-66, part.]

47.08.120 Transportation equipment fund. There is hereby created in the state treasury a state fund to be known as the "transportation equipment fund," the same to be used by the department of transportation as a revolving fund to be expended for salaries, wages and operations required for the repair, replacement, purchase and operation of equipment and for purchase of equipment, materials and supplies to be used as follows: (1) In the administration and operation of this fund; and (2) in the administration, maintenance and construction of highways and transportation facilities.

The transportation equipment fund shall be credited, in the case of equipment, with a reasonable rental assessed upon the use of such equipment by the various state departments, and in the case of materials and supplies, with a reasonable charge for such materials and supplies. Such credit for rental and charges for materials and supplies shall be charged against the proper appropriation therefor.

Equipment may be rented and materials and supplies may be sold out of this fund to any federal, state, county

or city political subdivision or governmental agency. The terms and charges for such rental and the prices for such sale shall be solely within the discretion of the department of transportation and its determination of the charge for rental or sale price shall be considered a reasonable rental charge or a reasonable sale price. Any political subdivision or governmental agency shall make payment for such rental or for purchase of such materials or supplies directly to the transportation equipment fund at the office of the department of transportation at Olympia. [1979 c 39 § 1; 1961 c 13 § 47.08.120. Prior: 1943 c 135 § 1; 1935 c 144 § 10; Rem. Supp. 1943 § 6600-1c.]

47.08.121 Transportation equipment fund declared revolving fund of proprietary nature—Use. The "highway equipment fund" as established by RCW 47.08.120 is declared to be a revolving fund of a proprietary nature and moneys that are or will be deposited in this fund are hereby authorized for expenditures for the purposes provided by law. [1961 c 13 § 47.08.121. Prior: 1959 c 326 § 3.]

47.08.125 Transfer of purchases to transportation equipment fund—Charge for computer services. The department of transportation may from time to time, transfer equipment, materials and supplies purchased with appropriations from the motor vehicle fund to the transportation equipment fund with or without charging the transportation equipment fund. The transfer of computer and computer-type equipment and hand-held and mobile radios, acquired with motor vehicle fund appropriations, to the transportation equipment fund prior to September 1, 1979, is ratified and approved. The full charge for computer services provided from this fund shall be paid directly into the fund by the division of the department of transportation, the political subdivision or the other governmental agency receiving the benefit of such services. [1979 c 39 § 2.]

47.08.130 Custody of federal funds—Disbursement. The state treasurer is hereby authorized and directed to receive and have custody of such funds and warrants drawn by the secretary of transportation or other authorized agent of the United States as are made available for payment by the secretary of the treasury of the United States under the provisions of the federal aid road act approved July 11, 1916, and all acts amendatory or supplementary thereto, disbursing the same under such terms and conditions as may be prescribed by the secretary of transportation or by the secretary of the treasury or other authorized agent of the United States. The state treasurer is further authorized and directed to pay from the motor vehicle fund for the use of the department such funds as may be necessary upon any project in anticipation of reimbursement by the government of the United States. [1984 c 7 § 99; 1961 c 13 § 47.08.130. Prior: 1937 c 53 § 45; RRS § 6400-45; 1931 c 129 § 1; 1929 c 146 § 1; 1927 c 214 § 1; 1925 c 4 § 1; 1923 c 41 § 1; 1921 c 89 § 1; 1919 c 56 § 1; RRS § 6850.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 47.10

HIGHWAY CONSTRUCTION BONDS

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FIRST PRIORITY PROJECT—1951 ACT

47.10.010 First priority highway projects—Declaration of. Reconstruction of primary state highway No. 1 from Oregon to British Columbia, construction of four traffic lanes at Snoqualmie Pass, construction of an adequate highway bridge from Pasco to Kennewick and construction of county arterial highways and farm to market roads in Grant, Franklin and Adams counties to coincide with the opening of lands for settlement in the Columbia Basin irrigation project, are declared to be highway projects of the first priority. The construction of such projects is required in the interest of the public safety and for the orderly development of the state. The reimbursement of the motor vehicle fund for money used to purchase Agate Pass Bridge bonds will also make possible other war emergency or high priority highway construction. The threat of war makes acceleration of construction a vital necessity at this time. [1961 c 13 § 47.10.010. Prior: 1951 c 121 § 1.]

47.10.020 Bond issue authorized—Use of motor vehicle fund. To provide funds for accelerating construction of these first priority projects, and to reimburse the motor vehicle fund for money expended for Agate Pass Bridge construction there shall be issued and sold limited obligation bonds of the state of Washington in the sum of sixty-six million seven hundred three thousand, six hundred and twenty-five dollars. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the Washington state highway commission, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of the first priority projects: *Provided*, That if funds are available in the motor vehicle fund in an amount greater than is necessary to pay current demands such funds may be used to finance these first priority projects until such time as bonds are sold, as provided by law, at which time the motor vehicle fund shall be reimbursed. [1961 c 13 § 47.10.020. Prior: 1955 c 117 § 1; 1951 c 121 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.10.030 Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding

twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.010 through 47.10.140 shall be fully negotiable instruments. [1961 c 13 § 47.10.030. Prior: 1951 c 121 § 3.]

47.10.040 Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.010 through 47.10.140 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.010 through 47.10.140 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949; and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.010 through 47.10.140, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.010 through 47.10.140 when due. [1961 c 13 § 47.10.040. Prior: 1951 c 121 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020 were repealed by 1971 ex.s. c 175 § 33; for later enactment see chapter 82.38 RCW.

47.10.050 Sale of bonds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.010 through 47.10.140 shall be legal investment for any of the funds of the state, except the permanent school fund: *Provided*, That bonds authorized herein to reimburse the motor vehicle fund for the cost of the Agate Pass Bridge construction shall be sold at the earliest

date which the committee finds feasible. [1961 c 13 § 47.10.050. Prior: 1951 c 121 § 5.]

47.10.060 Proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of such first priority projects, reimbursement of the motor vehicle fund for money expended for construction of the Agate Pass Bridge in order to make such money available for war emergency highway projects or other high priority highway uses, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.060. Prior: 1951 c 121 § 6.]

47.10.070 Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds: *Provided*, That money required hereunder to pay interest on or to retire any bonds issued for Columbia Basin county arterial highways or farm to market roads shall be repaid by any such county or counties wherein such highways or roads are constructed in the manner set forth in RCW 47.10.110. [1984 c 7 § 100; 1961 c 13 § 47.10.070. Prior: 1951 c 121 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.080 Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.070, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which is hereby established, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all

bonds issued shall be fully met at all times. [1961 c 13 § 47.10.080. Prior: 1951 c 121 § 8.]

47.10.090 Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.090. Prior: 1951 c 121 § 11.]

47.10.100 Allocation of bonds. The bonds authorized herein are allocated to the first priority projects as follows:

(1) Forty-nine million two hundred fifty thousand dollars of the total issue for the acceleration of the reconstruction of primary state highway No. 1, said amount to be expended on said primary state highway No. 1 as follows: Thirty-three million five hundred thousand dollars between Everett, Seattle, Tacoma, Olympia, Chehalis, Centralia, Kelso, Vancouver, and the Oregon boundary line, and fifteen million seven hundred fifty thousand dollars between Everett and the Canadian boundary line;

(2) Six million five hundred thousand dollars of the total issue for the construction of the highway bridge from Pasco to Kennewick;

(3) Four million two hundred fifty thousand dollars of the total issue for the construction of a four lane highway at Snoqualmie Pass;

(4) Five million dollars of the total issue for the construction of Columbia Basin county arterial highways and farm to market roads in Grant, Franklin and Adams counties, for which the state must be reimbursed as provided in RCW 47.10.110; and

(5) One million seven hundred three thousand six hundred twenty-five dollars of the total issue for reimbursement of the motor vehicle fund for money spent for Washington toll bridge authority bonds purchased in connection with the construction of the Agate Pass Bridge, said sum of one million seven hundred three thousand six hundred twenty-five dollars to be used when it becomes available in the motor vehicle fund, under allotments to be made by the director of highways, for war emergency or other high priority highway projects: *Provided*, That no bonds shall be issued for Columbia Basin county arterial highway and road purposes unless expenditures are actually required for the settlement of lands ready for irrigation in the Columbia Basin project and all construction of arterial highways and roads in such counties shall be accomplished by the engineering forces of the various counties under the supervision of the director of highways. [1961 c 13 § 47.10.100. Prior: 1951 c 121 § 12.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term

"director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.110 Columbia Basin highway projects—Reimbursement by counties. The secretary shall report separately to the state finance committee all sums expended from funds resulting from the sale of bonds for Columbia Basin county arterial highways and farm to market roads in Grant, Franklin, and Adams counties under the provisions of RCW 47.10.010 through 47.10.140. Those counties shall repay to the state all the cost of any Columbia Basin highway or road facilities actually constructed under the provisions of RCW 47.10.010 through 47.10.140 within each of such counties as follows: The state finance committee, at least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, shall ascertain the percentage of the motor vehicle funds arising from the excise taxes on motor vehicle fuels, which is to be transferred to such counties under the provisions of law which will be necessary to pay all of the interest upon or retire when due all of the portion of said bonds chargeable to expenditures incurred under the provisions of RCW 47.10.010 through 47.10.140 in each of said counties. The state finance committee shall notify the state treasurer of this estimate and the treasurer shall thereafter, when distributions are made from the motor vehicle fund to counties, retain such percentage of the total sums credited to such counties as aforesaid in the motor vehicle fund arising from the excise taxes on motor vehicle fuels until such fund is fully reimbursed for all expenditures under RCW 47.10.010 through 47.10.140 in Grant, Adams, and Franklin counties. Any money so retained shall be available for state highway purposes. [1984 c 7 § 101; 1961 c 13 § 47.10.110. Prior: 1951 c 121 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.120 Columbia Basin highway projects—Limit as to amounts currently retained. The sums retained from motor vehicle funds arising from the excise taxes on motor vehicle fuel, of any such counties shall not exceed in any distribution period fifty percent of the total amount to be credited to such county. If there shall be a deficit in the amount available for reimbursement of the motor vehicle fund, due to this provision, then such deficit shall continue to be a charge against any sums due any such county from the motor vehicle fund from such excise taxes until the full cost of such Columbia Basin highway facilities is paid. [1961 c 13 § 47.10.120. Prior: 1951 c 121 § 10.]

47.10.130 Agate Pass Bridge to become toll free—Cancellation of Agate Pass bonds. When the state finance committee has made arrangements for the sale of sufficient bonds to reimburse the motor vehicle fund in the sum of one million seven hundred three thousand six hundred twenty-five dollars as aforesaid, the committee shall notify the Washington toll bridge authority and the authority is thereafter directed to transfer the Agate Pass Bridge to the highway department for operation as

a toll free part of the state highway system. The bonds of the authority issued to construct the Agate Pass Bridge shall then be canceled. [1961 c 13 § 47.10.130. Prior: 1951 c 121 § 13.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "Washington state toll bridge authority" and "authority" mean department of transportation; see RCW 47.04.015.

47.10.140 Appropriation from motor vehicle fund. There is appropriated from the motor vehicle fund for the biennium ending March 31, 1953 the sum of sixty-six million seven hundred three thousand six hundred and twenty-five dollars, or so much thereof as may be necessary, to carry out the provisions of RCW 47.10.010 through 47.10.140, but no money shall be available under this appropriation from said fund unless a like amount of the bonds provided for herein are sold and the money derived deposited to the credit of such fund. [1961 c 13 § 47.10.140. Prior: 1951 c 121 § 15.]

ADDITIONAL BONDS—1953 ACT

47.10.150 Declaration of necessity for additional funds. Increased construction costs for highway and bridge construction since the enactment of a highway bond issue by the 1951 legislature makes necessary additional money with which to complete the sections of primary state highway No. 1 planned from funds allocated under RCW 47.10.010 through 47.10.140 and it is vital to the economy of the state and the safety of the traffic that these sections shall be completed to relieve traffic congestions, to add capacity in event of war, and to presently insure greater safety to highway users; the rapid increase of traffic across Snoqualmie Pass necessitates continued improvement of primary state highway No. 2 to provide four-lane paving contiguous to Snoqualmie Pass as the funds will permit; the rapid increase of traffic and the facilitation of movement of military forces and equipment from the military centers of the state makes imperative the construction of a highway from primary state highway No. 2 beginning approximately four miles west of North Bend thence southwesterly by the most feasible route by the way of Auburn to a junction with primary state highway No. 1 in the vicinity of Milton; said highway to follow approximately the route surveyed by the director of highways and covered in the report filed by him with the 1951 legislature commonly known as the "Echo Lake Route," as the funds provided for herein will permit; the construction of secondary state highways in to the Columbia Basin area is immediately necessary to provide needed state arterial highways for the irrigated lands of the Columbia Basin areas to market centers and thereby encourage the full development of the basin project. The construction of such projects is required in the interest of the public safety and for the orderly development of the state. The threat of war makes acceleration of construction a vital necessity at this time. [1961 c 13 § 47.10.150. Prior: 1953 c 154 § 1.]

Reviser's note: Powers, duties, and functions of director of highways transferred to department of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.160 Additional bonds—Issuance and sale authorized—Use of motor vehicle fund. To provide funds for accelerating construction of these priority projects there shall be issued and sold limited obligation bonds of the state of Washington in the sum of eighteen million dollars. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the Washington state highway commission, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of the first priority projects: *Provided*, That if funds are available in the motor vehicle fund in an amount greater than is necessary to pay current demands such funds may be used to finance these first priority projects until such time as bonds are sold, as provided by law, at which time the motor vehicle fund shall be reimbursed. [1961 c 13 § 47.10.160. Prior: 1955 c 117 § 2; 1953 c 154 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.10.170 Additional bonds—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.150 through 47.10.270 shall be fully negotiable instruments. [1961 c 13 § 47.10.170. Prior: 1953 c 154 § 3.]

47.10.180 Additional bonds—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.150 through 47.10.270 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by

chapter 220, Laws of 1949; and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.150 through 47.10.270 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.150 through 47.10.270 when due. [1961 c 13 § 47.10.180. Prior: 1953 c 154 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.190 Additional bonds—Sale of bonds. The bonds issued under RCW 47.10.150 through 47.10.270 shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.190. Prior: 1953 c 154 § 5.]

47.10.200 Additional bonds—Proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of such priority projects, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.200. Prior: 1953 c 154 § 6.]

47.10.210 Additional bonds—Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds. [1984 c 7 § 102; 1961 c 13 § 47.10.210. Prior: 1953 c 154 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.220 Additional bonds—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee

shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under RCW 47.10.150 through 47.10.270 when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimate so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.220. Prior: 1953 c 154 § 8.]

47.10.230 Additional bonds—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.230. Prior: 1953 c 154 § 9.]

47.10.240 Additional bonds—Allocation—Primary state highway No. 1. Seven million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270 are allocated for accelerating the completion of four-lane construction of primary state highway No. 1. [1961 c 13 § 47.10.240. Prior: 1953 c 154 § 10.]

47.10.250 Additional bonds—Allocation—Primary state highway No. 2, Snoqualmie Pass. Five million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270 are allocated for accelerating four-lane construction of primary state highway No. 2 contiguous to Snoqualmie Pass. [1961 c 13 § 47.10.250. Prior: 1953 c 154 § 11.]

47.10.260 Additional bonds—Allocation—Columbia Basin highways. Three million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270 are allocated for accelerating the construction of secondary state highways in the Columbia Basin area. [1961 c 13 § 47.10.260. Prior: 1953 c 154 § 12.]

47.10.270 Additional bonds—Allocation—Echo Lake route. Three million dollars of the total issue of the

bonds authorized by RCW 47.10.150 through 47.10.270 are allocated insofar as said funds will permit to the construction of a highway from primary state highway No. 2 beginning approximately four miles west of North Bend thence southwesterly by the most feasible route by the way of Auburn to a junction with primary state highway No. 1 in the vicinity of Milton. [1961 c 13 § 47.10.270. Prior: 1953 c 154 § 13.]

ADDITIONAL BONDS—1955 ACT

47.10.280 Construction in Grant, Franklin, Adams counties authorized—Declaration of priority. Construction of county arterial highways and farm to market roads in Grant, Franklin and Adams counties to coincide with the opening of lands for settlement in the Columbia Basin irrigation project, is declared to be a project of the first priority. The construction of said project is required in the interest of the public safety and for the orderly development of the state. [1961 c 13 § 47.10.280. Prior: 1955 c 311 § 1.]

47.10.290 Construction in Grant, Franklin, Adams counties authorized—Issuance and sale of bonds. To provide funds for construction of this first priority project, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of four million three hundred thousand dollars.

The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the director of highways, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of this first priority project. [1961 c 13 § 47.10.290. Prior: 1955 c 311 § 2.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.300 Construction in Grant, Franklin, Adams counties authorized—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signatures may be printed facsimile. Any bonds may be registered in the name of the holder by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued

under authority of RCW 47.10.280 through 47.10.400 shall be fully negotiable instruments. [1961 c 13 § 47.10.300. Prior: 1955 c 311 § 3.]

47.10.310 Construction in Grant, Franklin, Adams counties authorized—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.280 through 47.10.400 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.280 through 47.10.400 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW, and RCW 82.36.020, 82.36.230, 82.36.250 and 82.36.400; and *chapter 82.40 RCW and RCW 82.40.020. The proceeds of such excise taxes are pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.280 through 47.10.400. The legislature agrees to continue to impose the same excise taxes on motor fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.280 through 47.10.400 when due. [1961 c 13 § 47.10.310. Prior: 1955 c 311 § 4.]

*Reviser's note: Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.320 Construction in Grant, Franklin, Adams counties authorized—Sale of bonds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee. They may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If such bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale. It shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.280 through 47.10.400 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.320. Prior: 1955 c 311 § 5.]

47.10.330 Construction in Grant, Franklin, Adams counties authorized—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of this first priority project, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.330. Prior: 1955 c 311 § 6.]

47.10.340 Construction in Grant, Franklin, Adams counties authorized—Source of funds for payment of bond principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes. They shall never constitute a

charge against any allocation of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds: *Provided*, That money required hereunder to pay interest on or to retire any bonds issued for Columbia Basin county arterial highways or farm to market roads shall be repaid by any such county or counties wherein such highways or roads are constructed in the manner set forth in RCW 47.10.360. [1984 c 7 § 103; 1961 c 13 § 47.10.340. Prior: 1955 c 311 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.350 Construction in Grant, Franklin, Adams counties authorized—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.340, the percentage of receipts in money of the motor vehicle fuels, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which is hereby established, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.350. Prior: 1955 c 311 § 8.]

47.10.360 Construction in Grant, Franklin, Adams counties authorized—Reimbursement by counties. The secretary shall report to the state finance committee all sums expended from funds resulting from the sale of bonds for Columbia Basin county arterial highways and farm to market roads in Grant, Franklin, and Adams counties under the provisions of RCW 47.10.280 through 47.10.400. Those counties shall repay to the state all the cost of any Columbia Basin highway or road facilities actually constructed under the provisions of RCW 47.10.280 through 47.10.400 within each of those counties as follows: The state finance committee, at least one year prior to the date any such interest is due and payable on such bonds or before the maturity date of any such bonds, shall ascertain the percentage of the motor vehicle funds arising from the excise taxes on motor vehicle fuels, which is to be transferred to such counties under the provisions of law which will be necessary to pay all of the interest upon or retire when due

all of the portion of said bonds chargeable to expenditures incurred under the provisions of RCW 47.10.280 through 47.10.400 in each of said counties. The state finance committee shall notify the state treasurer of this estimate and the treasurer shall thereafter, when distributions are made from the motor vehicle fund to counties, retain such percentage of the total sums credited to such counties as aforesaid in the motor vehicle fund arising from such excise taxes on motor vehicle fuels until such fund is fully reimbursed for all expenditures under RCW 47.10.280 through 47.10.400 in Grant, Adams, and Franklin counties. Any money so retained shall be available for state highway purposes. [1984 c 7 § 104; 1961 c 13 § 47.10.360. Prior: 1955 c 311 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.370 Construction in Grant, Franklin, Adams counties authorized—Limit as to amounts currently retained from excise taxes. The sums retained from motor vehicle funds, arising from the excise taxes on motor vehicle fuel, of any such counties shall not exceed in any distribution period fifty percent of the total amount to be credited to such county. If there shall be a deficit in the amount available for reimbursement of the motor vehicle fund, due to this provision, then such deficit shall continue to be a charge against any sums due any such county from the motor vehicle fund from such excise taxes until the full cost of such Columbia Basin highway facilities is paid. [1961 c 13 § 47.10.370. Prior: 1955 c 311 § 10.]

47.10.380 Construction in Grant, Franklin, Adams counties authorized—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.380. Prior: 1955 c 311 § 11.]

47.10.390 Construction in Grant, Franklin, Adams counties authorized—Allocation of funds to each county. The bonds authorized herein are allocated to the counties as follows:

- (1) For Adams county—six hundred thousand dollars.
- (2) For Franklin county—one million five hundred thousand dollars.
- (3) For Grant county—two million two hundred thousand dollars:

Provided, That no bonds shall be issued for Columbia Basin county arterial highway and road purposes unless expenditures are actually required for the settlement of lands ready for irrigation in the Columbia Basin project and all construction of arterial highways and roads in such counties shall be accomplished by the engineering

forces of the various counties under the supervision of the director of highways. [1961 c 13 § 47.10.390. Prior: 1955 c 311 § 12.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.400 Construction in Grant, Franklin, Adams counties authorized—Appropriation from motor vehicle fund. There is appropriated from the motor vehicle fund for the biennium ending June 30, 1957 the sum of four million three hundred thousand dollars, or so much thereof as may be necessary, to carry out the provisions of RCW 47.10.280 through 47.10.400, but no money shall be available under this appropriation from said fund unless a like amount of the bonds provided for herein are sold and the money derived deposited to the credit of such fund. [1961 c 13 § 47.10.400. Prior: 1955 c 311 § 13.]

ADDITIONAL BONDS—1957 ACT

47.10.410 Echo Lake route—Declaration of necessity. Increased costs for highway and bridge construction since the enactment of the highway bond issues authorized by the 1951, 1953 and 1955 legislatures makes necessary additional money with which to complete that portion of primary state highway No. 2, beginning approximately four miles west of North Bend thence southwesterly by the most feasible route by way of Auburn to a junction with primary state highway No. 1 in the vicinity of Milton, commonly known as the "Echo Lake Route." It is vital to the economy of the state and traffic safety that this project be constructed as soon as the funds provided herein will permit. [1961 c 13 § 47.10.410. Prior: 1957 c 206 § 1.]

47.10.420 Echo Lake route—Additional bond issue authorized—Use of motor vehicle fund. To provide additional funds for the construction of the "Echo Lake Route," in addition to bonds authorized to be sold by RCW 47.10.160 and as allocated by RCW 47.10.270, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of three million dollars. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall when notified by the Washington state highway commission, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of this project: *Provided*, That if funds are available in the motor vehicle fund in an amount greater than is necessary to pay current demands, moneys appropriated to the state highway commission for highway purposes may be used to finance this project until such time as bonds are sold, as provided by law, at which time the motor vehicle fund shall be reimbursed. [1961 c 13 § 47.10.420. Prior: 1957 c 206 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Terms "Washington state highway commission" and "state highway commission" mean department of transportation; see RCW 47.04.015.

47.10.430 Echo Lake route—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption bearing such interest, and such terms and conditions as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.410 through 47.10.500 shall be fully negotiable instruments. [1961 c 13 § 47.10.430. Prior: 1957 c 206 § 3.]

47.10.440 Echo Lake route—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.410 through 47.10.500 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.410 through 47.10.500 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949, and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.410 through 47.10.500 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.410 through 47.10.500. [1961 c 13 § 47.10.440. Prior: 1957 c 206 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.450 Echo Lake route—Sale of bonds. The bonds issued under the terms of RCW 47.10.410 through 47.10.500 shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public

sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.450. Prior: 1957 c 206 § 5.]

47.10.460 Echo Lake route—Proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of the project referred to in RCW 47.10.410, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.460. Prior: 1957 c 206 § 6.]

47.10.470 Echo Lake route—Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds. [1984 c 7 § 105; 1961 c 13 § 47.10.470. Prior: 1957 c 206 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.480 Echo Lake route—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under RCW 47.10.410 through 47.10.500 when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.480. Prior: 1957 c 206 § 8.]

47.10.490 Echo Lake route—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.490. Prior: 1957 c 206 § 9.]

47.10.500 Echo Lake route—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1959 the sum of three million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.410 through 47.10.500, but no money shall be available under this appropriation from said fund unless a like amount of bonds provided for herein are sold and the moneys derived therefrom are deposited to the credit of such fund. [1961 c 13 § 47.10.500. Prior: 1957 c 206 § 10.]

**TACOMA-SEATTLE-EVERETT FACILITY—
1957 ACT**

47.10.700 Tacoma-Seattle-Everett facility—Declaration of necessity. Increased traffic and increased costs of highway and bridge construction make necessary additional moneys with which to complete the sections of primary state highway No. 1 through and between the cities of Tacoma, Seattle, and Everett and as an additional alternate route by-passing Seattle east of Lake Washington. It is vital to the economy of the state and the safety of traffic that these sections shall be completed to relieve traffic congestions, to insure greater safety to highway users, and to assure an adequate through highway to accommodate traffic from bridges across Lake Washington as soon as possible. [1961 c 13 § 47.10.700. Prior: 1957 c 189 § 1.]

47.10.702 Tacoma-Seattle-Everett facility—To be part of federal system as limited access—Federal standards and conditions to be met. This highway project shall be constructed as a part of the federal interstate highway system as a fully controlled limited access facility and shall meet the standards and specifications required by the state of Washington and the secretary of commerce of the United States in order to qualify for federal grants in aid as provided for in the federal-aid highway act of 1956. The state shall perform all conditions precedent to payment in advance of apportionment as provided by section 108(h) of the federal-aid highway act of 1956 so as to be entitled to federal aid funds for the project covered by RCW 47.10.700 through 47.10.724 when such funds are apportioned. [1961 c 13 § 47.10.702. Prior: 1957 c 189 § 2.]

47.10.704 Tacoma-Seattle-Everett facility—Powers and duties of highway commission—Route of project. In order to facilitate vehicular traffic through and between the cities of Tacoma, Seattle and Everett and to remove the present handicaps and hazards over and along primary state highway No. 1 as presently established, the state highway commission is authorized to realign, redesign and reconstruct primary state highway No. 1 upon a newly located right of way or upon portions of existing right of way through and between the cities of Tacoma, Seattle and Everett and as an additional alternate route bypassing Seattle east of Lake Washington. The route of the proposed project is established as follows: Beginning in the vicinity of Ponders Corner, thence in a general northeasterly and northerly direction through the cities of Tacoma and Seattle to a point in the vicinity of the city of Everett and as an additional alternate route bypassing Seattle east of Lake Washington. [1961 c 13 § 47.10.704. Prior: 1957 c 189 § 3.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "state highway commission" means department of transportation; see RCW 47.04.015.

47.10.706 Tacoma-Seattle-Everett facility—Issuance and sale of bonds authorized. In order to finance the immediate construction of the project referred to in RCW 47.10.700 pending receipt of federal grants in aid and in accordance with the federal-aid highway act of 1956, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of forty-five million dollars or such amount thereof and at such times as determined to be necessary by the state highway commission. No bonds shall be issued under the provisions of RCW 47.10.700 through 47.10.724 until the congress of the United States shall approve the estimated cost of completing the federal interstate system to be submitted to it within ten days subsequent to January 2, 1958, as provided by section 108(d), federal-aid highway act of 1956. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as may be necessary for the orderly progress of said project. [1967 ex.s. c 7 § 1; 1961 c 13 § 47.10.706. Prior: 1957 c 189 § 4.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Terms "state highway commission" and "Washington state highway commission" mean department of transportation; see RCW 47.04.015.

47.10.708 Tacoma-Seattle-Everett facility—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the

seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1961 c 13 § 47.10.708. Prior: 1957 c 189 § 5.]

47.10.710 Tacoma–Seattle–Everett facility—Sale of bonds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.700 through 47.10.724 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.710. Prior: 1957 c 189 § 6.]

47.10.712 Tacoma–Seattle–Everett facility—Proceeds from bonds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of the project referred to in RCW 47.10.700, 47.10.702 and 47.10.704, and for payment of the expense incurred in the drafting, printing, issuance, and sale of any such bonds. [1961 c 13 § 47.10.712. Prior: 1957 c 189 § 7.]

47.10.714 Tacoma–Seattle–Everett facility—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.700 through 47.10.724 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.700 through 47.10.724 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250 and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949; and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.700 through 47.10.724, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.700 through

47.10.724. [1961 c 13 § 47.10.714. Prior: 1957 c 189 § 8.]

*Reviser's note: Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.716 Tacoma–Seattle–Everett facility—Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 106; 1961 c 13 § 47.10.716. Prior: 1957 c 189 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.718 Tacoma–Seattle–Everett facility—Additional security for payment of bonds—Pledge of federal funds. As additional security for payment of the principal amount of any or all of the bonds to be issued hereunder, the state finance committee, with the consent of the department, may pledge all or any portion of the federal aid funds received or from time to time to be received by the state from the United States under the provisions of the federal–aid highway act of 1956 for the construction of all or any part of the project referred to in RCW 47.10.700, 47.10.702, and 47.10.704. [1984 c 7 § 107; 1961 c 13 § 47.10.718. Prior: 1957 c 189 § 10.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.720 Tacoma–Seattle–Everett facility—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.716, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which, together with federal funds which may be pledged as provided in RCW 47.10.718, shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee

shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.720. Prior: 1957 c 189 § 11.]

47.10.722 Tacoma–Seattle–Everett facility—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels and the federal funds which may be pledged as provided in RCW 47.10.718, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.722. Prior: 1957 c 189 § 12.]

47.10.724 Tacoma–Seattle–Everett facility—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1959 the sum of forty-five million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.700 through 47.10.724, but no money shall be available under this appropriation from said fund unless a like amount of bonds provided for herein are sold and the money derived therefrom deposited to the credit of such fund. [1967 ex.s. c 7 § 2; 1961 c 13 § 47.10.724. Prior: 1957 c 189 § 13.]

ADDITIONAL BONDS—1965 ACT

47.10.726 Construction in Grant, Franklin, Adams counties authorized—Declaration of public interest. Construction of county arterial highways and farm to market roads in Grant, Franklin and Adams counties to coincide with the opening of additional lands for settlement in the Columbia Basin irrigation project, is declared to be a project required in the interest of the public safety and for the orderly development of the state. [1965 c 121 § 1.]

47.10.727 Construction in Grant, Franklin, Adams counties authorized—Issuance and sale of limited obligation bonds. To provide funds for construction of this project, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of one million eight hundred and fifty thousand dollars.

The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the director of highways, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of this project. [1965 c 121 § 2.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term

"director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.728 Construction in Grant, Franklin, Adams counties authorized—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signatures may be printed facsimile. The coupons attached to the bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.726 through 47.10.738 shall be fully negotiable instruments. [1965 c 121 § 3.]

47.10.729 Construction in Grant, Franklin, Adams counties authorized—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.726 through 47.10.738 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.726 through 47.10.738 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.726 through 47.10.738. The legislature agrees to continue to impose the same excise taxes on motor fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.726 through 47.10.738 when due. [1965 c 121 § 4.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment, see chapter 82.38 RCW.

47.10.730 Construction in Grant, Franklin, Adams counties authorized—Sale of bonds—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee. They may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. The bonds shall be sold at public sale. It shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.726 through 47.10.738 shall be legal investment for any of the funds of the state, except the permanent school fund. [1965 c 121 § 5.]

47.10.731 Construction in Grant, Franklin, Adams counties authorized—Bond proceeds—Deposit and

use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of the project authorized by RCW 47.10.726 through 47.10.738, and payment of the expense incurred in the printing, issuance and sale of any such bonds, in which expense shall be included the sum of one eighth of one percent of the amount of the issue to cover the cost of servicing said issue, such sum to be deposited in the general fund. [1965 c 121 § 6.]

47.10.732 Construction in Grant, Franklin, Adams counties authorized—Source of funds for payment of bond principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes. They shall never constitute a charge against any allocation of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds: *Provided*, That money required hereunder to pay interest on or to retire any bonds issued as authorized by RCW 47.10.726 through 47.10.738 shall be repaid by the county or counties wherein the highways or roads are constructed in the manner set forth in RCW 47.10.734. [1984 c 7 § 108; 1965 c 121 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.733 Construction in Grant, Franklin, Adams counties authorized—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of receipts in money of the motor vehicle *fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which is hereby established, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1965 c 121 § 8.]

***Reviser's note:** The word "fuels" appearing in the session law version of the above section has been corrected to read "fund"; see comparable provisions in RCW 47.10.080, 47.10.220, 47.10.480, and 47.10.720.

47.10.734 Construction in Grant, Franklin, Adams counties authorized—Repayment to state by Grant, Franklin and Adams counties by retention of funds. The secretary shall report to the state finance committee all sums expended from funds resulting from the sale of bonds authorized by RCW 47.10.726 through 47.10.738. Grant, Franklin, and Adams counties shall repay to the state all the cost of highway or road facilities actually constructed under the provisions of RCW 47.10.726 through 47.10.738 within each of said counties as follows: The state finance committee, at least one year prior to the date any such interest is due and payable on such bonds or before the maturity date of any such bonds, shall ascertain the percentage of the motor vehicle funds arising from the excise taxes on motor vehicle fuels, which is to be transferred to such counties under the provisions of law which will be necessary to pay all of the interest upon or retire when due all of the portion of said bonds sold under the provisions of RCW 47.10.726 through 47.10.738 in each of said counties. The state finance committee shall notify the state treasurer of this estimate and the treasurer shall thereafter, when distributions are made from the motor vehicle fund to counties, retain such percentage of the total sums credited to such counties as aforesaid in the motor vehicle fund arising from such excise taxes on motor vehicle fuels until such fund is fully reimbursed for all expenditures under RCW 47.10.726 through 47.10.738 in Grant, Adams, and Franklin counties. Any money so retained shall be available for state highway purposes. [1984 c 7 § 109; 1965 c 121 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.735 Construction in Grant, Franklin, Adams counties authorized—Repayment, limitation as to amount of funds retained—Deficits. The sums retained from motor vehicle funds, arising from the excise taxes on motor vehicle fuel, of any such counties as provided in RCW 47.10.734, together with the sums similarly retained under the provisions of RCW 47.10.010 through 47.10.140 and RCW 47.10.280 through 47.10.400 shall not exceed in any distribution period fifty percent of the total amount to be credited to such county. If there shall be a deficit in the amount available for reimbursement of the motor vehicle fund, due to this provision, then such deficit shall continue to be a charge against any sums due any such county from the motor vehicle fund from such excise taxes until the full cost of such highway facilities is paid. [1965 c 121 § 10.]

47.10.736 Construction in Grant, Franklin, Adams counties authorized—Sums in excess of retirement requirements—Use. Whenever the percentages of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of

bonds, any excess may, in the discretion of the state finance committee, be available for prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1965 c 121 § 11.]

47.10.737 Construction in Grant, Franklin, Adams counties authorized—Allocation of bonds to counties—Conditions upon issuance—Use of county engineering forces. The bonds authorized herein are allocated to the counties as follows:

(1) For Adams county—one hundred thousand dollars.

(2) For Franklin county—four hundred fifty thousand dollars.

(3) For Grant county—one million three hundred thousand dollars:

Provided, That no bonds shall be issued for Columbia Basin county arterial highway and road purposes unless expenditures are actually required for the settlement of lands ready for irrigation in the Columbia Basin project and all construction of arterial highways and roads in such counties shall be accomplished by the engineering forces of the various counties under the supervision of the director of highways. [1965 c 121 § 12.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.738 Construction in Grant, Franklin, Adams counties authorized—Appropriation from motor vehicle fund. There is appropriated from the motor vehicle fund for the biennium ending June 30, 1967 the sum of one million eight hundred fifty thousand dollars, or so much thereof as may be necessary, to carry out the provisions of RCW 47.10.726 through 47.10.738. [1965 c 121 § 13.]

ADDITIONAL BONDS—CONSTRUCTION AND IMPROVEMENT—1967 ACT

47.10.751 Additional funds—Declaration of necessity. Increased costs of construction combined with an unprecedented increase in motor vehicle use in this state have created an urgent demand for additional highway construction funds. It is vital to the economy of this state and the safety of the public that additional funds be provided for the construction of state highways. [1967 ex.s. c 7 § 3.]

47.10.752 Additional funds—Issuance and sale of limited obligation bonds. In order to provide funds for the construction and improvement of state highways, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of thirty million dollars or such amount thereof and at such times as determined to be necessary by the state highway commission. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance

committee which, upon request being made by the state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the state highway commission. [1967 ex.s. c 7 § 4.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "state highway commission" means department of transportation; see RCW 47.04.015.

47.10.753 Additional funds—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1967 ex.s. c 7 § 5.]

47.10.754 Additional funds—Sale of bonds—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If the bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.751 through 47.10.760 shall be legal investment for any of the funds of the state, except the permanent school fund. [1967 ex.s. c 7 § 6.]

47.10.755 Additional funds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of state highways and for payment of the expenses incurred in the printing, issuance, and sale of any such bonds. [1967 ex.s. c 7 § 7.]

47.10.756 Additional funds—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.751 through 47.10.760 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.751 through 47.10.760 from the proceeds of

state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.751 through 47.10.760, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.751 through 47.10.760. [1967 ex.s. c 7 § 8.]

*Reviser's note: Chapter 82.40 RCW, see note following RCW 47.10.729.

47.10.757 Additional funds—Source of funds for payment of bond principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of any other such funds to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available to the state for construction of state highways proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 110; 1967 ex.s. c 7 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.758 Additional funds—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.757, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, hereby created, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1967 ex.s. c 7 § 10.]

47.10.759 Additional funds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle fuels payable into the bond retirement

fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1967 ex.s. c 7 § 11.]

47.10.760 Additional funds—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1969, the sum of thirty million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.751 through 47.10.760. [1967 ex.s. c 7 § 12.]

RESERVE FUNDS FOR HIGHWAY, STREET, AND ROAD PURPOSES—1967 ACT

47.10.761 Reserve funds—Purposes. It is the purpose of RCW 47.10.761 through 47.10.771 to provide reserve funds to the department for the following purposes:

(1) For construction, reconstruction, or repair of any state highway made necessary by slides, storm damage, or other unexpected or unusual causes;

(2) For construction or improvement of any state highway when necessary to alleviate or prevent intolerable traffic congestion caused by extraordinary and unanticipated economic development within any area of the state;

(3) To advance funds to any city or county to be used exclusively for the construction or improvement of any city street or county road when necessary to alleviate or prevent intolerable traffic congestion caused by extraordinary and unanticipated economic development within a particular area of the state. Before funds provided by the sale of bonds as authorized in RCW 47.10.761 through 47.10.770, are loaned to any city or county for the purposes specified herein, the department shall enter into an agreement with the city or county providing for repayment to the motor vehicle fund of such funds, together with the amount of bond interest thereon, from the city's or the county's share of the motor vehicle funds arising from excise taxes on motor vehicle fuels, over a period not to exceed twenty-five years. [1984 c 7 § 111; 1967 ex.s. c 7 § 13.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.762 Issuance and sale of limited obligation bonds. In order to provide reserve funds for the purposes specified in RCW 47.10.761, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of twenty-five million dollars or such amount thereof and at such times as may be determined to be necessary by the state highway commission. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state highway commission, shall provide for the issuance,

sale and retirement of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary for the orderly scheduled construction of the interstate highway system. [1967 ex.s. c 7 § 14.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "state highway commission" means department of transportation; see RCW 47.04.015.

47.10.763 Bonds—Term—Terms and conditions—Signatures—Registration—Where payable—Negotiable instruments. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1967 ex.s. c 7 § 15.]

47.10.764 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If the bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.761 through 47.10.771 shall be legal investment for any of the funds of the state, except the permanent school fund. [1967 ex.s. c 7 § 16.]

47.10.765 Bonds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the purposes enumerated in RCW 47.10.761 and for payment of the expense incurred in the drafting, printing, issuance and sale of any such bonds. [1967 ex.s. c 7 § 17.]

47.10.766 Bonds—Statement describing nature of obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.10.761 through 47.10.771

shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.761 through 47.10.771 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.761 through 47.10.771, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.761 through 47.10.771. [1967 ex.s. c 7 § 18.]

***Reviser's note:** Chapter 82.40 RCW, see note following RCW 47.10.729.

47.10.767 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 112; 1967 ex.s. c 7 § 19.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.768 Bonds—Pledge of federal aid funds. As additional security for payment of the principal amount of any or all of the bonds to be issued hereunder, the state finance committee, with the consent of the department, may pledge all or any portion of the federal aid funds received or from time to time to be received by the state from the United States under the provisions of the federal-aid highway act of 1956, as amended, for the construction of Washington's portion of the national system of interstate and defense highways. [1984 c 7 § 113; 1967 ex.s. c 7 § 20.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.769 Bonds—Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.767, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which, together with federal funds which may be pledged as provided in RCW 47.10.768, shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid

into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1967 ex.s. c 7 § 21.]

47.10.770 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels and the federal funds which may be pledged as provided in RCW 47.10.768, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1967 ex.s. c 7 § 22.]

47.10.771 Bonds—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1969, the sum of twenty-five million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.761 through 47.10.771. [1967 ex.s. c 7 § 23.]

STATE HIGHWAYS IN URBAN AREAS

47.10.775 Issuance and sale of limited obligation bonds, terms, conditions, retirement, use of proceeds, etc. See RCW 47.26.400 through 47.26.410.

COUNTY AND CITY ARTERIALS IN URBAN AREAS

47.10.777 Issuance and sale of limited obligation bonds, terms, conditions, retirement, use of proceeds, etc. See RCW 47.26.420 through 47.26.460.

INTERSTATE 90 COMPLETION—1979 ACT

47.10.790 Issuance and sale of general obligation bonds—State route 90 improvements—Category C improvements. (1) In order to provide funds for the location, design, right of way, and construction of selected interstate highway improvements, there shall be issued and sold upon the request of the Washington state transportation commission, a total of one hundred million dollars of general obligation bonds of the state of Washington to pay the state's share of costs for completion of state route 90 (state route 5 to state route 405)

and other related state highway projects eligible for regular federal interstate funding and until December 31, 1989, to temporarily pay the regular federal share of construction of completion projects on state route 90 (state route 5 to state route 405) and other related state highway projects eligible for regular interstate funding in advance of federal-aid apportionments under the provisions of 23 U.S.C. Secs. 115 or 122: *Provided*, That the total amount of bonds issued to temporarily pay the regular federal share of construction of federal-aid interstate highways in advance of federal-aid apportionments as authorized by this section and RCW 47.10.801 shall not exceed one hundred twenty million dollars: *Provided further*, That the transportation commission shall consult with the legislative transportation committee prior to the adoption of plans for the obligation of federal-aid apportionments received in federal fiscal year 1985 and subsequent years to pay the regular federal share of federal-aid interstate highway construction projects or to convert such apportionments under the provisions of 23 U.S.C. Secs. 115 or 122.

(2) The transportation commission, in consultation with the legislative transportation committee, may at any time find and determine that any amount of the bonds authorized in subsection (1) of this section, and not then sold, are no longer required to be issued and sold for the purposes described in subsection (1) of this section.

(3) Any bonds authorized by subsection (1) of this section that the transportation commission determines are no longer required for the purpose of paying the cost of the designated interstate highway improvements described therein shall be issued and sold, upon the request of the Washington state transportation commission, to provide funds for the location, design, right of way, and construction of major transportation improvements throughout the state that are identified as category C improvements in RCW 47.05.030. [1985 c 406 § 1; 1982 c 19 § 3; 1981 c 316 § 10; 1979 ex.s. c 180 § 1.]

Severability—1982 c 19: See note following RCW 47.10.801.

Severability—1981 c 316: See RCW 47.10.811.

47.10.791 Administration and amount of bond sales. Upon request being made by the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.790 in accordance with the provisions of chapter 39.42 RCW. The amount of such bonds issued and sold under the provisions of RCW 47.10.790 through 47.10.798 in any biennium may not exceed the amount of a specific appropriation therefor. Such bonds may be sold from time to time in such amounts as may be necessary for the orderly progress of the state highway improvements specified in RCW 47.10.790. The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect

to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued under this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [1986 c 290 § 6; 1979 ex.s. c 180 § 2.]

47.10.792 Bond proceeds—Deposit and use. The proceeds from the sale of the bonds authorized by RCW 47.10.790 shall be deposited in the motor vehicle fund and such proceeds shall be available only for the purposes enumerated in RCW 47.10.790, for the payment of bond anticipation notes, if any, and for the payment of the expense incurred in the drafting, printing, issuance, and sale of such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1986 c 290 § 7; 1979 ex.s. c 180 § 3.]

47.10.793 Statement of general obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.10.790 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.10.790 through 47.10.798 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.790 through 47.10.798, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.790 through 47.10.798. [1979 ex.s. c 180 § 4.]

47.10.794 Designation of funds to repay bonds and interest. Any funds required to repay the bonds authorized by RCW 47.10.790 or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state for expenditure pursuant to RCW 46.68.130

and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1979 ex.s. c 180 § 5.]

47.10.795 Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.794, the percentage of the receipts in money of the motor vehicle fund resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments when due and shall notify the treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the highway bond retirement fund heretofore created in the state treasury, which funds shall be available solely for payment of the principal of and interest on the bonds when due. If in any month it shall appear that the estimated percentage of moneys so made is insufficient to meet the requirements for payment of the principal thereof or interest thereon, the treasurer shall notify the state finance committee forthwith, and such committee shall adjust its estimates so that all requirements for the interest on and principal of all bonds issued shall be fully met at all times. [1979 ex.s. c 180 § 6.]

47.10.796 Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the highway bond retirement fund shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds pursuant to applicable bond covenants or remain available in the fund to reduce requirements upon the fuel excise tax portion of the motor vehicle fund. [1979 ex.s. c 180 § 7.]

47.10.797 Bonds legal investment for state funds. The bonds authorized in RCW 47.10.790 through 47.10.798 constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1979 ex.s. c 180 § 8.]

47.10.798 Bonds equal charge against fuel tax revenues. Except as otherwise provided by statute, general obligation bonds issued under authority of legislation enacted during the 45th session of the legislature and thereafter and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues

from such motor vehicle and special fuel excise taxes. [1979 ex.s. c 180 § 9.]

47.10.799 Appropriation—Expenditure limited to bond sale proceeds. There is hereby appropriated from the motor vehicle fund to the department of transportation for the biennium ending June 30, 1981, the sum of ten million dollars, or so much thereof as may be necessary, to carry out the provisions of RCW 47.10.790: *Provided*, That the money available for expenditure under this appropriation may not exceed the amount of money derived from the sale of ten million dollars of bonds authorized by RCW 47.10.790 and deposited to the credit of the motor vehicle fund. [1979 ex.s. c 180 § 10.]

47.10.800 Severability—1979 ex.s. c 180. If any provision of RCW 47.10.790 through 47.10.800 or its application to any person or circumstance is held invalid, the remainder of RCW 47.10.790 through 47.10.800 or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 180 § 12.]

INTERSTATE HIGHWAY, CATEGORY A, CATEGORY C IMPROVEMENTS—1981 ACT

47.10.801 Issuance and sale of general obligation bonds. (1) In order to provide funds necessary for the location, design, right of way, and construction of selected interstate and other state highway improvements, there shall be issued and sold, subject to subsections (2) and (3) of this section, upon the request of the Washington state transportation commission a total of four hundred sixty million dollars of general obligation bonds of the state of Washington for the following purposes and specified sums:

(a) Not to exceed two hundred twenty-five million dollars to pay the state's share of costs for federal-aid interstate highway improvements and until December 31, 1989, to temporarily pay the regular federal share of construction of federal-aid interstate highway improvements to complete state routes 82, 90, 182, and 705 in advance of federal-aid apportionments under the provisions of 23 U.S.C. Secs. 115 or 122: *Provided*, That the total amount of bonds issued to temporarily pay the regular federal share of construction of federal-aid interstate highways in advance of federal-aid apportionments as authorized by this section and RCW 47.10.790 shall not exceed one hundred twenty million dollars: *Provided further*, That the transportation commission shall consult with the legislative transportation committee prior to the adoption of plans for the obligation of federal-aid apportionments received in federal fiscal year 1985 and subsequent years to pay the regular federal share of federal-aid interstate highway construction projects or to convert such apportionments under the provisions of 23 U.S.C. Secs. 115 or 122;

(b) Two hundred twenty-five million dollars for major transportation improvements throughout the state that

are identified as category C improvements and for selected major non-interstate construction and reconstruction projects that are included as Category A Improvements in RCW 47.05.030;

(c) Ten million dollars for state highway improvements necessitated by planned economic development, as determined through the procedures set forth in RCW 43.160.074 and 47.01.280.

(2) The amount of bonds authorized in subsection (1)(a) of this section shall be reduced if the transportation commission, in consultation with the legislative transportation committee, determines that any of the bonds that have not been sold are no longer required.

(3) The amount of bonds authorized in subsection (1)(b) of this section shall be increased by an amount not to exceed, and concurrent with, any reduction of bonds authorized under subsection (1)(a) of this section in the manner prescribed in subsection (2) of this section. [1985 c 433 § 7; 1985 c 406 § 2; 1982 c 19 § 1; 1981 c 316 § 1.]

Reviser's note: This section was amended by 1985 c 406 § 2 and by 1985 c 433 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Nonseverability—1985 c 433: See note following RCW 43.160.074.

Severability—1982 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 19 § 5.]

47.10.802 Administration and amount of bond sales. Upon request being made by the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.801 in accordance with chapter 39.42 RCW. The amount of such bonds issued and sold under RCW 47.10.801 through 47.10.809 in any biennium may not exceed the amount of a specific appropriation therefor. Such bonds may be sold from time to time in such amounts as may be necessary for the orderly progress of the state highway improvements specified in RCW 47.10.801. The amount of bonds issued and sold under RCW 47.10.801(1)(a) in any biennium shall not, except as provided in that section, exceed the amount required to match federal-aid interstate funds available to the state of Washington. The transportation commission shall give notice of its intent to sell bonds to the legislative transportation committee before requesting the state finance committee to issue and sell bonds authorized by RCW 47.10.801(1)(a). The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued under this section shall not constitute a

debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [1986 c 290 § 1; 1983 1st ex.s. c 53 § 23; 1982 c 19 § 2; 1981 c 316 § 2.]

Severability—1983 1st ex.s. c 53: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 53 § 36.]

Severability—1982 c 19: See note following RCW 47.10.801.

47.10.803 Bond proceeds—Deposit and use. The proceeds from the sale of the bonds authorized by RCW 47.10.801(1) (a) and (b) shall be deposited in the motor vehicle fund. The proceeds from the sale of the bonds authorized by RCW 47.10.801(1)(c) shall be deposited in the economic development account of the motor vehicle fund, hereby created. All such proceeds shall be available only for the purposes enumerated in RCW 47.10.801, for the payment of bond anticipation notes, if any, and for the payment of the expense incurred in the drafting, printing, issuance, and sale of such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1986 c 290 § 2; 1985 c 433 § 8; 1981 c 316 § 3.]

Nonseverability—1985 c 433: See note following RCW 43.160.074.

47.10.804 Statement of general obligation—Pledge of excise taxes. Bonds issued under RCW 47.10.801 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.10.801 through 47.10.809 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under RCW 47.10.801 through 47.10.809, and the legislature hereby agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under RCW 47.10.801 through 47.10.809. [1981 c 316 § 4.]

47.10.805 Designation of funds to repay bonds and interest. Any funds required to repay the bonds authorized by RCW 47.10.801 or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state for expenditure pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1981 c 316 § 5.]

47.10.806 Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of such bonds, the state finance committee shall estimate, subject to RCW 47.10.805, the percentage of the receipts in money of the motor vehicle fund resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments when due and shall notify the treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the highway bond retirement fund heretofore created in the state treasury, which funds shall be available solely for payment of the principal of and interest on the bonds when due. If in any month it shall appear that the estimated percentage of moneys so made is insufficient to meet the requirements for payment of the principal thereof or interest thereon, the treasurer shall notify the state finance committee forthwith, and the committee shall adjust its estimates so that all requirements for the interest on and principal of all bonds issued shall be fully met at all times. [1981 c 316 § 6.]

47.10.807 Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the highway bond retirement fund shall prove more than is required for the payment of interest on bonds when due, or current retirement bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1981 c 316 § 7.]

47.10.808 Bonds legal investment for state funds. The bonds authorized in RCW 47.10.801 through 47.10.809 constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1981 c 316 § 8.]

47.10.809 Bonds equal charge against fuel tax revenues. Bonds issued under authority of RCW 47.10.801 through 47.10.809 and any subsequent general obligation bonds of the state of Washington which may be authorized and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1981 c 316 § 9.]

47.10.811 Severability—1981 c 316. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 316 § 13.]

Chapter 47.12

ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

Sections

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Acquisition of rights of way, city streets: RCW 47.24.030.

47.12.010 Acquisition of property authorized—Condemnation actions—Cost. Whenever it is necessary to secure any lands or interests in land for a right of way for any state highway, or for the drainage thereof or construction of a protection therefor or so as to afford unobstructed vision therefor toward any railroad crossing or another public highway crossing or any point of danger to public travel or to provide a visual or sound buffer between highways and adjacent properties or for the purpose of acquiring sand pits, gravel pits, borrow pits, stone quarries, or any other land for the extraction of materials for construction or maintenance or both, or for any site for the erection upon and use as a maintenance camp, of any state highway, or any site for other necessary structures or for structures for the health and accommodation of persons traveling or stopping upon the state highways of this state, or any site for the construction and maintenance of structures and facilities adjacent to, under, upon, within, or above the right of way of any state highway for exclusive or nonexclusive use by an urban public transportation system, or for any other highway purpose, together with right of way to reach such property and gain access thereto, the department of transportation is authorized to acquire such lands or interests in land in behalf of the state by gift, purchase, or condemnation. In case of condemnation to secure such lands or interests in land, the action shall be brought in the name of the state of Washington in the manner provided for the acquiring of property for the

public uses of the state, and in such action the selection of the lands or interests in land by the secretary of transportation shall, in the absence of bad faith, arbitrary, capricious, or fraudulent action, be conclusive upon the court and judge before which the action is brought that said lands or interests in land are necessary for public use for the purposes sought. The cost and expense of such lands or interests in land may be paid as a part of the cost of the state highway for which such right of way, drainage, unobstructed vision, sand pits, gravel pits, borrow pits, stone quarries, maintenance camp sites, and structure sites or other lands are acquired. [1977 ex.s. c 151 § 46; 1967 c 108 § 4; 1961 c 13 § 47.12.010. Prior: 1937 c 53 § 25, part; RRS § 6400–25, part.]

Urban public transportation system defined: RCW 47.04.082.

Right of way donations: Chapter 47.14 RCW.

47.12.011 Purchase options authorized. Whenever it becomes necessary or feasible to purchase rights of way for state highways, and the department deems it to be in the best interest of the general public, the department may secure options for purchase of property needed or proposed for any entire project or section thereof or proposed alignment for the location or relocation of any highway. [1984 c 7 § 114; 1961 c 13 § 47.12.011. Prior: 1955 c 49 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.023 Acquisition of state lands or interests or rights therein—Notice—Amount of compensation—Arbitration or court settlement—Reacquisition by department of natural resources. (1) Except as provided in RCW 47.12.026 and 47.12.029, whenever it is necessary to secure any lands or interests in lands for any highway purpose mentioned in RCW 47.12.010, or for the construction of any toll facility or ferry terminal or docking facility, the title to which is in the state of Washington and under the jurisdiction of the department of natural resources, the department of transportation may acquire jurisdiction over the lands or interests in lands, or acquire rights to remove materials from the lands in the manner set forth in this section.

(2) At any time after the final adoption of a right of way plan or other plan requiring the acquisition of lands or interests in lands for any purpose as authorized in subsection (1) of this section, the department of transportation may file with the department of natural resources a notice setting forth its intent to acquire jurisdiction of the lands or interests in lands under the jurisdiction of the department of natural resources required for right of way or other highway purposes related to the construction or improvement of such state highway, toll facility, or ferry terminal or docking facility.

(3) The department of transportation at the time of filing its notice of intent as provided in subsection (2) of this section shall file therewith a written statement showing the total amount of just compensation to be paid for the property in the event of settlement. The offer shall be based upon the department of transportation

approved appraisal of the fair market value of the property to be acquired. In no event may the offer of settlement be referred to or used during any arbitration proceeding or trial conducted for the purpose of determining the amount of just compensation.

(4) Just compensation and/or fair market value for the purposes of this section shall be determined in accordance with applicable federal and state constitutional, statutory, and case law relating to the condemnation of private and public property for public purposes.

(5) If the department of natural resources does not accept the offer of the department of transportation, the department of transportation may nonetheless pay to the department of natural resources the amount of its offer and obtain immediate possession and use of the property pending the determination of just compensation in the manner hereinafter provided.

(6) If the amount of just compensation is not agreed to, either the department of natural resources or the department of transportation may request in writing the appointment of an arbitrator for the purpose of determining the amount of compensation to be paid by the department of transportation for the acquisition of jurisdiction over the lands or interests in lands or rights therein. In that event the department of natural resources and the department of transportation may jointly agree on an arbitrator to determine the compensation, and his determination shall be final and conclusive upon both departments. The costs of the arbitrator shall be borne equally by the parties. If the department of natural resources and the department of transportation are unable to agree on the selection of an arbitrator within thirty days after a request therefor is made, either the department of transportation or the department of natural resources may file a petition with the superior court for Thurston county for the purpose of determining the amount of just compensation to be paid. The matter shall be tried by the court pursuant to the procedures set forth in RCW 8.04.080.

(7) Whenever the department of transportation has acquired immediate possession and use of property by payment of the amount of its offer to the department of natural resources, and the arbitration award or judgment of the court for the acquisition exceeds the payment for immediate possession and use, the department of transportation shall forthwith pay the amount of such excess to the department of natural resources with interest thereon from the date it obtained immediate possession. If the arbitration or court award is less than the amount previously paid by the department of transportation for immediate possession and use, the department of natural resources shall forthwith pay the amount of the difference to the department of transportation.

(8) Upon the payment of just compensation, as agreed to by the department of transportation and the department of natural resources, or as determined by arbitration or by judgment of the court, and other costs or fees as provided by statute, the department of natural resources shall cause to be executed and delivered to the department of transportation an instrument transferring jurisdiction over the lands or interests in lands, or rights

to remove material from the lands, to the department of transportation.

(9) Except as provided in RCW 47.12.026, whenever the department of transportation ceases to use any lands or interests in lands acquired in the manner set forth in this section for the purposes mentioned herein, the department of natural resources may reacquire jurisdiction over the lands or interests in land by paying the fair market value thereof to the department of transportation. If the two departments are unable to agree on the fair market value of the lands or interests in lands, the market value shall be determined and the interests therein shall be transferred in accordance with the provisions and procedures set forth in subsections (4) through (8) of this section. [1984 c 7 § 115; 1977 ex.s. c 103 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.026 Acquisition of state lands or interests or rights therein—Easements across navigable waters or harbors—Removal of materials—Relocation of railroad tracks. (1) The department of transportation may acquire an easement for highway or toll facilities right of way or for ferry terminal or docking facilities, including the right to make necessary fills, on, over, or across the beds of navigable waters which are under the jurisdiction of the department of natural resources, in accordance with the provisions of RCW 47.12.023, except that no charge may be made to the department of transportation for such an easement.

(2) The department of transportation may obtain an easement for highway or toll facilities purposes or for ferry terminal or docking facilities on, over, or across harbor areas in accordance with RCW 47.12.023 but only when the areas are approved by the harbor line commission as a public place for public landings, wharves, or other public conveniences of commerce or navigation. No charge may be made to the department of transportation for such an easement.

(3) Upon the selection by the department of transportation of an easement for highway or toll facilities right of way or for ferry terminal or docking facilities, as authorized in subsections (1) and (2) of this section, the department of natural resources shall cause to be executed and delivered to the department of transportation an instrument transferring the easement. Whenever the state no longer requires the easement for highway or toll facilities right of way or for ferry terminal or docking facilities, the easement shall automatically terminate and the department of transportation shall, upon request, cause to be executed an instrument relinquishing to the department of natural resources all of its interest in the lands.

(4) The department of transportation, pursuant to the procedures set forth in RCW 47.12.023, may remove sand and gravel and borrow materials and stone from the beds of navigable waters under the jurisdiction of the department of natural resources which lie below the line of ordinary high water upon the payment of fair market value per cubic yard for such materials to be determined in the manner set forth in RCW 47.12.023.

(5) The department of transportation may acquire full jurisdiction over lands under the jurisdiction of the department of natural resources including the beds of navigable waters that are required for the relocation of the operating tracks of any railroad that will be displaced by the acquisition of such railroad property for state highway purposes. The department of transportation may exchange lands so acquired in consideration or partial consideration for the land or property rights needed for highway purposes and may cause to be executed a conveyance of the lands in the manner prescribed in RCW 47.12.150. In that event the department of transportation shall pay to the department of natural resources, as just compensation for the acquisition, the fair market value of the property, including the beds of any navigable waters, to be determined in accordance with procedures set forth in RCW 47.12.023. [1984 c 7 § 116; 1977 ex.s. c 103 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.029 Acquisition of state lands or interests or rights therein—Certain purposes prohibited. The department of transportation shall not acquire jurisdiction of any lands or interest in lands under the jurisdiction of the department of natural resources for any of the purposes set forth in RCW 47.12.150, 47.12.160, 47.12.180, 47.12.250, and 47.12.270. [1984 c 7 § 117; 1977 ex.s. c 103 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.040 Acquisition of property from a political subdivision. Whenever it is necessary to secure any lands for primary or secondary state highway right of way or other state highway purposes, the title to which is in any county of the state or in any political or municipal subdivision of the state, which land is not at the time being used as a public highway, the county legislative authority or the board of directors or governing body of any such political or municipal subdivision are authorized to directly lease, sell, or convey by gift the land or any interest therein to the state of Washington, without requiring competitive bids or notice to the public, and at such price as the legislative authority, directors, or governing body may deem for the best interests of the county or for the best interests of the political or municipal subdivision of the state. The county legislative authority or the directors or governing body of any political or municipal subdivision are empowered to execute a deed or other proper instrument to the land, passing title to the state of Washington, and the instrument need not require consideration other than the benefit which may be derived by the grantor on account of the use thereof. Whenever any state highway is established by legislative enactment and the state highway is upon the former route of a county road, the county legislative authority shall cause the title to the existing right of way or so much thereof as the department requires to be transferred to the state of Washington by

proper instrument. [1984 c 7 § 118; 1961 c 13 § 47.12-.040. Prior: 1943 c 266 § 1; 1937 c 53 § 26; Rem. Supp. 1943 § 6400-26.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.044 Proceedings to acquire property or rights for highway purposes—Precedence. Court proceedings necessary to acquire property or property rights for highway purposes pursuant to RCW 47.12.010 take precedence over all other causes not involving the public interest in all courts in cases where the state is unable to secure an order granting it immediate possession and use of the property or property rights pursuant to RCW 8.04.090 through 8.04.094. [1983 c 140 § 2.]

47.12.050 Work on remaining land as payment. Whenever it is considered in the securing of any lands for state highway purpose, whether by condemnation or otherwise, that it is for the best interest of the state, for specific structural items of damage claimed, the court or judge may order or the person whose lands are sought may agree that a portion or all work or labor necessary to the land or remaining land by reason of the taking by way of damage, be performed by the state through the department as all or a part of the consideration or satisfaction of the judgment therefor, in which event the department may perform the work as a portion of the right of way cost of the state highway. [1984 c 7 § 119; 1961 c 13 § 47.12.050. Prior: 1937 c 53 § 27; RRS § 6400-27.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.063 Surplus real property program. (1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or improvements or for construction of improvements at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) The former owner of the property from whom the state acquired title;
- (e) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;
- (f) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the

property within fifteen days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;

(g) To any person through the solicitation of written bids through public advertising in the manner prescribed by RCW 47.28.050; or

(h) To any other owner of real property required for transportation purposes.

(3) Sales to purchasers may at the department's option be for cash, by real estate contract, or exchange of land or improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW or Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

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

(5) All moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund. [1988 c 135 § 1; 1983 c 3 § 125; 1977 ex.s. c 78 § 1.]

47.12.066 Sale or lease of personal property—Provision of services—Proceeds placed in motor vehicle fund. (1) The department may sell at fair market value, or lease at rental value (economic rent), materials or other personal property to any United States agency or to any municipal corporation, political subdivision, or another agency of the state and may provide services to any United States agency or to any municipal corporation, political subdivision, or another agency of the state at actual cost, including a reasonable amount for indirect costs.

(2) The department may sell at fair market value materials or other personal property to any private utility company regulated by the utilities and transportation commission for the purpose of making emergency repairs to utility facilities or to protect such facilities from imminent damage upon a finding in writing by the secretary that an emergency exists.

(3) The proceeds of all sales and leases under this section shall be placed in the motor vehicle fund. [1984 c 7 § 120; 1977 ex.s. c 78 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.080 Sale or exchange of rights or land not needed for highway purposes—Transfer to United States, municipal subdivision, public utility—Proceeds. The secretary of transportation may transfer and convey to the United States, its agencies or instrumentalities, to any other state agency, to any county or city or port district of this state, or to any public utility company, any unused state-owned real property under the jurisdiction of the department of transportation when, in the judgment of the secretary of transportation and the attorney general, the transfer and conveyance is consistent with public interest. Whenever the secretary makes an agreement for any such transfer or conveyance, and the

attorney general concurs therein, the secretary shall execute and deliver unto the grantee a deed of conveyance, easement, or other instrument, duly acknowledged, as shall be necessary to fulfill the terms of the aforesaid agreement. All moneys paid to the state of Washington under any of the provisions hereof shall be deposited in the motor vehicle fund. [1984 c 7 § 121. Prior: 1977 ex.s. c 151 § 49; 1977 ex.s. c 78 § 5; 1975 1st ex.s. c 96 § 3; 1961 c 13 § 47.12.080; prior: 1945 c 127 § 1; Rem. Supp. 1945 § 6400–120.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.120 Lease of unused highway land or air space.

The department is authorized, subject to the provisions and requirements of zoning ordinances of political subdivisions of government, to rent or lease any lands, improvements, or air space above or below any lands, including those used or to be used for both limited access and conventional highways which are held for highway purposes but are not presently needed, upon such terms and conditions as the department may determine. [1977 ex.s. c 151 § 50; 1969 c 91 § 1; 1961 c 13 § 47.12.120. Prior: 1949 c 162 § 1; Rem. Supp. 1949 § 6400–122.]

47.12.125 Lease of unused highway land or air space—Disposition of proceeds. All moneys paid to the state of Washington under any of the provisions of RCW 47.12.120 shall be deposited in the motor vehicle fund. [1961 c 13 § 47.12.125. Prior: 1949 c 162 § 2; Rem. Supp. 1949 § 6400–123.]

47.12.140 Severance and sale of timber and other personalty—Removal of nonmarketable materials. (1) Except as otherwise provided in subsection (2) of this section, whenever the department shall have acquired any lands for highway purposes, except state granted lands, upon which are located any structures, timber or other thing of value attached to the land, which the department shall deem it best to sever from the land and sell as personal property, the same may be sold by the department at public auction after due notice thereof shall have been given in accordance with general regulations adopted by the secretary. The department may set minimum prices that will be accepted for any item offered for sale at public auction as herein provided and may prescribe terms or conditions of sale and, in the event that any item shall be offered for sale at such auction and for which no satisfactory bids shall be received or for which the amount bid shall be less than the minimum set by the department, it shall be lawful for the department to sell such item at private sale for the best price which it deems obtainable but at not less than the highest price bid at the public auction. The proceeds of all sales under this section shall be placed in the motor vehicle fund.

(2) The department may issue permits to residents of this state to remove specified quantities of standing or downed trees and shrubs, rock, sand, gravel, or soils which have no market value in place and which the department desires to be removed from state owned lands

which are under the jurisdiction of the department. An applicant for such a permit must certify that the materials so removed are to be used by himself and that they will not be disposed of to any other person. Removal of materials pursuant to permit shall be in accordance with such regulations as the department shall prescribe. The fee for a permit shall be two dollars and fifty cents which shall be deposited in the motor vehicle fund. The department may adopt regulations providing for special access to limited access facilities for the purpose of removal of materials pursuant to permits authorized in this section. [1981 c 260 § 12. Prior: 1977 ex.s. c 151 § 52; 1977 ex.s. c 78 § 6; 1961 c 13 § 47.12.140; prior: 1953 c 42 § 1.]

47.12.150 Acquisition, exchange of property to relocate displaced facility. Whenever the department shall need for highway purposes land or property rights belonging to the United States government or any municipality or political subdivision of the state, or which shall be a part of the right of way of any public utility having authority to exercise powers of eminent domain, when the acquisition of such property by the state will result in the displacement of any existing right of way or facility, the department is authorized to acquire by condemnation or otherwise such lands and property rights as shall be needed to relocate such right of way or facilities so displaced and to exchange lands or property rights so acquired in consideration or partial consideration for the land or property rights needed for highway purposes. The secretary of transportation shall execute each conveyance, which shall be duly acknowledged, necessary to accomplish such exchange. [1977 ex.s. c 151 § 53; 1975 1st ex.s. c 96 § 5; 1961 c 13 § 47.12.150. Prior: 1953 c 55 § 1.]

47.12.160 Acquisition of land outside highway right of way to minimize damage. Whenever a part of a parcel of land is to be acquired for state highway purposes and the remainder lying outside of the right of way is to be left in such shape or condition as to be of little value to its owner or to give rise to claims or litigation concerning severance or other damage, and its value does not exceed the probable amount of the severance claims or damages, the department may acquire by gift, purchase, or condemnation the whole parcel and may sell that portion lying outside of the highway right of way or may exchange the same for other property needed for highway purposes. The provisions of this section do not apply if the taking of that portion of the land lying outside of the highway right of way would deprive any adjacent owner of an existing right of ingress and egress to his property. [1984 c 7 § 122; 1961 c 13 § 47.12.160. Prior: 1953 c 131 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.170 Sale, lease of unneeded toll facility, ferry system property—Franchises for utility, railway purposes. See RCW 47.56.253 through 47.56.257.

47.12.180 Additional method of financing acquisition of property, engineering costs—Declaration of policy, public use, and highway purpose. It is declared to be the public policy of the state of Washington to provide for the acquisition of real property and engineering costs necessary for the improvement of the state highway system, in advance of actual construction, for the purposes of eliminating costly delays in construction, reducing hardship to owners of the property, and eliminating economic waste occasioned by the improvement of such property immediately prior to its acquisition for highway uses.

The legislature therefore finds and declares that purchase and condemnation of real property necessary for the state highway system and engineering costs, reasonably in advance of programmed construction, is a public use and purpose and a highway purpose.

The department is hereby authorized to purchase or condemn any real property or property rights therein which it deems will be necessary for the improvement of routes on the state highway system by the method provided in RCW 47.12.180 through 47.12.240 or alternatively by the method provided in RCW 47.12.242 through 47.12.246. Neither method may be used to condemn property or property rights in advance of programmed construction until the department has complied with hearing procedures required for the location or relocation of the type of highway for which the property is to be condemned. [1984 c 7 § 123; 1969 ex.s. c 197 § 1; 1961 c 281 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 281: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 281 § 12.]

47.12.190 Additional method of financing acquisition of property, engineering costs—Authorization to purchase or condemn real property and property rights by additional method. The department, in addition to its other powers and duties as provided by law, is authorized to purchase or condemn any real property or property rights therein which it deems will be necessary for the improvements of routes on the state highway system by the method provided in RCW 47.12.180 through 47.12.240. Condemnation actions brought hereunder shall be brought in the name of the state as provided for acquiring property for the public uses of the state, and in such actions selection of the property and property rights by the secretary of transportation is conclusive that they are necessary for the purposes sought, in the absence of bad faith, or arbitrary, capricious, or fraudulent action. [1977 ex.s. c 151 § 54; 1961 c 281 § 2.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.200 Additional method of financing acquisition of property, engineering costs—Agreements with state finance committee. The transportation commission may enter into agreements with the state finance committee for financing the acquisition, by purchase or condemnation, of real property together with engineering costs

that the transportation commission deems will be necessary for the improvement of the state highway system. Such agreements may provide for the acquisition of an individual parcel or for the acquisition of any number of parcels within the limits of a contemplated highway project. [1977 ex.s. c 151 § 55; 1969 ex.s. c 197 § 2; 1961 c 281 § 3.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.210 Additional method of financing acquisition of property, engineering costs—Agreement with finance committee to purchase motor vehicle fund warrants—Funds which may be used for payment, limitations. Such an agreement shall provide that the state finance committee shall purchase, at par, warrants drawn upon the motor vehicle fund in payment for the property covered by the agreement and the engineering costs necessary for such advance purchase or condemnation. Such warrants shall be purchased by the state finance committee, upon the presentation by the holders thereof to the state treasurer, from any moneys available for investment in the state treasury as provided in RCW 43.84.080: *Provided*, That in no event shall more than ten percent of the assets of any fund be used for the purpose of acquiring property as authorized herein, except in the case of current state funds in the state treasury, twenty percent of the balance therein available for investment may be invested as provided in RCW 47.12.180 through 47.12.240. [1981 c 3 § 38; 1969 ex.s. c 197 § 3; 1961 c 281 § 4.]

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

Severability—1961 c 281: See note following RCW 47.12.180.

Authorization that certain funds may be invested in motor vehicle fund warrants: RCW 43.84.080.

47.12.220 Additional method of financing acquisition of property, engineering costs—Mandatory, permissive, provisions in agreement with finance committee—Duration, funds, redemption of warrants, interest, etc. Each such agreement shall include, but shall not be limited to the following:

(1) A provision stating the term of the agreement which shall not extend more than seven years from the effective date of the agreement;

(2) A designation of the specific fund or funds to be used to carry out such agreement;

(3) A provision that the department of transportation may redeem warrants purchased by the state finance committee at any time prior to the letting of a highway improvement contract utilizing the property; and further, during the effective period of each such agreement the department of transportation shall redeem such warrants whenever such a highway improvement contract is let, or upon the expiration of such agreement, whichever date is earlier;

(4) A provision stating the rate of interest such warrants shall bear commencing at the time of purchase by the state finance committee;

(5) Any additional provisions agreed upon by the transportation commission and the state finance committee which are necessary to carry out the purposes of such agreement as indicated by RCW 47.12.180 through 47.12.240, as now or hereafter amended. [1977 ex.s. c 151 § 56; 1969 ex.s. c 197 § 4; 1961 c 281 § 5.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.230 Additional method of financing acquisition of property, engineering costs—Form of warrants—Approval—Payment—Deposit. Warrants issued for payment of property and engineering costs as provided herein shall be of a distinctive design and shall contain the words "for purchase by the state finance committee from ----- fund" (indicating the proper investing fund as provided by the agreement). Such warrants shall be approved by the secretary of the state finance committee prior to their issuance by the state treasurer. Upon presentation of such warrants to the state treasurer for payment, he shall pay the par value thereof from the fund for which the state finance committee agreed to purchase such warrants whether or not there are then funds in the motor vehicle fund. The state treasurer shall deposit such warrants in the treasury for the investing fund. [1969 ex.s. c 197 § 5; 1961 c 281 § 6.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.240 Additional method of financing acquisition of property, engineering costs—Transfer of interest from motor vehicle fund to purchasing fund—Time of warrant payment—Obligations are prior charge. The state treasurer shall transfer from the motor vehicle fund to the credit of the fund purchasing such warrants interest at the rate and at the times provided for in the agreement. The state treasurer shall pay the warrants at the time provided for in the agreement. The obligations coming due are a prior charge against any funds in the motor vehicle fund available to the department for construction of state highways. [1984 c 7 § 124; 1961 c 281 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.242 "Advance right of way acquisition" defined. The term "advance right of way acquisition" means the acquisition of property and property rights not less than two nor more than seven years in advance of programmed construction, together with the engineering costs necessary for such advance right of way acquisition. [1969 ex.s. c 197 § 6.]

47.12.244 Advance right of way revolving fund. There is created the "advance right of way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation any federal moneys available for acquisition of right of way for future construction under the provisions of section 108 of Title 23, United States Code. [1984 c 7 § 125; 1969 ex.s. c 197 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.246 Reimbursement to advance right of way revolving fund. Whenever, after any properties or property rights are acquired from funds in the advance right of way revolving fund, the department proceeds with the construction of a highway which will require the use of any of the property so acquired, the department shall reimburse the advance right of way revolving fund, from other funds available to it, the amount of the prior expenditures for advance right of way acquisition for the state highway being constructed. Such deposits may be reexpended as provided in RCW 47.12.180, 47.12.200 through 47.12.230, and 47.12.242 through 47.12.248 without further or additional appropriations. [1984 c 7 § 126; 1969 ex.s. c 197 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.248 Structures acquired in advance of programmed construction to be maintained in good appearance. Whenever the department purchases or condemns any property under RCW 47.12.180 through 47.12.240 or 47.12.242 through 47.12.246, the department shall cause any structures so acquired and not removed within a reasonable time to be maintained in good appearance. [1984 c 7 § 127; 1969 ex.s. c 197 § 10.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.250 Acquisition of property for preservation of beauty, historic sites, viewpoints, safety rest areas, buffer zones. The department is authorized to acquire by purchase, lease, condemnation, gift, devise, bequest, grant, or exchange, title to or any interests or rights in real property adjacent to state highways for the preservation of natural beauty, historic sites or viewpoints or for safety rest areas or to provide a visual or sound buffer between highways and adjacent properties. However, the department shall not acquire, by condemnation, less than an owner's entire interest for providing a visual or sound buffer between highways and adjacent properties under RCW 47.12.010 and 47.12.250 if the owner objects to the taking of a lesser interest or right. [1984 c 7 § 128; 1967 c 108 § 5; 1965 ex.s. c 170 § 62.]

Severability—1984 c 7: See note following RCW 47.01.141.

Roadside areas—Safety rest areas: Chapter 47.38 RCW.

Scenic and Recreational Highway Act: Chapter 47.39 RCW.

47.12.260 Acquisition of real property subject to local improvement assessments—Payment. See RCW 79.44.190.

47.12.270 Acquisition of property for parking facilities for motorists using urban public transportation facilities or private car pool vehicles. The department may acquire real property or interests in real property by gift, purchase, lease, or condemnation and may construct and maintain thereon fringe and transportation corridor parking facilities to serve motorists transferring to or from urban public transportation vehicles or private car pool vehicles. The department may obtain and exercise options for the purchase of property to be used for purposes described in this section. The department shall not

expend any funds for acquisition or construction costs of any parking facility to be operated as a part of a transit system by a metropolitan municipal corporation unless the facility has been approved by the department in advance of its acquisition or construction. [1984 c 7 § 129; 1973 2nd ex.s. c 18 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.283 Sale of real property authorized—Procedure—Disposition of proceeds. (1) Whenever the department of transportation determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for highway purposes and that it is in the public interest to do so, the department may, in its discretion, sell the property under RCW 47.12.063 or under subsections (2) through (6) of this section.

(2) Whenever the department determines to sell real property under its jurisdiction at public auction, the department shall first give notice thereof by publication on the same day of the week for two consecutive weeks, with the first publication at least two weeks prior to the date of the auction, in a legal newspaper of general circulation in the area where the property to be sold is located. The notice shall be placed in both the legal notices section and the real estate classified section of the newspaper. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) The department shall sell the property at the public auction, in accordance with the terms set forth in the notice, to the highest and best bidder providing the bid is equal to or higher than the appraised fair market value of the property.

(4) If no bids are received at the auction or if all bids are rejected, the department may, in its discretion, enter into negotiations for the sale of the property or may list the property with a licensed real estate broker. No property shall be sold by negotiations or through a broker for less than the property's appraised fair market value. Any offer to purchase real property pursuant to this subsection shall be in writing and may be rejected at any time prior to written acceptance by the department.

(5) Before the department shall approve any offer for the purchase of real property having an appraised value of more than ten thousand dollars, pursuant to subsection (4) of this section, the department shall first publish a notice of the proposed sale in a local newspaper of general circulation in the area where the property is located. The notice shall include a description of the property, the selling price, the terms of the sale, including the price and interest rate if sold by real estate contract, and the name and address of the department employee or the real estate broker handling the transaction. The notice shall further state that any person may, within ten days after the publication of the notice, deliver to the designated state employee or real estate broker a written offer to purchase the property for not less than ten percent more than the negotiated sale price, subject to the same terms and conditions. A subsequent offer shall not

be considered unless it is accompanied by a deposit of twenty percent of the offer in the form of cash, money order, cashier's check, or certified check payable to the Washington state treasurer, to be forfeited to the state (for deposit in the motor vehicle fund) if the offeror fails to complete the sale if the offeror's offer is accepted. If a subsequent offer is received, the first offeror shall be informed by registered or certified mail sent to the address stated in his offer. The first offeror shall then have ten days, from the date of mailing the notice of the increased offer, in which to file with the designated state employee or real estate broker a higher offer than that of the subsequent offeror. After the expiration of the ten day period, the department shall approve in writing the highest and best offer which the department then has on file.

(6) All moneys received pursuant to this section, less any real estate broker's commissions paid pursuant to RCW 47.12.320, shall be deposited in the motor vehicle fund. [1979 ex.s. c 189 § 1.]

Effective date—1979 ex.s. c 189: "This 1979 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 189 § 8.]

47.12.287 Exchange of real property authorized—Conveyance by deed. The department of transportation is hereby authorized to enter into an exchange agreement with the owner of real property required for highway purposes to convey to such owner real property, owned by the state and under the department's jurisdiction, as full or part consideration for property to be acquired for highway purposes. Such an exchange agreement may relate back and apply to any exchange of property previously agreed to and partially executed (pursuant to an earlier exchange agreement found to be void for want of a governor's deed as required by prior law), and shall be subject to such agreed terms and conditions as are authorized by RCW 47.12.063(3) as now existing or hereafter amended. Any conveyance from the state of Washington made pursuant to this section shall be by deed executed by the secretary of transportation, which shall be duly acknowledged. [1979 ex.s. c 189 § 2.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

47.12.290 Sale of real property—Execution, acknowledgment, and delivery of deed. When full payment for real property agreed to be sold as authorized by RCW 47.12.283 has been received, the secretary of transportation shall execute the deed which shall be duly acknowledged and deliver it to the grantee. [1979 ex.s. c 189 § 3; 1975 1st ex.s. c 96 § 6; 1973 1st ex.s. c 177 § 2.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

47.12.300 Sale of unneeded property—Department of transportation—Authorized—Rules. See RCW 47.56.254.

47.12.301 Sale of unneeded property—Department of transportation —Certification to governor—Execution, delivery of deed. See RCW 47.56.255.

47.12.302 Department of transportation—Sale of unneeded property. See RCW 47.60.130.

47.12.320 Sale of property—Listing with broker. The department may list any available properties with any licensed real estate broker at a commission rate otherwise charged in the geographic area for such services. [1984 c 7 § 130; 1973 1st ex.s. c 177 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 47.13

TRANSPORTATION CAPITAL FACILITIES ACCOUNT

Sections

47.13.010	Account created—Deposits and expenditures.
47.13.020	Property rentals—Federal moneys.
47.13.030	Exclusion of certain facilities.
47.13.040	Definition.
47.13.900	Effective date—1989 c 397.

47.13.010 Account created—Deposits and expenditures. The transportation capital facilities account is created in the state treasury. All receipts from transactions by the department of transportation involving capital facility sales, transfers, and property leases shall be deposited into the account. The department may make expenditures from the account subject to appropriation for the purchase, acquisition, exchange, sale, construction, repair, replacement, maintenance, and operation of real property, buildings, or structures necessary or convenient for the planning, design, construction, operation, maintenance, and administration of the state transportation system under the jurisdiction of the department. [1989 c 397 § 1.]

47.13.020 Property rentals—Federal moneys. By July 1, 1991, the department shall set and charge reasonable rental rates for the use of its real property, buildings, or structures. The department shall deposit receipts from the charges in the transportation capital facilities account.

The department may transfer to the account all federal moneys made available for the purpose of purchase, acquisition, exchange, sale, construction, repair, replacement, maintenance, or operation of real property, buildings, or structures necessary or convenient for the planning, design, construction, operation, maintenance, or administration of the state transportation system under the jurisdiction of the department. [1989 c 397 § 2.]

47.13.030 Exclusion of certain facilities. The department may exclude capital facilities necessary for the operation, maintenance, or administration of the state marine and aeronautic transportation systems. [1989 c 397 § 3.]

47.13.040 Definition. As used in this chapter, the term "capital facilities" includes all real property, buildings, or structures used for the planning, design, construction, maintenance, or administration of the state department of transportation's construction management and support program—program D. [1989 c 397 § 4.]

47.13.900 Effective date—1989 c 397. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989. [1989 c 397 § 6.]

Chapter 47.14

RIGHT OF WAY DONATIONS

Sections

47.14.010	Legislative finding, intent.
47.14.020	Definitions.
47.14.030	Credit against transportation benefit district assessment.
47.14.040	Advertising signs on donated parcel.
47.14.050	Department's duties.
47.14.900	Construction.
47.14.910	Severability—1987 c 267.

47.14.010 Legislative finding, intent. The legislature finds that in numerous areas throughout the state, rapid expansion of residential, commercial, industrial, and business activities is producing increased traffic levels. The legislature further finds that many property owners have exhibited a willingness to donate real property or property rights for transportation improvements to accommodate such increases in traffic. The legislature recognizes that the cost of right of way acquisition is often a significant, and even a prohibitive cost element in many transportation improvement projects.

The legislature seeks to encourage the voluntary donation of right of way to the state, counties, cities, and towns for transportation improvements recognizing that such donations can result in direct benefits to property owners, developers, and the community at large.

It is the intent of the legislature to further facilitate the department of transportation's authority under RCW 47.12.010, 47.24.030, and 47.52.050 to accept donations of right of way for state transportation purposes. The legislature further intends to facilitate the authority of a city, town, or county to accept donations of right of way for other transportation purposes.

The legislature therefore declares it to be in the best interest and welfare of the citizens of Washington for the state department of transportation, and for counties, cities, and towns to actively foster and encourage donations of right of way by willing donors in all areas where transportation improvements are to be made. In addition, and in lieu of monetary compensation for property needed for right of way purposes, the legislature seeks to provide incentives to potential donors such as are set forth in RCW 47.14.030 and 47.14.040. [1987 c 267 § 1.]

47.14.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Right of way" means the area of land designated for transportation purposes.

(2) "Airspace" means the space above and below the gradeline of all highways, roads, and streets, and the area alongside the traveled way and within approved right of way lines. [1987 c 267 § 2.]

47.14.030 Credit against transportation benefit district assessment. The governing body of a transportation benefit district may give credit for all or any portion of any real property donation against an assessment, charge, or other required financial contribution for transportation improvements within a transportation benefit district established under RCW 36.73.020 or 35.21.225. The credit granted shall be available against any assessment, charge or other required financial contribution for any transportation purpose which utilizes the donated property. [1987 c 267 § 3.]

47.14.040 Advertising signs on donated parcel. The department or the county, city, or town to which the right of way is donated shall, upon request, grant the donor an airspace lease or a permit for the purpose of erecting or maintaining, or both, one or more signs advertising a business of the donor that is conducted on premises adjacent to the donated parcel unless the sign or signs would be detrimental to the safety and operation of the highway, road, or street. This provision applies to all highways, roads, and streets other than limited access highways and streets, where it applies only until the donated parcel becomes part of a completed operating facility. Except as provided in this section, any such sign shall conform to the requirements of all other applicable federal, state, and local laws and ordinances. The lease agreement or permit shall take into consideration applicable county and city zoning ordinances and may provide for compensation for removal of the sign in accordance with applicable federal, state, and local laws and ordinances. The lease agreement or permit shall specify the conditions for signage. [1987 c 267 § 4.]

47.14.050 Department's duties. The department shall:

(1) Give priority to the refinement and modification of right of way procedures and policies dealing with donation;

(2) Reduce or simplify paperwork requirements resulting from right of way procurement;

(3) Increase communication and education efforts as a means to solicit and encourage voluntary right of way donations;

(4) Enhance communication and coordination with local governments through agreements of understanding that address state acceptance of right of way donations secured under zoning, use permits, subdivision, and associated police power authority of local government;

(5) Report to the legislative transportation committee by January 31, 1988, on its efforts under this section. [1987 c 267 § 5.]

47.14.900 Construction. Nothing in this chapter may be construed to contravene the requirements of chapter 8.26 RCW. [1987 c 267 § 6.]

47.14.910 Severability—1987 c 267. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 267 § 12.]

Chapter 47.17

STATE HIGHWAY ROUTES

Sections

47.17.005	State route No. 2.
47.17.010	State route No. 3.
47.17.015	State route No. 4.
47.17.020	State route No. 5.
47.17.025	State route No. 6.
47.17.030	State route No. 7.
47.17.035	State route No. 8.
47.17.040	State route No. 9.
47.17.045	State route No. 10.
47.17.050	State route No. 11.
47.17.055	State route No. 12.
47.17.060	State route No. 14.
47.17.065	State route No. 16.
47.17.070	State route No. 17.
47.17.075	State route No. 18.
47.17.080	State route No. 20.
47.17.081	State route No. 20 north.
47.17.085	State route No. 21.
47.17.090	State route No. 22.
47.17.095	State route No. 23.
47.17.100	State route No. 24.
47.17.105	State route No. 25.
47.17.110	State route No. 26.
47.17.115	State route No. 27.
47.17.120	State route No. 28.
47.17.130	State route No. 31.
47.17.135	State route No. 82.
47.17.140	State route No. 90.
47.17.145	State route No. 92.
47.17.155	State route No. 97.
47.17.157	State route No. 97—alternate.
47.17.160	State route No. 99.
47.17.165	State route No. 101.
47.17.168	State route No. 102.
47.17.170	State route No. 103.
47.17.175	State route No. 104.
47.17.180	State route No. 105.
47.17.185	State route No. 106.
47.17.190	State route No. 107.
47.17.195	State route No. 108.
47.17.200	State route No. 109.
47.17.215	State route No. 112.
47.17.217	State route No. 115.
47.17.225	State route No. 121.
47.17.230	State route No. 123.
47.17.235	State route No. 124.
47.17.240	State route No. 125.
47.17.245	State route No. 126.
47.17.250	State route No. 127.
47.17.255	State route No. 128.
47.17.260	State route No. 129.
47.17.270	State route No. 140.
47.17.275	State route No. 141.
47.17.280	State route No. 142.
47.17.285	State route No. 150.
47.17.295	State route No. 153.
47.17.300	State route No. 155.
47.17.305	State route No. 160.

47.17.310	State route No. 161.	47.17.665	State route No. 506.
47.17.315	State route No. 162.	47.17.670	State route No. 507.
47.17.320	State route No. 164.	47.17.675	State route No. 508.
47.17.325	State route No. 165.	47.17.680	State route No. 509.
47.17.330	State route No. 167.	47.17.685	State route No. 510.
47.17.335	State route No. 168.	47.17.690	State route No. 512.
47.17.340	State route No. 169.	47.17.695	State route No. 513.
47.17.345	State route No. 170.	47.17.700	State route No. 514.
47.17.350	State route No. 171.	47.17.705	State route No. 515.
47.17.355	State route No. 172.	47.17.710	State route No. 516.
47.17.360	State route No. 173.	47.17.715	State route No. 518.
47.17.365	State route No. 174.	47.17.720	State route No. 520.
47.17.370	State route No. 181.	47.17.725	State route No. 522.
47.17.372	State route No. 182.	47.17.730	State route No. 524.
47.17.375	State route No. 193.	47.17.735	State route No. 525.
47.17.380	State route No. 195.	47.17.740	State route No. 526.
47.17.382	State route No. 197.	47.17.745	State route No. 527.
47.17.385	State route No. 202.	47.17.750	State route No. 528.
47.17.390	State route No. 203.	47.17.752	State route No. 529.
47.17.395	State route No. 204.	47.17.755	State route No. 530.
47.17.400	State route No. 205.	47.17.760	State route No. 532.
47.17.405	State route No. 206.	47.17.765	State route No. 534.
47.17.410	State route No. 207.	47.17.770	State route No. 536.
47.17.415	State route No. 209.	47.17.780	State route No. 538.
47.17.416	State route No. 211.	47.17.785	State route No. 539.
47.17.417	State route No. 213.	47.17.795	State route No. 542.
47.17.419	State route No. 215.	47.17.797	State route No. 543.
47.17.420	State route No. 220.	47.17.800	State route No. 544.
47.17.425	State route No. 221.	47.17.805	State route No. 546.
47.17.430	State route No. 223.	47.17.806	State route No. 547.
47.17.435	State route No. 224.	47.17.808	State route No. 599.
47.17.440	State route No. 230.	47.17.810	State route No. 603.
47.17.445	State route No. 231.	47.17.815	State route No. 702.
47.17.450	State route No. 232.	47.17.819	State route No. 705.
47.17.453	State route No. 237.	47.17.820	State route No. 706.
47.17.455	State route No. 240.	47.17.821	State route No. 730.
47.17.460	State route No. 241.	47.17.823	State route No. 821.
47.17.465	State route No. 243.	47.17.824	State route No. 823.
47.17.475	State route No. 260.	47.17.825	State route No. 900.
47.17.480	State route No. 261.	47.17.830	State route No. 901.
47.17.485	State route No. 270.	47.17.835	State route No. 902.
47.17.490	State route No. 271.	47.17.840	State route No. 903.
47.17.495	State route No. 272.	47.17.845	State route No. 904.
47.17.500	State route No. 274.	47.17.850	State route No. 906.
47.17.502	State route No. 276.	47.17.855	State route No. 908.
47.17.505	State route No. 281.	47.17.917	State route No. 970.
47.17.510	State route No. 282.		
47.17.515	State route No. 283.		
47.17.517	State route No. 285.		
47.17.520	State route No. 290.		
47.17.525	State route No. 291.		
47.17.530	State route No. 292.		
47.17.540	State route No. 300.		
47.17.545	State route No. 302.		
47.17.550	State route No. 303.		
47.17.555	State route No. 304.		
47.17.560	State route No. 305.		
47.17.565	State route No. 306.		
47.17.567	State route No. 308.		
47.17.575	State route No. 395.		
47.17.580	State route No. 401.		
47.17.590	State route No. 403.		
47.17.595	State route No. 405.		
47.17.600	State route No. 407.		
47.17.605	State route No. 409.		
47.17.610	State route No. 410.		
47.17.615	State route No. 411.		
47.17.620	State route No. 431.		
47.17.625	State route No. 432.		
47.17.630	State route No. 433.		
47.17.635	State route No. 500.		
47.17.640	State route No. 501.		
47.17.645	State route No. 502.		
47.17.650	State route No. 503.		
47.17.655	State route No. 504.		
47.17.660	State route No. 505.		

47.17.005 State route No. 2. A state highway to be known as state route number 2 is established as follows:

Beginning at a junction with state route number 5 in Everett, thence easterly by way of Monroe, Stevens Pass and Leavenworth to a junction with state route number 97 in the vicinity of Peshastin; also

From a junction with state route number 97 in the vicinity of Peshastin, thence easterly by way of Wenatchee, to a junction with state route number 97 in the vicinity of Orondo, thence easterly by way of Waterville, Wilbur and Davenport to a junction with state route number 90 in the vicinity west of Spokane; also

Beginning at a junction with state route number 90 at Spokane, thence northerly to a junction with state route number 395 in the vicinity north of Spokane; also

From a junction with state route number 395 in the vicinity north of Spokane, thence northerly to a junction with state route number 20 at Newport; also

From a junction with state route number 20 at Newport, thence easterly to the Washington–Idaho boundary line, thence southerly along said boundary line to Fourth Street in Newport. [1987 c 199 § 1; 1970 ex.s. c 51 § 2.]

Purpose—1970 ex.s. c 51: "This act is intended to assign state route numbers to existing state highways duly established by prior legislative act in lieu of primary state highway numbers and secondary state highway numbers. Nothing contained herein is intended to add any new section of highway to the state highway system or delete any section of highway from the state highway system." [1970 ex.s. c 51 § 179.] For codification of 1970 ex.s. c 51, see Codification Tables, Volume 0.

47.17.010 State route No. 3. A state highway to be known as state route number 3 is established as follows:

Beginning at a junction with state route number 101 at Shelton, thence northeasterly to a junction with state route number 302 at Allyn; also

From that junction with state route number 302 at Allyn, thence northeasterly to a junction with state route number 106 in the vicinity of Belfair; also

From that junction with state route number 106 in the vicinity of Belfair, thence northeasterly by the most feasible route to Bremerton, thence northerly and easterly by the most feasible route in the vicinity of Poulsbo to a junction with state route number 104 in the vicinity of Port Gamble. [1970 ex.s. c 51 § 3.]

47.17.015 State route No. 4. A state highway to be known as state route number 4 is established as follows:

Beginning at a junction with state route number 101 in the vicinity of a location known as Johnson's Landing, in Pacific county, thence southeasterly by the most feasible route by way of Kelso to a junction with state route number 5. [1970 ex.s. c 51 § 4.]

47.17.020 State route No. 5. A state highway to be known as state route number 5 is established as follows:

Beginning at the Washington–Oregon boundary line on the interstate bridge over the Columbia river at Vancouver, thence northerly by way of Kelso, Chehalis, Centralia, Olympia, Tacoma, Seattle, Everett and Mt. Vernon, thence northwesterly to the east of Lake Samish, thence northeasterly and northerly by way of Bellingham to the international boundary line in the vicinity of Blaine in Whatcom county. [1970 ex.s. c 51 § 5.]

47.17.025 State route No. 6. A state highway to be known as state route number 6 is established as follows:

Beginning at a junction with state route number 101 at Raymond, thence easterly by the most feasible route to a junction with state route number 5 at Chehalis. [1970 ex.s. c 51 § 6.]

47.17.030 State route No. 7. A state highway to be known as state route number 7 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Morton, thence northerly to a junction with state route number 706 at Elbe; also

From that junction with state route number 706 at Elbe, thence northerly to a junction with state route number 5 at Tacoma. [1970 ex.s. c 51 § 7.]

47.17.035 State route No. 8. A state highway to be known as state route number 8 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 west of Olympia. [1987 c 199 § 2; 1970 ex.s. c 51 § 8.]

47.17.040 State route No. 9. A state highway to be known as state route number 9 is established as follows:

Beginning at a junction with state route number 522 north of Woodinville, thence northerly by way of Snohomish, Arlington and Sedro Woolley to a junction with state route number 542, in the vicinity of Deming; also

Beginning at a junction with state route number 542, in the vicinity of Lawrence, thence northerly to the international boundary at Sumas. [1970 ex.s. c 51 § 9.]

47.17.045 State route No. 10. A state highway to be known as state route number 10 is established as follows:

Beginning at a junction with state route number 970 at Teanaway junction thence easterly to a junction with state route number 97 west of Ellensburg. [1987 c 199 § 3; 1975 c 63 § 14; 1971 ex.s. c 73 § 1; 1970 ex.s. c 51 § 10.]

47.17.050 State route No. 11. A state highway to be known as state route number 11 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Burlington, thence northerly by way of Blanchard to a junction with state route number 5 at Bellingham. [1987 c 199 § 4; 1970 ex.s. c 51 § 11.]

47.17.055 State route No. 12. A state highway to be known as state route number 12 is established as follows:

Beginning at a junction with state route number 101 at Aberdeen, thence easterly by way of Montesano and Elma to a junction with state route number 8 in the vicinity of Elma; also

From that junction with state route number 8 in the vicinity of Elma, thence southeasterly to a junction with state route number 5 in the vicinity north of Centralia; also

Beginning at a junction with state route number 5 in the vicinity south of Chehalis, thence easterly by way of Morton and White Pass to a junction with state route number 410 northwest of Yakima; also

From that junction with state route number 410 northwest of Yakima, thence southeasterly to a junction with state route number 82 at Yakima; also

Beginning at a junction with state route number 182 near Pasco, thence southeasterly by the most feasible route by way of Wallula to Walla Walla, thence northerly by way of Dayton to a junction with state route number 127 at Dodge; also

From that junction with state route number 127 in the vicinity of Dodge, thence easterly by the most feasible route by way of Pomeroy and Clarkston to the Washington–Idaho boundary line. [1985 c 177 § 1; 1983 c 180 § 1; 1970 ex.s. c 51 § 12.]

47.17.060 State route No. 14. A state highway to be known as state route number 14 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence easterly by way of Stevenson to a junction with state route number 97 in the vicinity of Maryhill; also

Beginning at a junction with state route number 97 in the vicinity of Maryhill, thence easterly along the north bank of the Columbia river to a junction with state route number 82 in the vicinity of Plymouth. [1985 c 177 § 2; 1970 ex.s. c 51 § 13.]

47.17.065 State route No. 16. A state highway to be known as state route number 16 is established as follows:

Beginning at a junction with state route number 5 at Tacoma, thence northwesterly by way of the Tacoma Narrows Bridge to a junction with state route number 3 in the vicinity of Gorst. [1987 c 199 § 5; 1973 1st ex.s. c 151 § 1; 1970 ex.s. c 51 § 14.]

47.17.070 State route No. 17. A state highway to be known as state route number 17 is established as follows:

Beginning at a junction with state route number 395 in the vicinity of Mesa, thence northwesterly by way of the vicinity of Moses Lake, and Soap Lake, to a junction with state route number 2 west of Coulee City; also

From a junction with state route number 2 in the vicinity west of Coulee City, thence northerly by way of the vicinity of Leahy, crossing the Columbia river in the vicinity of Bridgeport, thence northwesterly to a junction with state route number 97 east of Brewster. [1979 ex.s. c 33 § 1; 1970 ex.s. c 51 § 15.]

47.17.075 State route No. 18. A state highway to be known as state route number 18 is established as follows:

Beginning at a junction with state route number 99 in the vicinity of northeast Tacoma, thence northeasterly by way of Auburn to a junction with state route number 90 west of North Bend. [1987 c 199 § 6; 1970 ex.s. c 51 § 16.]

47.17.080 State route No. 20. A state highway to be known as state route number 20 is established as follows:

Beginning at a junction with state route number 101 in the vicinity of Discovery Bay, thence northeasterly via the most feasible route to Port Townsend; also

From the Keystone ferry dock on Whidbey Island, thence northeasterly by the most feasible route by way of Deception Pass, Burlington, Sedro Woolley, Concrete, Newhalem, Winthrop, Twisp, Okanogan, Tonasket, Republic, Kettle Falls, Colville, and Tiger; thence southerly and southeasterly to a junction with state route number 2 at Newport. [1973 1st ex.s. c 151 § 13; 1970 ex.s. c 51 § 17.]

47.17.081 State route No. 20 north. A state highway to be known as state route number 20 north is established as follows:

Beginning at Anacortes, thence easterly via the most feasible route to a junction with state route number 20 southeast of Anacortes. [1973 1st ex.s. c 151 § 17.]

47.17.085 State route No. 21. A state highway to be known as state route number 21 is established as follows:

Beginning at a junction with state route number 260 in Kahlotus, thence northerly by the most feasible route, crossing state route number 26, and continuing northerly to a junction with state route number 395 in the vicinity of Lind; also

Beginning at a junction with state route number 395 in the vicinity of Lind, thence northerly by the most feasible route by way of Odessa to a junction with state route number 2 in the vicinity west of Wilbur; also

Beginning at a junction with state route number 2 at Wilbur, thence northerly by the most feasible route to a junction with state route number 20 at Republic; also

Beginning at a junction with state route number 20 east of Republic, thence northeasterly by the most feasible route to the east of Curlew lake by way of Curlew to the international boundary line in the vicinity of Danville. [1983 c 79 § 1; 1975 c 63 § 1; 1970 ex.s. c 51 § 18.]

47.17.090 State route No. 22. A state highway to be known as state route number 22 is established as follows:

Beginning at a junction with state route number 82, thence southerly to a junction of state route number 97 in the vicinity of Toppenish; also

From a junction with state route number 97 at Toppenish, thence southeasterly by way of Mabton to a junction with state route number 82 at Prosser. [1987 c 199 § 7; 1970 ex.s. c 51 § 19.]

47.17.095 State route No. 23. A state highway to be known as state route number 23 is established as follows:

Beginning at a junction with state route number 195 in the vicinity north of Colfax, thence northwesterly to a junction with state route number 90 at Sprague; also

From that junction with state route number 90 at Sprague, thence northwesterly to a junction with state route number 28 at Harrington. [1987 c 199 § 8; 1970 ex.s. c 51 § 20.]

47.17.100 State route No. 24. A state highway to be known as state route number 24 is established as follows:

Beginning at a junction with state route number 82 at Yakima, thence easterly and northerly via Cold Creek and Vernita to a junction with state route number 26 in the vicinity of Othello. [1970 ex.s. c 51 § 21.]

47.17.105 State route No. 25. A state highway to be known as state route number 25 is established as follows:

Beginning at a junction with state route number 2 at Davenport, thence northerly by the most feasible route to a junction with state route number 395 in the vicinity of Kettle Falls, thence northeasterly by the most feasible route to international boundary line. [1970 ex.s. c 51 § 22.]

47.17.110 State route No. 26. A state highway to be known as state route number 26 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of the east end of the Vantage bridge, thence southerly, parallel to the east bank of the Columbia river for a distance of approximately two and one-half miles,

thence southeasterly to the vicinity of Othello, thence easterly to a junction with state route number 395, thence easterly by way of the vicinity of Washtucna and Dusty to a junction with state route number 195 in the vicinity of Colfax. [1979 ex.s. c 33 § 2; 1970 ex.s. c 51 § 23.]

47.17.115 State route No. 27. A state highway to be known as state route number 27 is established as follows:

Beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence in a northerly direction by way of Tekoa, Latah, Fairfield, and Rockford to a junction with state route number 90 in the vicinity of Opportunity. [1979 ex.s. c 195 § 1; 1975 c 63 § 2; 1970 ex.s. c 51 § 24.]

47.17.120 State route No. 28. A state highway to be known as state route number 28 is established as follows:

Beginning at a junction with state route number 2 in the vicinity east of Wenatchee, thence southeasterly to a junction with state route number 281 at Quincy; also

From that junction with state route number 281 at Quincy, thence easterly by way of Ephrata and Odessa to a junction with state route number 2 at Davenport. [1970 ex.s. c 51 § 25.]

47.17.130 State route No. 31. A state highway to be known as state route number 31 is established as follows:

Beginning at a junction with state route number 20 at Tiger, thence northerly by way of Metaline Falls to the international boundary. [1973 1st ex.s. c 151 § 14; 1970 ex.s. c 51 § 27.]

47.17.135 State route No. 82. A state highway to be known as state route number 82 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Ellensburg, thence southerly and easterly by way of Yakima, Union Gap, Sunnyside, Prosser, Kiona, and Goose Gap west of Richland, thence southeasterly near Kennewick and southwesterly by way of the vicinity of Plymouth to a crossing of the Columbia river at the Washington–Oregon boundary line. [1979 ex.s. c 33 § 3; 1970 ex.s. c 51 § 28.]

47.17.140 State route No. 90. A state highway to be known as state route number 90 is established as follows:

Beginning at a junction with state route number 5, thence, via the west approach to the Lake Washington bridge in Seattle, in an easterly direction by way of Mercer Island, North Bend, Snoqualmie pass, Ellensburg, Vantage, Moses Lake, Ritzville, Sprague and Spokane to the Washington–Idaho boundary line. [1971 ex.s. c 73 § 2; 1970 ex.s. c 51 § 29.]

47.17.145 State route No. 92. A state highway to be known as state route number 92 is established as follows:

Beginning at a junction with state route number 9 northeast of Everett, thence northeasterly by the most feasible route to Granite Falls. [1970 ex.s. c 51 § 30.]

47.17.155 State route No. 97. A state highway to be known as state route number 97 is established as follows:

Beginning at the Washington–Oregon boundary on the interstate bridge across the Columbia river at Biggs Rapids, thence in a northerly direction to the junction with state route number 14 in the vicinity of Maryhill, thence in a northerly direction by way of Goldendale, thence northeasterly by way of Satus Pass to a junction with state route number 22 at Toppenish, thence northwesterly south of the Yakima river to a junction with state route number 82 at Union Gap; also

Beginning at a junction with state route number 90 in the vicinity of Ellensburg, thence northeasterly by way of Swauk Pass to a junction with state route number 2 in the vicinity of Peshastin; also

Beginning at a junction with state route number 2 in the vicinity north of Orondo, thence northerly by way of the vicinities of Chelan, Pateros, Brewster, Okanogan, and Oroville to the international boundary line. [1987 c 199 § 9; 1984 c 7 § 131; 1975 c 63 § 3; 1973 1st ex.s. c 151 § 2; 1970 ex.s. c 51 § 32.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.157 State route No. 97–alternate. A state highway to be known as state route number 97–alternate is established as follows:

Beginning at a junction with state route number 2 in the vicinity of Olds, thence northerly by way of Entiat to a junction with state route number 97 in the vicinity east of Chelan. [1987 c 199 § 10.]

47.17.160 State route No. 99. A state highway to be known as state route number 99 is established as follows:

Beginning at a junction with state route number 18 in the vicinity of Federal Way, thence northerly by way of Midway, Seattle, Edmonds, and Lynnwood to a junction with state route number 5 in Everett: *Provided*, That until state route number 509 is constructed and opened to traffic on an anticipated ultimate alignment from a junction with state route number 705 in Tacoma via the Port of Tacoma industrial area to a junction with state route number 18 in the vicinity of Federal Way that portion of state route number 99 between state route number 5 at Fife and state route number 18 in the vicinity of Federal Way shall remain on the state highway system. [1979 ex.s. c 33 § 4; 1971 ex.s. c 73 § 3; 1970 ex.s. c 51 § 33.]

47.17.165 State route No. 101. A state highway to be known as state route number 101 is established as follows:

Beginning at the Oregon boundary on the interstate bridge at Point Ellis, thence northwesterly by way of Ilwaco to a junction with state route number 4 in the vicinity of a location known as Johnson's Landing in Pacific county; also

From that junction with state route number 4 in the vicinity of a location known as Johnson's Landing, in Pacific county, thence northerly by way of South Bend to a junction with state route number 6 at Raymond; also

From that junction with state route number 6 at Raymond, thence northerly by way of Cosmopolis to a junction with state route number 12 at Aberdeen; also

From that junction with state route number 12 at Aberdeen, thence westerly to Hoquiam, thence northwesterly by way of Lake Quinault to Forks, thence easterly by way of Port Angeles to the vicinity of Discovery Bay, thence southerly by way of Shelton to a junction with state route number 5 in the vicinity west of Olympia; also

Beginning at a junction with state route number 101 in the vicinity east of Ilwaco, thence northerly to a junction with state route number 101 in the vicinity north-east of Ilwaco. [1987 c 199 § 11; 1970 ex.s. c 51 § 34.]

47.17.168 State route No. 102. A state highway to be known as state route number 102 is established as follows:

Beginning at the Washington Corrections Center, thence northeasterly to a junction of state route number 101 north of Shelton.

Before award of any construction contract for improvements to state route number 102 under either program A or program C, the department of transportation shall secure a portion of the construction cost from Mason county. [1984 c 197 § 1.]

47.17.170 State route No. 103. A state highway to be known as state route number 103 is established as follows:

Beginning at a junction with state route number 101 at Seaview, thence northerly by the most feasible route by way of Long Beach to Ocean Park. [1970 ex.s. c 51 § 35.]

47.17.175 State route No. 104. A state highway to be known as state route number 104 is established as follows:

Beginning at a junction with state route number 101 in the vicinity south of Discovery Bay, thence southeasterly to the vicinity of Shine on Hood Canal, thence crossing Hood Canal to a junction with state route number 3 in the vicinity of Port Gamble; also

From that junction with state route number 3 in the vicinity of Port Gamble, thence to Port Gamble, thence southerly and easterly to Kingston; also

Beginning at Edmonds, thence southeasterly to a junction with state route number 99 in the vicinity of the Snohomish-King county line; also

Beginning at a junction with state route number 99 in the vicinity of the Snohomish-King county line, thence southeasterly to a junction with state route number 522 in the vicinity of Lake Forest Park. [1970 ex.s. c 51 § 36.]

47.17.180 State route No. 105. A state highway to be known as state route number 105 is established as follows:

Beginning at a junction with state route number 101 at Raymond, thence westerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen. [1987 c 199 § 12; 1970 ex.s. c 51 § 37.]

47.17.185 State route No. 106. A state highway to be known as state route number 106 is established as follows:

Beginning at a junction with state route number 101 near the mouth of the Skokomish river, thence northeasterly along the southeast shore of Hood Canal to a junction with state route number 3 in the vicinity of Belfair. [1970 ex.s. c 51 § 38.]

47.17.190 State route No. 107. A state highway to be known as state route number 107 is established as follows:

Beginning at a junction with state route number 101 north of Artic, thence northeasterly to a junction with state route number 12 at Montesano. [1970 ex.s. c 51 § 39.]

47.17.195 State route No. 108. A state highway to be known as state route number 108 is established as follows:

Beginning at a junction with state route number 8 in the vicinity west of McCleary, thence northeasterly to a junction with state route number 101 south of Shelton. [1973 1st ex.s. c 151 § 3; 1970 ex.s. c 51 § 40.]

47.17.200 State route No. 109. A state highway to be known as state route number 109 is established as follows:

Beginning at a junction with state route number 101 in Hoquiam, thence northwesterly by way of Ocean City, Copalis, Pacific Beach, and Moclips to a junction with state route number 101 in the vicinity of Queets; also a bypass beginning at a junction with state route number 101 in the vicinity of the north city limits of Hoquiam, thence southerly to a junction with state route number 109 in the vicinity of the west city limits of Hoquiam. [1983 c 180 § 2; 1970 ex.s. c 51 § 41.]

Quinault Tribal Highway: RCW 47.20.710.

47.17.215 State route No. 112. A state highway to be known as state route number 112 is established as follows:

Beginning at the easterly boundary of the Makah Indian Reservation, thence easterly by way of Clallam Bay and Pysht to a junction with state route number 101 in or near Port Angeles. [1971 ex.s. c 73 § 5; 1970 ex.s. c 51 § 44.]

47.17.217 State route No. 115. A state highway to be known as state route number 115 is established as follows:

Beginning at Ocean Shores thence in an easterly and northerly direction by the most feasible route to a junction with state route number 109 in the vicinity south of Ocean City. [1973 c 60 § 1.]

47.17.225 State route No. 121. A state highway to be known as state route number 121 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Rochester, thence easterly and northeasterly to a junction with state route number 5 in the vicinity of Maytown. [1970 ex.s. c 51 § 46.]

47.17.230 State route No. 123. A state highway to be known as state route number 123 is established as follows:

Beginning at a junction with state route number 12 in the vicinity west of White Pass, thence northerly to a junction with state route number 410 in the vicinity west of Chinook Pass. [1970 ex.s. c 51 § 47.]

47.17.235 State route No. 124. A state highway to be known as state route number 124 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Burbank, thence northeasterly by the most feasible route to a point in the vicinity of Eureka, thence easterly by the most feasible route to a junction with state route number 125 in the vicinity of Prescott, thence easterly to a junction with state route number 12 in the vicinity northeast of Waitsburg.

That portion of state route number 124 lying between the junction with state route number 12 and the county road to Ice Harbor Dam to be known as "Ice Harbor Drive". [1973 1st ex.s. c 151 § 4; 1970 ex.s. c 51 § 48.]

47.17.240 State route No. 125. A state highway to be known as state route number 125 is established as follows:

Beginning at the Washington–Oregon boundary line south of Walla Walla, thence northerly to a junction with state route number 12 at Walla Walla; also

From a junction with state route number 12 at Walla Walla, thence northerly to a junction with state route number 124 at Prescott. [1979 ex.s. c 33 § 5; 1970 ex.s. c 51 § 49.]

47.17.245 State route No. 126. A state highway to be known as state route number 126 is established as follows:

Beginning at a junction with state route number 12 in the vicinity north of Dayton, thence northeasterly to a junction with state route number 12 in the vicinity west of Pomeroy. [1970 ex.s. c 51 § 50.]

47.17.250 State route No. 127. A state highway to be known as state route number 127 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Dodge, thence northerly to a junction with state route number 26 in the vicinity of Dusty. [1979 ex.s. c 33 § 6; 1970 ex.s. c 51 § 51.]

47.17.255 State route No. 128. A state highway to be known as state route number 128 is established as follows:

Beginning at a junction with state route number 12 at Pomeroy, thence southeasterly to Peola, thence northeasterly to a junction with state route number 12 in the vicinity west of Clarkston. [1970 ex.s. c 51 § 52.]

47.17.260 State route No. 129. A state highway to be known as state route number 129 is established as follows:

Beginning at the Washington–Oregon boundary line in Asotin county, thence northerly by the most feasible route by way of Asotin to a junction with state route number 12 at Clarkston. [1970 ex.s. c 51 § 53.]

47.17.270 State route No. 140. A state highway to be known as state route number 140 is established as follows:

Beginning at a junction with state route number 14 at Washougal, thence northerly and easterly by the most feasible route following the general course of the Washougal river to a junction with state route number 14 east of Washougal. [1970 ex.s. c 51 § 55.]

47.17.275 State route No. 141. A state highway to be known as state route number 141 is established as follows:

Beginning at a wye junction with state route number 14, the west branch in the vicinity east of Underwood and the east branch in the vicinity of White Salmon, thence northerly to the boundary of the Gifford Pinchot National Forest. [1970 ex.s. c 51 § 56.]

47.17.280 State route No. 142. A state highway to be known as state route number 142 is established as follows:

Beginning at a junction with state route number 14 in the vicinity of Lyle, thence northeasterly by way of Klickitat to a junction with state route number 97 in the vicinity of Goldendale. [1970 ex.s. c 51 § 57.]

47.17.285 State route No. 150. A state highway to be known as state route number 150 is established as follows:

Beginning at Manson, thence southeasterly to the north of Lake Chelan to a junction with state route number 97–alternate at Chelan.

Also beginning at a junction with state route number 97–alternate at Chelan southerly to a junction with state route number 97 in the vicinity of Chelan Station. [1987 c 199 § 13; 1970 ex.s. c 51 § 58.]

47.17.295 State route No. 153. A state highway to be known as state route number 153 is established as follows:

Beginning at a junction with state route number 97 in the vicinity of Pateros, thence northerly and westerly by the most feasible route to a junction with state route number 20 in the vicinity south of Twisp. [1970 ex.s. c 51 § 60.]

47.17.300 State route No. 155. A state highway to be known as state route number 155 is established as follows:

Beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northeasterly to the boundary of the federal reservation at the Grand Coulee dam; also

Beginning at the boundary of the federal reservation at the Grand Coulee dam, thence northwesterly by the most feasible route by way of Nespelem and Disautel to a junction with state route number 97 at Omak; also

Beginning at a junction with state route number 155 at Omak, thence northwesterly crossing the Okanogan river to a junction with state route number 215 at Omak. [1975 c 63 § 4; 1970 ex.s. c 51 § 61.]

47.17.305 State route No. 160. A state highway to be known as state route number 160 is established as follows:

Beginning at a junction with state route number 16 in the vicinity west of Port Orchard, thence northeasterly by way of Port Orchard to Harper and Point Southworth. [1970 ex.s. c 51 § 62.]

47.17.310 State route No. 161. A state highway to be known as state route number 161 is established as follows:

Beginning at a junction with state route number 7 in the vicinity of La Grande, thence northeasterly via Eatonville to Puyallup, thence northerly to a junction with state route number 18.

That portion of state route 161 within King county shall be designated Enchanted Parkway. [1987 c 520 § 1; 1971 ex.s. c 73 § 6; 1970 ex.s. c 51 § 63.]

47.17.315 State route No. 162. A state highway to be known as state route number 162 is established as follows:

Beginning at a junction with state route number 410 at Sumner, thence southerly to Orting, thence northeasterly to a junction with state route number 165 in the vicinity south of Buckley. [1975 c 63 § 5; 1971 ex.s. c 73 § 7; 1970 ex.s. c 51 § 64.]

47.17.320 State route No. 164. A state highway to be known as state route number 164 is established as follows:

Beginning at a junction with state route number 18 in the vicinity of Auburn, thence southeasterly to a junction with state route number 410 at Enumclaw. [1987 c 199 § 14; 1970 ex.s. c 51 § 65.]

47.17.325 State route No. 165. A state highway to be known as state route number 165 is established as follows:

Beginning at the northwest entrance to Mt. Rainier National Park, thence northerly to a junction with state route number 410 at Buckley. [1970 ex.s. c 51 § 66.]

47.17.330 State route No. 167. A state highway to be known as state route number 167 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Tacoma, thence easterly by way of the vicinity of Puyallup and Sumner, thence northerly by way of the vicinity of Auburn, Kent, Renton, and Bryn Mawr to a junction with state route number 900 at Seattle. [1979 ex.s. c 33 § 8; 1970 ex.s. c 51 § 67.]

47.17.335 State route No. 168. A state highway to be known as state route number 168 is established as follows:

Beginning at a junction with state route number 410 in the vicinity of the junction of the Greenwater and White rivers, thence easterly to a junction with state route number 410 in the vicinity north of Cliffdell. [1970 ex.s. c 51 § 68.]

47.17.340 State route No. 169. A state highway to be known as state route number 169 is established as follows:

Beginning at a junction with state route number 164 at Enumclaw, thence northwesterly by way of Summit to a junction with state route number 900 in the vicinity of Renton. [1971 ex.s. c 73 § 8; 1970 ex.s. c 51 § 69.]

47.17.345 State route No. 170. A state highway to be known as state route number 170 is established as follows:

Beginning at a junction with state route number 17 west of Warden, thence easterly to Warden. [1970 ex.s. c 51 § 70.]

47.17.350 State route No. 171. A state highway to be known as state route number 171 is established as follows:

Beginning at a junction with state route number 90 west of Moses Lake, thence northeasterly by way of Moses Lake to a junction with state route number 28 in the vicinity west of Odessa. Until such time as state route number 171 is actually constructed on the location adopted by the department, no existing county roads may be maintained or improved by the department as a temporary route of state route number 171. [1984 c 7 § 132; 1970 ex.s. c 51 § 71.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.355 State route No. 172. A state highway to be known as state route number 172 is established as follows:

Beginning at a junction with state route number 2 in the vicinity of Waterville, thence northerly and easterly by the most feasible route by way of Mansfield to a junction with state route number 17 in the vicinity of Leahy. [1970 ex.s. c 51 § 72.]

47.17.360 State route No. 173. A state highway to be known as state route number 173 is established as follows:

Beginning at a junction with state route number 17 at Bridgeport thence northwesterly on the south side of the Columbia river to a junction with state route number 97 in the vicinity of Brewster. [1970 ex.s. c 51 § 73.]

47.17.365 State route No. 174. A state highway to be known as state route number 174 is established as follows:

Beginning at a junction with state route number 17 east of Bridgeport, thence easterly to the boundary of the federal reservation at Grand Coulee dam; also

Beginning at a junction with state route number 155 at Grand Coulee, thence southeasterly to a junction with state route number 21 in the vicinity north of Wilbur; also

A spur beginning at a junction with state route number 174 in the vicinity of the boundary of the federal reservation at the Grand Coulee dam and extending to Crown Point. [1987 c 199 § 15; 1970 ex.s. c 51 § 74.]

47.17.370 State route No. 181. A state highway to be known as state route number 181 is established as follows:

Beginning at a junction with state route number 18 in the vicinity west of Auburn, thence northerly to a junction with state route number 405 in the vicinity of Tukwila. [1979 ex.s. c 192 § 4; 1971 ex.s. c 73 § 9; 1970 ex.s. c 51 § 75.]

Effective dates—1979 ex.s. c 192: See note following RCW 44.40.070.

47.17.372 State route No. 182. A state highway to be known as state route number 182 is established as follows:

Beginning at a junction with state route number 82 in the vicinity of Goose Gap, thence easterly via Richland to a junction with state route number 395 in the vicinity of Pasco. [1979 ex.s. c 33 § 9; 1971 ex.s. c 73 § 10.]

47.17.375 State route No. 193. A state highway to be known as state route number 193 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Clarkston, thence westerly and northerly by way of Steptoe canyon to a junction of state route number 195 in the vicinity of Colton. Until such time as state route number 193 between Colton and Clarkston is actually constructed on the location adopted by the department, no existing county roads may be maintained or improved by the department as a temporary route of state route number 193. [1984 c 7 § 133; 1970 ex.s. c 51 § 76.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.380 State route No. 195. A state highway to be known as state route number 195 is established as follows:

Beginning at the Washington–Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Pullman, Colfax, and Rosalia to a junction with state route number 90 at Spokane. [1979 ex.s. c 33 § 10; 1970 ex.s. c 51 § 77.]

47.17.382 State route No. 197. A state highway to be known as state route number 197 is established as follows:

Beginning at the Washington–Oregon boundary on the interstate bridge across the Columbia river in the vicinity of The Dalles, thence northerly to a junction with state route number 14. [1979 ex.s. c 33 § 11; 1973 1st ex.s. c 151 § 6.]

47.17.385 State route No. 202. A state highway to be known as state route number 202 is established as follows:

Beginning at a junction with state route number 522 near Bothell, thence southeasterly to a junction with state route number 90 in the vicinity of North Bend. [1987 c 199, § 16; 1970 ex.s. c 51 § 78.]

47.17.390 State route No. 203. A state highway to be known as state route number 203 is established as follows:

Beginning at a junction with state route number 202 at Fall City, thence northerly by the most feasible route by way of Duvall to a junction with state route number 2 at Monroe. [1970 ex.s. c 51 § 79.]

47.17.395 State route No. 204. A state highway to be known as state route number 204 is established as follows:

Beginning at a junction with state route number 2 in the vicinity east of Everett, thence northeasterly to a junction with state route number 9. [1987 c 199 § 17; 1970 ex.s. c 51 § 80.]

47.17.400 State route No. 205. A state highway to be known as state route number 205 is established as follows:

Beginning at the Washington–Oregon boundary line in the vicinity east of Vancouver, thence northwesterly to a junction with state route number 5 in the vicinity of Salmon Creek, north of Vancouver. [1970 ex.s. c 51 § 81.]

47.17.405 State route No. 206. A state highway to be known as state route number 206 is established as follows:

Beginning at a junction with state route number 2 in the vicinity north of Mead, thence northeasterly to the entrance to Mt. Spokane State Park. [1987 c 199 § 18; 1970 ex.s. c 51 § 82.]

47.17.410 State route No. 207. A state highway to be known as state route number 207 is established as follows:

Beginning at a junction with state route number 2 in the vicinity north of Winton, thence northerly to a junction with state route number 209 at Lake Wenatchee; also

From that junction with state route number 209 at Lake Wenatchee, thence northwesterly by the most feasible route on the north side of Lake Wenatchee to Telma. [1970 ex.s. c 51 § 83.]

47.17.415 State route No. 209. A state highway to be known as state route number 209 is established as follows:

Beginning at Leavenworth on state route number 2, thence northerly by the most feasible route to a junction with state route number 207 at Lake Wenatchee. [1970 ex.s. c 51 § 84.]

47.17.416 State route No. 211. A state highway to be known as state route number 211 is established as follows:

Beginning at a junction with state route number 2 southwest of Newport, thence northerly by the most feasible route by way of Sacheen Lake to a junction with state route number 20 at Usk. [1975 c 63 § 10.]

47.17.417 State route No. 213. A state highway to be known as state route number 213 is established as follows:

Beginning at a junction with state route number 97 in the vicinity of Malott, thence northeasterly to a junction with state route number 20 southwest of Okanogan. Until such time as this route is actually constructed on the location adopted by the department, no county roads may be maintained or improved by the department as a temporary route. [1984 c 7 § 134; 1973 1st ex.s. c 151 § 18.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.419 State route No. 215. A state highway to be known as state route number 215 is established as follows:

Beginning at a junction with state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak. [1973 1st ex.s. c 151 § 19.]

47.17.420 State route No. 220. A state highway to be known as state route number 220 is established as follows:

Beginning at Old Fort Simcoe, thence easterly by way of White Swan to a junction with state route number 22 at Toppenish. [1971 ex.s. c 73 § 11; 1970 ex.s. c 51 § 85.]

47.17.425 State route No. 221. A state highway to be known as state route number 221 is established as follows:

Beginning at a junction with state route number 14 in the vicinity of Patterson, thence northerly to a junction

with state route number 22 in the vicinity of Prosser. [1970 ex.s. c 51 § 86.]

47.17.430 State route No. 223. A state highway to be known as state route number 223 is established as follows:

Beginning at a junction with state route number 22 in the vicinity southeast of Toppenish, thence easterly to a junction with state route number 12 in the vicinity of Granger. The establishment of state route number 223 as defined in this section shall be effective July 1, 1965. [1970 ex.s. c 51 § 87.]

47.17.435 State route No. 224. A state highway to be known as state route number 224 is established as follows:

Beginning at a junction with state route number 82 at Kiona, thence northeasterly to a junction with state route number 240 at Richland. [1987 c 199 § 19; 1970 ex.s. c 51 § 88.]

47.17.440 State route No. 230. A state highway to be known as state route number 230 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Ritzville, thence easterly by the most feasible route to a junction with state route number 23 in the vicinity of Ewan. [1970 ex.s. c 51 § 89.]

47.17.445 State route No. 231. A state highway to be known as state route number 231 is established as follows:

Beginning at a junction with state route number 23 in the vicinity northwest of Sprague, thence northerly by way of Edwall to a junction with state route number 2 in the vicinity west of Reardan; also

Beginning at a junction with state route number 2 in the vicinity of Reardan, thence northerly by way of Long Lake across the Spokane river, thence northeasterly by way of Springdale to a junction with state route number 395 in the vicinity of Chewelah. [1970 ex.s. c 51 § 90.]

47.17.450 State route No. 232. A state highway to be known as state route number 232 is established as follows:

Beginning at a junction with state route number 231 in the vicinity south of Valley, thence easterly to a junction with state route number 395. [1979 ex.s. c 33 § 12; 1970 ex.s. c 51 § 91.]

47.17.453 State route No. 237. A state highway to be known as state route number 237 is established as follows:

Beginning at a junction with state route number 20 in the vicinity of Whitney, thence northerly to a junction with state route number 11 in the vicinity south of Blanchard. [1975 c 63 § 11.]

47.17.455 State route No. 240. A state highway to be known as state route number 240 is established as follows:

Beginning at a junction with state route number 24 in the vicinity east of Cold Creek, thence southeasterly by the most feasible route across the Atomic Energy Commission Reservation to a junction with state route number 224 at Richland; also

From that junction with state route number 224 at Richland, thence southerly to a junction with state route number 182 at Richland; also

From a junction with state route number 182 at Richland southeasterly to a junction with state route number 395 at Kennewick. The secretary may enter into negotiations with appropriate federal agencies to secure right of way for the highway over and across the Atomic Energy Commission Reservation. [1985 c 177 § 3; 1984 c 7 § 135; 1970 ex.s. c 51 § 92.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.460 State route No. 241. A state highway to be known as state route number 241 is established as follows:

Beginning at a junction with state route number 82 east of Sunnyside, thence northeasterly to a junction with state route number 24. [1987 c 199 § 20; 1970 ex.s. c 51 § 93.]

47.17.465 State route No. 243. A state highway to be known as state route number 243 is established as follows:

Beginning at a junction with state route number 24 north of its crossing of the Columbia river, thence westerly and northerly by way of Arrowsmith and Beverly to a junction with state route number 26 south of the Columbia river bridge at Vantage. [1970 ex.s. c 51 § 94.]

47.17.475 State route No. 260. A state highway to be known as state route number 260 is established as follows:

Beginning at a junction with state route number 17 west of Connell, thence easterly to a junction with state route number 395 in the vicinity of Connell, thence northeasterly by way of Kahlotus to a junction with state route number 26 at Washtucna. [1970 ex.s. c 51 § 96.]

47.17.480 State route No. 261. A state highway to be known as state route number 261 is established as follows:

Beginning at a junction with state route number 12 at Delaney, thence northwesterly to a junction with state route number 260 in the vicinity of McAdam; also

Beginning at a junction with state route number 26 at Washtucna, thence northerly to a junction with state route number 90 at Ritzville. [1987 c 199 § 21; 1971 ex.s. c 73 § 12; 1970 ex.s. c 51 § 97.]

47.17.485 State route No. 270. A state highway to be known as state route number 270 is established as follows:

Beginning at a junction with state route number 195 at Pullman, thence easterly by the most feasible route to

a point on the Washington–Idaho boundary line. [1970 ex.s. c 51 § 98.]

47.17.490 State route No. 271. A state highway to be known as state route number 271 is established as follows:

Beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia. [1970 ex.s. c 51 § 99.]

47.17.495 State route No. 272. A state highway to be known as state route number 272 is established as follows:

Beginning at a junction with state route number 195 at Colfax, thence easterly to a junction with state route number 27 at Palouse; also

Beginning at a junction with state route number 27 at Palouse, thence northeasterly by the most feasible route to a point on the Washington–Idaho boundary line. [1970 ex.s. c 51 § 100.]

47.17.500 State route No. 274. A state highway to be known as state route number 274 is established as follows:

Beginning at a junction with state route number 27 at Tekoa, thence easterly to the Washington–Idaho boundary line. [1970 ex.s. c 51 § 101.]

47.17.502 State route No. 276. A state highway to be known as state route number 276 is established as follows:

Beginning at a junction with state route number 195 west of Pullman, thence easterly and southeasterly to a junction with state route number 270 east of Pullman. [1973 1st ex.s. c 151 § 7.]

47.17.505 State route No. 281. A state highway to be known as state route number 281 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of George, thence northerly to a junction with state route number 28 at Quincy; also

Beginning at a junction with state route number 281 at a point north of the above described junction on state route number 90, thence in a southeasterly direction to a junction with state route number 90 in the vicinity east of George, some 1.6 miles more or less, resulting in a wye connection between state route number 281 and state route number 90. [1971 ex.s. c 73 § 13; 1970 ex.s. c 51 § 102.]

47.17.510 State route No. 282. A state highway to be known as state route number 282 is established as follows:

Beginning at a junction with state route number 28 in the vicinity of Ephrata, thence southeasterly to a junction with state route number 17 in the vicinity of Rocky Ford creek. [1970 ex.s. c 51 § 103.]

47.17.515 State route No. 283. A state highway to be known as state route number 283 is established as follows:

Beginning at a junction with state route number 281 in the vicinity of Burke Junction, thence northeasterly by the most feasible route to a junction with state route number 28 in the vicinity west of Ephrata. [1970 ex.s. c 51 § 104.]

47.17.517 State route No. 285. A state highway to be known as state route number 285 is established as follows:

Beginning at a junction with state route number 28 in the East Wenatchee vicinity, thence westerly across the Columbia river to the west pavement seat of the Columbia River bridge at milepost number 123.45 in Wenatchee. [1977 ex.s. c 224 § 1.]

47.17.520 State route No. 290. A state highway to be known as state route number 290 is established as follows:

Beginning at a junction with state route number 2 in Spokane, thence northeasterly by way of Millwood, Trentwood, and Newman Lake to the termination of Idaho state highway number 53 at the Washington–Idaho boundary line; also

Beginning at a junction with state route number 90 in Spokane, thence northerly to a junction with state route number 290 in the vicinity of Hamilton Street. [1977 ex.s. c 6 § 1; 1970 ex.s. c 51 § 105.]

47.17.525 State route No. 291. A state highway to be known as state route number 291 is established as follows:

Beginning at a junction with state route number 2 in Spokane, thence northwesterly along the north bank of the Spokane river to the vicinity of Tumtum; and thence southwesterly along the north shore of Long Lake to a junction with state route number 231 in the vicinity of the Little Falls Dam. [1983 c 180 § 4; 1970 ex.s. c 51 § 106.]

47.17.530 State route No. 292. A state highway to be known as state route number 292 is established as follows:

Beginning at a junction with state route number 231 at Springdale, thence easterly to a junction with state route number 395 in the vicinity of Loon Lake. [1970 ex.s. c 51 § 107.]

47.17.540 State route No. 300. A state highway to be known as state route number 300 is established as follows:

Beginning at the western boundary of the Belfair State Park, thence generally easterly to a junction with state route number 3 at Belfair. [1970 ex.s. c 51 § 109.]

47.17.545 State route No. 302. A state highway to be known as state route number 302 is established as follows:

Beginning at a junction with state route number 3 in the vicinity of Allyn, thence easterly to a junction with

state route number 16 in the vicinity of Purdy. [1987 c 199 § 22; 1970 ex.s. c 51 § 110.]

47.17.550 State route No. 303. A state highway to be known as state route number 303 is established as follows:

Beginning at a junction with state route number 304 at Bremerton, thence northerly by way of the Manette bridge, across the Port Washington Narrows to a junction with state route number 308 in the vicinity west of Keyport; also

Beginning at a junction with state route number 304, thence by way of the Warren Avenue bridge across the Port Washington Narrows northerly to a junction with state route number 303, all within Bremerton. [1971 ex.s. c 73 § 14; 1970 ex.s. c 51 § 111.]

47.17.555 State route No. 304. A state highway to be known as state route number 304 is established as follows:

Beginning at a junction with state route number 3 in Bremerton, thence easterly to the ferry terminal in Bremerton. [1970 ex.s. c 51 § 112.]

47.17.560 State route No. 305. A state highway to be known as state route number 305 is established as follows:

Beginning at the ferry terminal in Winslow, thence northerly by the most feasible route to the north end of Bainbridge Island, across Agate Pass, thence northwesterly by the most feasible route to a junction with state route number 3 in the vicinity north of Poulsbo. [1970 ex.s. c 51 § 113.]

47.17.565 State route No. 306. A state highway to be known as state route number 306 is established as follows:

Beginning at a junction with state route number 303 in the vicinity north of East Bremerton, thence easterly by the most feasible route to Illahee State Park. [1970 ex.s. c 51 § 114.]

47.17.567 State route No. 308. A state highway to be known as state route number 308 is established as follows:

Beginning at a junction with state route number 3, thence easterly to Keyport. [1987 c 199 § 23; 1971 ex.s. c 73 § 15.]

47.17.575 State route No. 395. A state highway to be known as state route number 395 is established as follows:

Beginning at a junction with state route number 82 at Kennewick, northerly to a junction with state route number 182 at Pasco; also

From a junction with state route number 182 at Pasco, thence northeasterly by way of the vicinity of Mesa and Connell to a junction with state route number 90 at Ritzville; also

From a junction with state route number 2 in the vicinity north of Spokane, thence northerly by way of the vicinity of Colville and Kettle Falls to the international

boundary line in the vicinity of Laurier. [1985 c 177 § 4; 1979 ex.s. c 33 § 13; 1970 ex.s. c 51 § 116.]

47.17.580 State route No. 401. A state highway to be known as state route number 401 is established as follows:

Beginning at Point Ellice on state route number 101, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle. [1970 ex.s. c 51 § 117.]

47.17.590 State route No. 403. A state highway to be known as state route number 403 is established as follows:

Beginning at the shore of the Columbia river, thence northerly by the most feasible route to a junction with state route number 4 in the vicinity west of Grays river. [1970 ex.s. c 51 § 119.]

47.17.595 State route No. 405. A state highway to be known as state route number 405 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Seattle, thence northeasterly to Renton, thence northerly east of Lake Washington to a junction with state route number 5 north of Seattle. [1970 ex.s. c 51 § 120.]

47.17.600 State route No. 407. A state highway to be known as state route number 407 is established as follows:

Beginning at a junction with state route number 4 in the vicinity north of Cathlamet, thence northeasterly by the most feasible route following the general course of the Elokomín river to the vicinity of its confluence with the west fork of the Elokomín river. [1970 ex.s. c 51 § 121.]

47.17.605 State route No. 409. A state highway to be known as state route number 409 is established as follows:

Beginning at the South Ferry landing, as now located, or as it may be relocated, on the south side of Puget Island, thence generally northerly by the most feasible route to the Puget Island bridge, thence crossing said bridge to a junction with state route number 4 at the north approach of said bridge at the town of Cathlamet: *Provided*, That the state of Washington shall not assume or pay any bond or bonds outstanding against said bridge, or interest on said bonds, but said bond or bonds, and interest thereon, shall remain the sole obligation of the obligors named on said bonds. [1970 ex.s. c 51 § 122.]

47.17.610 State route No. 410. A state highway to be known as state route number 410 is established as follows:

Beginning at a junction with state route number 167 at Sumner, thence easterly by way of Buckley, Enumclaw, and Chinook Pass, to a junction with state route number 12 northwest of Yakima: *Provided*, That until such time as state route number 167 is constructed

and opened to traffic on an anticipated ultimate alignment from a junction with state route number 5 near Tacoma easterly to Sumner on the north side of the Puyallup river, the public highway between state route number 5 in Tacoma and state route number 161 in Sumner, on the south side of the Puyallup river, shall remain on the state highway system. [1987 c 199 § 24; 1973 1st ex.s. c 151 § 8; 1970 ex.s. c 51 § 123.]

47.17.615 State route No. 411. A state highway to be known as state route number 411 is established as follows:

Beginning at a junction with state route number 4 in West Kelso, thence northerly to a junction with state route number 506 in the vicinity of Vader. [1970 ex.s. c 51 § 124.]

47.17.620 State route No. 431. A state highway to be known as state route number 431 is established as follows:

Beginning at a junction with state route number 4 in Kelso, thence northeasterly to a junction with state route number 5. [1970 ex.s. c 51 § 125.]

47.17.625 State route No. 432. A state highway to be known as state route number 432 is established as follows:

Beginning at a junction with state route number 4 at Longview, thence southeasterly by the most feasible route to a junction with state route number 5 south of Kelso. [1970 ex.s. c 51 § 126.]

47.17.630 State route No. 433. A state highway to be known as state route number 433 is established as follows:

Beginning at the Washington–Oregon boundary on the interstate bridge at Longview, thence northerly to a junction with state route number 432. [1987 c 199 § 25; 1970 ex.s. c 51 § 127.]

47.17.635 State route No. 500. A state highway to be known as state route number 500 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence northeasterly to Orchards, thence southeasterly to a junction with state route number 14 at Camas. [1970 ex.s. c 51 § 128.]

47.17.640 State route No. 501. A state highway to be known as state route number 501 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence northerly by way of the lower river road and an extension thereof to Ridgefield, thence easterly to a junction with state route number 5 in the vicinity south of La Center. The department may enter into an agreement with the Port of Vancouver, and/or Clark county and/or the United States Army Engineers to obtain material dredged from the Columbia river and have it stockpiled at no expense to the state. [1984 c 7 § 136; 1970 ex.s. c 51 § 129.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.645 State route No. 502. A state highway to be known as state route number 502 is established as follows:

Beginning at a junction with state route number 5 in the vicinity north of Vancouver, thence easterly to a junction with state route number 503 at Battleground. [1970 ex.s. c 51 § 130.]

47.17.650 State route No. 503. A state highway to be known as state route number 503 is established as follows:

Beginning at a junction with state route number 500 at Orchards, thence northerly to a junction with state route number 502 at Battleground, thence northerly to Amboy, thence westerly to a junction with state route number 5 in the vicinity of Woodland. [1975 c 63 § 6; 1970 ex.s. c 51 § 131.]

47.17.655 State route No. 504. A state highway to be known as state route number 504, hereby designated the Spirit Lake Memorial Highway, dedicated to the memory of those who lost their lives in the 1980 eruption of Mt. St. Helens, is established as follows:

Beginning at a junction with state route number 5 in the vicinity north of Castle Rock, thence easterly along the north shore of Silver Lake by way of Silverlake and Toutle, past a junction with state route number 505, thence by way of Kid Valley and St. Helens to the former Spirit Lake. [1982 c 82 § 1; 1970 ex.s. c 51 § 132.]

47.17.660 State route No. 505. A state highway to be known as state route number 505 is established as follows:

Beginning at a junction with state route number 5 west of Toledo, thence via Toledo, easterly and southerly to a junction with state route number 504 in the vicinity north of Toutle. [1970 ex.s. c 51 § 133.]

47.17.665 State route No. 506. A state highway to be known as state route number 506 is established as follows:

Beginning at Ryderwood, thence by way of Vader northeasterly to a junction with state route number 5 west of Toledo. [1970 ex.s. c 51 § 134.]

47.17.670 State route No. 507. A state highway to be known as state route number 507 is established as follows:

Beginning at a junction with state route number 5 in Centralia, thence northerly by the most feasible route by way of Bucoda to Tenino, thence northeasterly by way of Rainier, Yelm and McKenna to a junction with state route number 7 in the vicinity south of Tacoma. [1970 ex.s. c 51 § 135.]

47.17.675 State route No. 508. A state highway to be known as state route number 508 is established as follows:

Beginning at a junction with state route number 5 south of Chehalis, thence easterly by way of Onalaska to a junction with state route number 7 at Morton. [1970 ex.s. c 51 § 136.]

47.17.680 State route No. 509. A state highway to be known as state route number 509 is established as follows:

Beginning at a junction with state route number 705 at Tacoma, thence northeasterly to a junction with state route number 99 in the vicinity of Redondo; also

From a junction with state route number 99 northeast of Redondo, thence northerly via Des Moines to a junction with state route number 99 in Seattle: *Provided*, That until state route number 705 is constructed and open to traffic on an anticipated new alignment, that portion of existing state route number 509 in Tacoma from state route number 5 northerly to the central business district shall remain on the state highway system. [1979 ex.s. c 33 § 14; 1970 ex.s. c 51 § 137.]

47.17.685 State route No. 510. A state highway to be known as state route number 510 is established as follows:

Beginning at a junction with state route number 5, thence southeasterly via St. Clair to a junction with state route number 507 at Yelm. [1970 ex.s. c 51 § 138.]

47.17.690 State route No. 512. A state highway to be known as state route number 512 is established as follows:

Beginning at a junction with state route number 5 south of Tacoma, thence easterly to a junction with state route number 7 south of Tacoma, thence easterly to a junction with state route number 167 in the vicinity of Puyallup. [1970 ex.s. c 51 § 139.]

47.17.695 State route No. 513. A state highway to be known as state route number 513 is established as follows:

Beginning at a junction with state route number 520 in Seattle, thence northerly and easterly to the vicinity of Sand Point, thence northwesterly to a junction with state route number 5 in the vicinity north of Seattle. [1971 ex.s. c 73 § 16; 1970 ex.s. c 51 § 140.]

47.17.700 State route No. 514. A state highway to be known as state route number 514 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Fife, thence easterly by way of Milton to a junction with state route number 161 in the vicinity east of Milton. [1971 ex.s. c 73 § 17; 1970 ex.s. c 51 § 141.]

47.17.705 State route No. 515. A state highway to be known as state route number 515 is established as follows:

Beginning at a junction with state route number 516 in the vicinity east of Kent, thence northerly to a junction with state route number 900 in Renton. [1970 ex.s. c 51 § 142.]

47.17.710 State route No. 516. A state highway to be known as state route number 516 is established as follows:

Beginning at a junction with state route number 509 in the vicinity south of Des Moines, thence southeasterly to a junction with state route number 5; also

From that junction with state route number 5, thence easterly to a junction with state route number 167 in Kent, thence easterly to a junction with state route number 169 south of Maple Valley. [1970 ex.s. c 51 § 143.]

47.17.715 State route No. 518. A state highway to be known as state route number 518 is established as follows:

Beginning at a junction with state route number 509 near Sunnydale, thence easterly to a junction with state route number 5 in the vicinity of Seattle. [1970 ex.s. c 51 § 144.]

47.17.720 State route No. 520. A state highway to be known as state route number 520 is established as follows:

Beginning at a junction with state route number 5 in Seattle, thence easterly via the Evergreen Point bridge to a junction with state route number 202 in the vicinity of Redmond. [1970 ex.s. c 51 § 145.]

47.17.725 State route No. 522. A state highway to be known as state route number 522 is established as follows:

Beginning at Seattle in King county, thence easterly by the most feasible route to the north of Lake Washington by way of Bothell to a junction with state route number 202 near Bothell; also

From that junction with state route number 202 near Bothell, thence northeasterly by the most feasible route to a junction with state route number 2 in the vicinity of Monroe. [1970 ex.s. c 51 § 146.]

47.17.730 State route No. 524. A state highway to be known as state route number 524 is established as follows:

Beginning at a junction with state route number 104 at Edmonds, thence northeasterly to a junction with state route number 5 in the vicinity of Lynnwood, thence easterly to a junction with state route number 527. Until such times as state route number 524 east of Lynnwood is actually constructed on the location adopted by the department, no existing county roads may be maintained or improved by the department as a temporary route of state route number 524. [1984 c 7 § 137; 1970 ex.s. c 51 § 147.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.735 State route No. 525. A state highway to be known as state route number 525 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Everett, thence northwesterly to Mukilteo; also

Beginning at the vicinity of Columbia Beach in the southern portion of Whidbey Island, thence northwesterly to a junction with state route number 20 in the vicinity east of Keystone. [1973 1st ex.s. c 151 § 15; 1970 ex.s. c 51 § 148.]

47.17.740 State route No. 526. A state highway to be known as state route number 526 is established as follows:

Beginning at a junction with state route number 525 at Mukilteo, thence easterly to a junction with state route number 5 in the vicinity of its junction with state route number 527. [1970 ex.s. c 51 § 149.]

47.17.745 State route No. 527. A state highway to be known as state route number 527 is established as follows:

Beginning at a junction with state route number 522 in the vicinity of Bothell, thence northerly to a junction with state route number 5 in the vicinity south of Everett. [1970 ex.s. c 51 § 150.]

47.17.750 State route No. 528. A state highway to be known as state route number 528 is established as follows:

Beginning at a junction with state route number 5 near Marysville, thence easterly to a junction with state route number 9. Until such time as state route number 528 from Marysville to a junction with state route number 9 is actually constructed on the location adopted by the department, no existing city streets or county roads may be maintained or improved by the department as a temporary route of state route number 528. [1984 c 7 § 138; 1971 ex.s. c 73 § 18; 1970 ex.s. c 51 § 151.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.752 State route No. 529. A state highway to be known as state route number 529 is established as follows:

Beginning at a junction with state route number 5 in Everett, thence northerly through Everett to a junction with state route number 528 in Marysville. [1971 ex.s. c 73 § 19.]

47.17.755 State route No. 530. A state highway to be known as state route number 530 is established as follows:

Beginning at a junction with state route number 5 at Conway, thence southerly by way of Stanwood, thence southeasterly to a junction with state route number 5, thence easterly to a junction with state route number 9 at Arlington, thence easterly to Darrington, thence northerly to a junction with state route number 20 at Rockport. [1983 c 131 § 1; 1971 ex.s. c 73 § 20; 1970 ex.s. c 51 § 152.]

47.17.760 State route No. 532. A state highway to be known as state route number 532 is established as follows:

Beginning at a point on Camano Island known as McEacherns Corner, thence easterly over a bridge and

by way of Stanwood to a junction with state route number 530 in the vicinity of Stanwood, thence easterly to a junction with state route number 5 in the vicinity east of Stanwood. [1970 ex.s. c 51 § 153.]

47.17.765 State route No. 534. A state highway to be known as state route number 534 is established as follows:

Beginning at a junction with state route number 5 at Conway, thence southeasterly to a junction with state route number 9 at McMurray. [1970 ex.s. c 51 § 154.]

47.17.770 State route No. 536. A state highway to be known as state route number 536 is established as follows:

Beginning at a junction with state route number 20 at Fredonia, thence easterly to a junction with state route number 5 at Mt. Vernon. [1973 1st ex.s. c 151 § 16; 1970 ex.s. c 51 § 155.]

47.17.780 State route No. 538. A state highway to be known as state route number 538 is established as follows:

Beginning at a junction with state route number 5 at Mt. Vernon, thence easterly to a junction with state route number 9. [1970 ex.s. c 51 § 157.]

47.17.785 State route No. 539. A state highway to be known as state route number 539 is established as follows:

Beginning at a junction with state route number 5 at Bellingham, thence northerly to the international boundary in the vicinity east of Delta. [1970 ex.s. c 51 § 158.]

47.17.795 State route No. 542. A state highway to be known as state route number 542 is established as follows:

Beginning at a junction with state route number 5 at Bellingham, thence easterly to a point in the vicinity of Austin Pass in Whatcom county. [1970 ex.s. c 51 § 160.]

47.17.797 State route No. 543. A state highway to be known as state route number 543 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Blaine, thence northerly to the international boundary. [1971 ex.s. c 73 § 22.]

47.17.800 State route No. 544. A state highway to be known as state route number 544 is established as follows:

Beginning at a junction with state route number 539 in the vicinity of Wisner lake, thence northeasterly by way of Everson to a junction with state route number 9 in the vicinity of Nooksack. [1970 ex.s. c 51 § 161.]

47.17.805 State route No. 546. A state highway to be known as state route number 546 is established as follows:

Beginning at a junction with state route number 539 approximately 2.7 miles south of the international

boundary, thence easterly by way of Van Buren to a junction with state route number 9. [1970 ex.s. c 51 § 162.]

47.17.806 State route No. 547. A state highway to be known as state route number 547 is established as follows:

Beginning at the junction of state route number 542 in the vicinity of Kendall, thence northwesterly to a junction with state route number 9 at Sumas. [1984 c 197 § 2.]

47.17.808 State route No. 599. A state highway to be known as state route number 599 is established as follows:

Beginning in the vicinity south of Seattle at a junction with state route number 5, thence in a northwesterly direction west of the Duwamish river to a junction with state route number 99 in the vicinity of South 118 street south of Seattle. [1971 ex.s. c 73 § 23.]

47.17.810 State route No. 603. A state highway to be known as state route number 603 is established as follows:

Beginning at a junction with state route number 5 in the vicinity north of Toledo, thence northerly by the most feasible route by way of Winlock and Napavine to a junction with state route number 6 in the vicinity west of Chehalis. [1970 ex.s. c 51 § 163.]

47.17.815 State route No. 702. A state highway to be known as state route number 702 is established as follows:

Beginning at a junction with state route number 507 at McKenna, thence easterly to a junction with state route number 7. [1970 ex.s. c 51 § 164.]

47.17.819 State route No. 705. A state highway to be known as state route number 705 is established as follows:

Beginning at a junction with state route number 5 in Tacoma, thence northerly to a junction with Schuster Parkway in the Tacoma central business district. [1979 ex.s. c 33 § 15.]

47.17.820 State route No. 706. A state highway to be known as state route number 706 is established as follows:

Beginning at a junction with state route number 7 at Elbe, thence easterly to a southwest entrance to Mt. Rainier National Park. [1970 ex.s. c 51 § 165.]

47.17.821 State route No. 730. A state highway to be known as state route number 730 is established as follows:

Beginning at the Washington–Oregon boundary line, thence northeasterly to a junction with state route number 12 south of Wallula. [1985 c 177 § 5.]

47.17.823 State route No. 821. A state highway to be known as state route number 821 is established as follows:

Beginning at a junction with state route number 82 in the vicinity north of Yakima, thence northerly to a junction with state route number 82 south of Ellensburg. [1973 1st ex.s. c 151 § 9.]

47.17.824 State route No. 823. A state highway to be known as state route number 823 is established as follows:

Beginning at the junction of state route number 82 at the Selah interchange, thence northerly to a junction with Fasset Avenue in Selah.

Before award of any construction contract for improvements to state route number 823 under either program A or program C, the department of transportation shall secure a portion of the construction cost from the city of Selah or Yakima county, or both. [1984 c 197 § 3.]

47.17.825 State route No. 900. A state highway to be known as state route number 900 is established as follows:

Beginning at a junction with state route number 99 in Seattle, thence easterly and southerly by way of Renton to a junction with state route number 90 in the vicinity of Issaquah. [1979 ex.s. c 33 § 16; 1970 ex.s. c 51 § 166.]

47.17.830 State route No. 901. A state highway to be known as state route number 901 is established as follows:

Beginning at a junction with state route number 90 in the vicinity west of Issaquah, thence northerly to the west of Lake Sammamish to a junction with state route number 908 in the vicinity of Redmond. [1971 ex.s. c 73 § 24; 1970 ex.s. c 51 § 167.]

47.17.835 State route No. 902. A state highway to be known as state route number 902 is established as follows:

Beginning in the vicinity of the state custodial school, thence northerly to the town of Medical Lake, thence northeasterly and easterly to a junction with state route number 90 at a point approximately three miles north-east of Four Lakes. [1970 ex.s. c 51 § 168.]

47.17.840 State route No. 903. A state highway to be known as state route number 903 is established as follows:

Beginning at a junction with state route number 970 in the vicinity of Cle Elum, thence northwesterly by way of Cle Elum and Roslyn to the National Forest boundary in the vicinity of Lake Cle Elum. [1975 c 63 § 7; 1970 ex.s. c 51 § 169.]

47.17.845 State route No. 904. A state highway to be known as state route number 904 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Tyler, thence northeasterly via Cheney to a junction with state route number 90 in the vicinity of Four Lakes. [1971 ex.s. c 73 § 25; 1970 ex.s. c 51 § 170.]

47.17.850 State route No. 906. A state highway to be known as state route number 906 is established as follows:

Beginning at a junction with state route number 90 at the West Summit interchange of Snoqualmie Pass, thence along the alignment of the state route number 90 as it existed on May 11, 1967, in a southeasterly direction to a junction with state route number 90 at the Hyak interchange.

The legislative transportation committee, the house and senate transportation committees, and the department shall undertake appropriate studies to evaluate state route number 906 to determine whether or not it should permanently remain on the state system. [1984 c 7 § 139; 1977 ex.s. c 235 § 16; 1971 ex.s. c 73 § 26; 1970 ex.s. c 51 § 171.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.855 State route No. 908. A state highway to be known as state route number 908 is established as follows:

Beginning at a junction with state route number 520, Evergreen Point bridge route, in the vicinity of Northrup Road, thence northerly and easterly in the vicinity of Kirkland to a junction with state route number 202 in the vicinity of Redmond. [1971 ex.s. c 73 § 27.]

47.17.917 State route No. 970. A state highway to be known as state route number 970 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Cle Elum, thence northeasterly by way of Teanaway to a junction with state route number 97 in the vicinity of Virden. [1975 c 63 § 12.]

Chapter 47.20

MISCELLANEOUS PROJECTS

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- 47.20.720 Quinault Tribal Highway—Certain portion as limited access.
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- 47.20.730 Quinault Tribal Highway—Department as agent.
- 47.20.735 Quinault Tribal Highway—Authority to seek federal funding.
- 47.20.900 Severability—1975 1st ex.s. c 272.

47.20.570 Manette bridge authorized. The department is authorized and directed to construct a bridge across Port Washington Narrows connecting state route number 304 at or near Bremerton with state route number 303 on the Manette Peninsula; to make surveys and plans; and to condemn or otherwise acquire such lands as are necessary or proper for approaches to the bridge or for the relocation of any portion of the highway to locate the bridge at the most feasible place. The bridge shall become and be maintained as a part of the state highway system. [1984 c 7 § 140; 1970 ex.s. c 51 § 173; 1961 c 13 § 47.20.570. Prior: 1947 c 4 p 6 § 2; Rem. Supp. 1947 § 6584a-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.580 Washington State University highway authorized. The department is hereby authorized and directed to locate, construct, pave, and maintain a suitable highway on the most feasible route beginning in the vicinity of the stadium of the Washington State University and extending in a northwesterly direction to a connection with state route number 27, near the north boundary of the city of Pullman. [1984 c 7 § 141; 1970 ex.s. c 51 § 174; 1961 c 13 § 47.20.580. Prior: 1945 c 27 § 1; Rem. Supp. 1945 § 6402-40.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.590 University of Washington approach authorized. The department is hereby authorized and directed to select and locate a suitable and fitting street and highway approach to the University of Washington campus in the city of Seattle, from Roosevelt Way to Fifteenth Avenue northeast, including an underpass beneath the surface of Roosevelt Way, and necessary approaches to the underpass. [1984 c 7 § 142; 1961 c 13 § 47.20.590. Prior: 1945 c 27 § 2; Rem. Supp. 1945 § 6402-41.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.600 Washington State University highway, University of Washington approach—Acquisition of property. The department is hereby authorized and directed in the name of the state of Washington to acquire by purchase, gift, or condemnation, any and all private real estate, rights, and interests necessary to locate, construct, and maintain the Washington State University highway and the University of Washington approach provided for herein. [1984 c 7 § 143; 1961 c 13 § 47.20.600. Prior: 1945 c 27 § 3; Rem. Supp. 1945 § 6402-42.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.605 Washington State University highway, University of Washington approach—Public use. The use of the private real estate, rights, and interests, selected by the department as necessary for the approach, underpass, and highway is declared to be a public use. [1984 c 7 § 144; 1961 c 13 § 47.20.605. Prior: 1945 c 27 § 4; Rem. Supp. 1945 § 6402-43. Formerly RCW 47.20.600, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.610 Washington State University highway, University of Washington approach—Condemnation. In case of condemnation to secure any real estate, rights, or interests authorized under this chapter, the court actions shall be brought in the name of the state of Washington in the respective counties in which the real estate is located and in the manner provided by law for acquiring property for public uses for the state. In such actions the selection of the real estate, rights, and interests by the department is, in the absence of bad faith, arbitrary, capricious, or fraudulent action, conclusive upon the court and judge before which the action is brought that the real estate, rights, and interests are necessary for public use for the purposes sought. [1984 c 7 § 145; 1961 c 13 § 47.20.610. Prior: 1945 c 27 § 5; Rem. Supp. 1945 § 6402-44.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.620 Washington State University highway, University of Washington approach—Measure of damage to buildings. If, in any condemnation proceeding authorized herein, it appears that there is any building wholly or partially upon any of the real estate to be taken, the jury, or the court, if the jury be waived, shall add to the value of the land taken the amount of damages to the building. If the entire building is taken, or if the building is damaged so that it cannot be readjusted to the real estate not taken, then the measure of damages shall be the fair cash value of the building. If part of a building is taken or damaged and the building can be readjusted or replaced on the real estate remaining, then the measure of damages shall be the cost of readjusting or moving the building, or part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving. [1961 c 13 § 47.20.620. Prior: 1945 c 27 § 6; Rem. Supp. 1945 § 6402-45.]

47.20.630 Washington State University highway, University of Washington approach—Sale of buildings, personalty, acquired in acquisition of land. The department shall have power to sell at public or private sale any building, equipment, or fixtures acquired in the acquisition of the real estate for such price as it shall fix and to execute to the purchaser upon payment of the purchase price a bill of sale in the name of the state. Proceeds of the sale shall be placed in the motor vehicle fund of the state treasury. The department shall have power to permit occupation of buildings on real estate so

acquired for such specified limited time as it deems will lapse before construction of the approach, underpass, and highway can be undertaken; and in behalf of the state it may be shown in any condemnation proceeding the period during which such occupancy will be permitted for the purpose of mitigating damages. [1984 c 7 § 146; 1961 c 13 § 47.20.630. Prior: 1945 c 27 § 7; Rem. Supp. 1945 § 6402-46.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.635 University of Washington approach—Ordinance requisite—Construction and maintenance. No action may be taken by the department for the acquisition of real estate, rights, and interests for the approach and underpass to the University of Washington unless and until the city of Seattle, through its legislative authority, enacts an ordinance providing that the city of Seattle will, within three months after the necessary real estate, rights, and interests have been secured by the state as provided in this chapter, begin the work of grading, paving, and such other work as is necessary to complete and render available for use of the public, the approach and underpass and approaches to the underpass; and further providing that the city of Seattle shall thereafter keep and maintain the approach and underpass and approach to the underpass in a good state of repair and suitable for public travel and use, which construction and maintenance work the city of Seattle is hereby authorized and empowered to do and perform. [1984 c 7 § 147; 1961 c 13 § 47.20.635. Prior: 1945 c 27 § 8; Rem. Supp. 1945 § 6402-47.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.640 Reestablishment and redesignation of intersections when highway relocated. In any case where a state highway is relocated in such manner that it ceases to intersect another state highway, the department is authorized to extend and designate either of the state highways to reestablish an appropriate intersection. [1984 c 7 § 148; 1967 ex.s. c 145 § 44; 1961 c 13 § 47.20.640. Prior: 1953 c 82 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.645 Interstate 90 corridor—Legislative finding. The legislature finds that the department initiated route studies for the location of that segment of the national system of interstate and defense highways (interstate system) between south Bellevue and state route No. 5 in Seattle in 1957 culminating in a corridor public hearing and adoption of a corridor in 1963; that thereafter the department, utilizing a multidisciplinary design team and soliciting the broadest public participation, developed a series of designs culminating in a public design hearing in 1970, a public limited access hearing in 1971, and adoption of a design and limited access plan for the facility in 1971; that commencing in 1970 the proposed facility has been the subject of numerous lawsuits and administrative proceedings that have prevented advancement of the project to construction; that since

further development of the project was enjoined by federal courts in 1971 the cost of constructing the project has increased by more than one hundred million dollars; that the traffic congestion and traffic hazards existing in the existing highway corridor between south Bellevue, Mercer Island, and the city of Seattle are no longer tolerable; that after more than seventeen years of studies the public interest now requires that final decisions regarding the appropriate system for meeting the transportation requirements between south Bellevue and the city of Seattle be made promptly and in accordance with a prescribed schedule.

It is therefore the sense of the legislature that further protracted delay in establishing the transportation system to be constructed between south Bellevue and state route No. 5 in the city of Seattle is contrary to the interest of the people of this state and can no longer be tolerated as acceptable public administration. Accordingly the schedule for finally determining the character of transportation modes between south Bellevue and state route No. 5 in the city of Seattle as set forth in RCW 47.20.645 through 47.20.653 and 47.20.900 is adopted as the public policy of this state. [1984 c 7 § 149; 1975 1st ex.s. c 272 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.647 Interstate 90 corridor—Withdrawal of local governments from project—Effect on use of state funds. (1) The Puget Sound council of governments (until July 1, 1975, known as the Puget Sound governmental conference) now engaged in a study of the withdrawal from the interstate system of that segment of state route No. 90 between the south Bellevue interchange and the Connecticut street interchange on state route No. 5 and the substitution of public mass transit projects in lieu thereof as authorized by section 103(e)(4) of Title 23, United States Code, is directed to complete all phases of the study by November 1, 1975.

(2) No later than January 15, 1976, the city councils of Seattle, Mercer Island and Bellevue and the county council of King County shall each by resolution either approve or disapprove a request to withdraw from the interstate system the segment of state route No. 90 between south Bellevue interchange and the Connecticut street interchange on state route No. 5. Nothing in this subsection shall be construed as requiring the city or county councils to adopt by January 15, 1976 any proposal for substitute mass transit projects.

(3) If at least three of the four city and county councils request withdrawal from the interstate system of the designated segment of state route No. 90 by January 15, 1976, and such request is thereafter concurred in by the governor and the Puget Sound council of governments, such determination shall be final as it relates to the state of Washington and except as may be required to terminate the project in an orderly manner, no moneys shall thereafter be expended from the motor vehicle fund for further development of the designated section of highway as an interstate highway without further express authorization of the legislature.

(4) If fewer than three of the four city and county councils request withdrawal from the interstate system of the designated segment of state route No. 90 by January 15, 1976, or if the governor does not concur in the withdrawal request, then no tax revenues collected by the state of Washington shall thereafter be expended for the construction of substitute public mass transit projects in the Seattle metropolitan area pursuant to section 103(e)(4) of Title 23, United States Code, without further express authorization of the legislature. [1975 1st ex.s. c 272 § 2.]

47.20.653 Interstate 90 corridor—Court proceedings, priority. State court proceedings instituted to challenge the validity of any steps taken in pursuance of the construction of the segment of the interstate system between south Bellevue and state route No. 5 in Seattle, or the construction of substitute public mass transit projects in lieu thereof, shall take precedence over all other causes not involving the public interest in all courts of this state to the end construction of such facilities may be expedited to the fullest. The legislature of the state of Washington respectfully requests of the federal judiciary that challenges instituted in the federal courts relating to the validity of steps leading to the construction of the designated interstate highway or substitute public mass transit projects in lieu thereof be expedited to the fullest. [1975 1st ex.s. c 272 § 5.]

47.20.700 State route No. 504 (Spirit Lake Memorial Highway)—Extension and parking facilities. The department of transportation may provide for the construction of an extension of state route number 504 from the vicinity of Maple Flats to the vicinity of the United States Corps of Engineers debris dam on the north fork of the Toutle river on an alignment to be approved by the department of transportation. The department may enter into an agreement with the principal owner of the necessary right of way providing as follows:

(1) The owner of the right of way shall construct the highway extension and public parking facilities as specified by the department of transportation.

(2) The owner of the right of way shall convey to the state, right of way for the highway extension a minimum of one hundred fifty feet in width (except right of way presently under the control of the department of natural resources), together with areas for public parking facilities as designated by the department of transportation.

(3) The department of transportation shall reimburse the present owner of the right of way for the actual cost of construction of the highway extension and the public parking facilities.

(4) The construction of the highway extension and public parking facilities shall be completed within one year after March 27, 1982.

The department of transportation may acquire that part of the right of way necessary for the highway extension that is now under the control of the department of natural resources in the manner provided in RCW 47.12.023 through 47.12.029.

All expenditures by the department of transportation pursuant to this section shall be from appropriations for the construction of category A projects. [1982 c 82 § 2.]

47.20.710 Quinault Tribal Highway—Agreement authorized—Route. The department of transportation is authorized to enter into a cooperative agreement with the governing authority for the Indian peoples of the Quinault Indian Reservation and appropriate agencies of the United States for the location, design, right of way acquisition, construction, and maintenance of a highway beginning at the south boundary of the Quinault Indian reservation on state route number 109, thence northerly along the present right of way of state route number 109 to the township line, thence inland and northerly across the Raft river to an intersection with state route number 101 south of Queets. The highway shall be known as the "Tribal Highway" and may also be designated by the department as state route number 109. It is anticipated that this highway construction will be funded from federal sources other than normal federal aid highway allocations. [1985 c 228 § 1.]

State route number 109: RCW 47.17.200.

47.20.715 Quinault Tribal Highway—Maintenance, operation, improvements—Intersections, access. As a part of the agreement, the department may assume responsibility for the operation and maintenance and future improvement of the highway. The agreement may also reserve to the governing authority for the Indian peoples of the Quinault Indian Reservation authority to construct public road intersections or grade separation crossings of the highway. Existing rights of access from adjoining property to existing state route number 109 from the south reservation boundary to the township line shall not be affected by RCW 47.20.710 through 47.20.735 or the agreement authorized by RCW 47.20.710. [1985 c 228 § 2.]

47.20.720 Quinault Tribal Highway—Certain portion as limited access. The department is authorized to determine the location of the highway from the township line to a junction with state route number 101 after consultations with the governing authority for the Indian peoples of the Quinault Indian Reservation and the bureau of Indian affairs. The department may then proceed with the establishment of this section of the highway as a limited access facility in the manner prescribed in RCW 47.52.131 through 47.52.137 and 47.52.195 (and the administrative rules adopted by the department to implement those sections), subject, however, to the following conditions: (1) The access report required by RCW 47.52.131 shall be approved by the governing authority for the Indian peoples of the Quinault Indian Reservation before public hearings; and (2) the final limited access plan adopted pursuant to RCW 47.52.137 at the conclusion of the public hearing, or after any appeal from it has been decided, shall be approved by the governing authority for the Indian peoples of the Quinault Indian Reservation and the bureau

of Indian affairs before right of way is acquired for this section of highway. [1985 c 228 § 3.]

47.20.725 Quinault Tribal Highway—Acquisition of remaining right of way. The department is authorized to acquire the remaining right of way for the Tribal Highway by purchase or by condemnation under state or federal eminent domain statutes. The secretary of transportation pursuant to the agreement is authorized to convey by deed to the governing authority for the Indian peoples of the Quinault Indian Reservation the right of way to the entire highway when fully acquired in return for a conveyance by the governing authority for the Indian peoples of the Quinault Indian Reservation to the state of Washington of a perpetual easement for public travel on the through lanes and shoulders of the highway when constructed. The agreement may also authorize the governing authority for the Indian peoples of the Quinault Indian Reservation to convey to the United States an easement to construct, maintain, and repair the highway improvements if such an easement is required by regulations of the bureau of Indian affairs. [1985 c 228 § 4.]

47.20.730 Quinault Tribal Highway—Department as agent. Except as otherwise provided by RCW 47.20.710 through 47.20.735 or by the agreement authorized by RCW 47.20.710, the department may proceed with the location, design, acquisition of right of way, construction, and maintenance of the highway as an agent of the governing authority for the Indian peoples of the Quinault Indian Reservation in accordance with applicable state or federal law. [1985 c 228 § 5.]

47.20.735 Quinault Tribal Highway—Authority to seek federal funding. The department is authorized to join with the governing authority for the Indian peoples of the Quinault Indian Reservation to seek federal funding for the construction of the Tribal Highway. [1985 c 228 § 6.]

47.20.900 Severability—1975 1st ex.s. c 272. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 272 § 6.]

Chapter 47.22

COMBINATION HIGHWAY ROUTES

- Sections
 47.22.010 East Pacific highway.
 47.22.020 Lewis and Clark highway.

47.22.010 East Pacific highway. There is hereby established the east Pacific highway which shall be composed of the following existing highway routes: Beginning on state route number 5 at or near Centralia; thence by way of state route number 5 to its junction with state route number 12 or by way of state route number 507 between Centralia and Tenino; thence on

state route number 507 to Roy junction with state route number 7; thence on state route number 7 to a junction with state route number 512; thence on state route number 512 to Puyallup; thence on state route numbers 410 and 167 to Sumner, Auburn, Kent and Renton; thence on state route number 405 to Kirkland; thence on state route number 405 north to a junction with state route number 522; thence on state route number 522 to a junction with state route number 9 northeast of Woodinville; and thence on state route number 9 to Snohomish, Arlington, Sedro Woolley, and to a junction with state route number 542 at Deming; thence westerly on state route 542 to a junction with state route number 9 at Lawrence; thence on state route number 9 via Sumas, to the Canadian international boundary. [1970 ex.s. c 51 § 175; 1961 c 13 § 47.22.010. Prior: 1951 c 273 § 1.]

47.22.020 Lewis and Clark highway. There is established the Lewis and Clark highway, which shall be composed of the following existing routes: state route number 12 from Clarkston to Waitsburg; state route number 124 from Waitsburg to Pasco (west); state route number 12 from Pasco to Waitsburg via Wallula and Walla Walla (east); state route number 14 from Pasco to Maryhill; state route numbers 14, 5 and 4 from Maryhill to Naselle junction; state route number 401 from Naselle junction to Megler; and state route number 101 from Megler to Ilwaco. [1970 ex.s. c 51 § 176; 1967 ex.s. c 145 § 13; 1961 c 13 § 47.22.020. Prior: 1955 c 178 § 1.]

Chapter 47.24

CITY STREETS AS PART OF STATE HIGHWAYS

- Sections
 47.24.010 Designation of street as part of highway—Construction, maintenance—Return of street to city or town.
 47.24.020 Jurisdiction, control of such streets.
 47.24.030 Acquisition of rights of way—Condemnation proceedings.
 47.24.040 Street fund—Expenditures on streets forming part of state highway.
 47.24.050 Aid on streets by state or county—Payment.

City streets
 parkways, boulevards, generally: Title 35 RCW.
 sidewalks, etc.: Chapters 35.68 through 35.79 RCW.
 Design standards committee for city streets: Chapter 35.78 RCW.
 Off-street parking
 cities: Chapter 35.86 RCW.
 towns: RCW 35.27.550 through 35.27.590.
 Platted streets as public highways: RCW 58.08.035, 58.08.050.
 Speed limits in cities: RCW 46.61.415, 46.61.430, 46.61.440.
 Viaducts, bridges, elevated roadways, tunnels, etc., in cities: Chapter 35.85 RCW.

47.24.010 Designation of street as part of highway—Construction, maintenance—Return of street to city or town. The transportation commission shall determine what streets, together with bridges thereon and wharves necessary for use for ferriage of motor vehicle traffic in connection with such streets, if any, in any incorporated cities and towns shall form a part of the

route of state highways and between the first and fifteenth days of July of any year the department of transportation shall certify to the clerk of each city or town, by brief description, the streets, together with the bridges thereon and wharves, if any, in such city or town which are designated as forming a part of the route of any state highway; and all such streets, including curbs and gutters and street intersections and such bridges and wharves, shall thereafter be a part of the state highway system and as such shall be constructed and maintained by the department of transportation from any state funds available therefor: *Provided*, That the responsibility for the construction and maintenance of any such street together with its appurtenances may be returned to a city or a town upon certification by the department of transportation to the clerk of any city or town that such street, or portion thereof, is no longer required as a part of the state highway system: *Provided further*, That any such certification that a street, or portion thereof, is no longer required as a part of the state highway system shall be made between the first and fifteenth of July following the determination by the department that such street or portion thereof is no longer required as a part of the state highway system, but this shall not prevent the department and any city or town from entering into an agreement that a city or town will accept responsibility for such a street or portion thereof at some time other than between the first and fifteenth of July of any year. [1979 ex.s. c 86 § 2; 1977 ex.s. c 151 § 57; 1973 c 95 § 3; 1961 c 13 § 47.24.010. Prior: 1959 c 160 § 1; 1957 c 83 § 2; 1955 c 179 § 2; 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

47.24.020 Jurisdiction, control of such streets. The jurisdiction, control, and duty of the state and city or town with respect to such streets shall be as follows:

(1) The department has no authority to change or establish any grade of any such street without approval of the governing body of such city or town, except with respect to limited access facilities established by the commission;

(2) The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. However, within incorporated cities and towns the title to a state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over such facility as provided in chapter 47.52 RCW;

(3) The department has authority to prohibit the suspension of signs, banners, or decorations above the portion of such street between the curbs or portion used for highway purposes up to a vertical height of twenty feet above the surface of the roadway;

(4) The city or town shall at its own expense maintain all underground facilities in such streets, and has the

right to construct such additional underground facilities as may be necessary in such streets;

(5) The city or town has the right to grant the privilege to open the surface of any such street, but all damage occasioned thereby shall promptly be repaired either by the city or town itself or at its direction;

(6) The city or town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins, and remove all snow, except that the state shall when necessary plow the snow on the roadway. In cities and towns having a population of fifteen thousand or less according to the latest determination of population by the office of financial management, the state, when necessary for public safety, shall assume, at its expense, responsibility for the stability of the slopes of cuts and fills and the embankments within the right of way to protect the roadway itself. The state shall install, maintain, and operate all illuminating facilities on any limited access facility, together with its interchanges, located within the corporate limits of any city or town, and shall assume and pay the costs of all such installation, maintenance, and operation incurred after November 1, 1954;

(7) The department has the right to use all storm sewers on such highways without cost; and if new storm sewer facilities are necessary in construction of new streets by the department, the cost of the facilities shall be borne by the state and/or city as may be mutually agreed upon between the department and the governing body of the city or town;

(8) Cities and towns have exclusive right to grant franchises not in conflict with state laws, over, beneath, and upon such streets, but the department is authorized to enforce in an action brought in the name of the state any condition of any franchise which a city or town has granted on such street. No franchise for transportation of passengers in motor vehicles may be granted on such streets without the approval of the department, but the department shall not refuse to approve such franchise unless another street conveniently located and of strength of construction to sustain travel of such vehicles is accessible;

(9) Every franchise or permit granted any person by a city or town for use of any portion of such street by a public utility shall require the grantee or permittee to restore, repair, and replace to its original condition any portion of the street damaged or injured by it;

(10) The city or town has the right to issue overload or overwidth permits for vehicles to operate on such streets or roads subject to regulations printed and distributed to the cities and towns by the department;

(11) Cities and towns shall regulate and enforce all traffic and parking restrictions on such streets, but all regulations adopted by a city or town relating to speed, parking, and traffic control devices on such streets not identical to state law relating thereto are subject to the approval of the department before becoming effective. All regulations pertaining to speed, parking, and traffic control devices relating to such streets heretofore adopted by a city or town not identical with state laws

shall become null and void unless approved by the department heretofore or within one year after March 21, 1963;

(12) The department shall erect, control, and maintain at state expense all route markers and directional signs, except street signs, on such streets;

(13) The department shall install, operate, maintain, and control at state expense all traffic control signals, signs, and traffic control devices for the purpose of regulating both pedestrian and motor vehicular traffic on, entering upon, or leaving state highways in cities and towns having a population of fifteen thousand or less according to the latest determination of population by the office of financial management. Such cities and towns may submit to the department a plan for traffic control signals, signs, and traffic control devices desired by them, indicating the location, nature of installation, or type thereof, or a proposed amendment to such an existing plan or installation, and the department shall consult with the cities or towns concerning the plan before installing such signals, signs, or devices. Cities and towns having a population in excess of fifteen thousand according to the latest determination of population by the office of financial management shall install, maintain, operate, and control such signals, signs, and devices at their own expense, subject to approval of the department for the installation and type only. For the purpose of this subsection, striping, lane marking, and channelization are considered traffic control devices;

(14) All revenue from parking meters placed on such streets belongs to the city or town;

(15) Rights of way for such streets shall be acquired by either the city or town or by the state as shall be mutually agreed upon. Costs of acquiring rights of way may be at the sole expense of the state or at the expense of the city or town or at the expense of the state and the city or town as may be mutually agreed upon. Title to all such rights of way so acquired shall vest in the city or town: *Provided*, That no vacation, sale, rental, or any other nontransportation use of any unused portion of any such street may be made by the city or town without the prior written approval of the department; and all revenue derived from sale, vacation, rental, or any nontransportation use of such rights of way shall be shared by the city or town and the state in the same proportion as the purchase costs were shared;

(16) If any city or town fails to perform any of its obligations as set forth in this section or in any cooperative agreement entered into with the department for the maintenance of a city or town street forming part of the route of a state highway, the department may notify the mayor of the city or town to perform the necessary maintenance within thirty days. If the city or town within the thirty days fails to perform the maintenance or fails to authorize the department to perform the maintenance as provided by RCW 47.24.050, the department may perform the maintenance, the cost of which is to be deducted from any sums in the motor vehicle fund credited or to be credited to the city or town. [1987 c 68 § 1; 1984 c 7 § 150; 1977 ex.s. c 78 § 7; 1967 c 115 § 1; 1963 c 150 § 1; 1961 c 13 § 47.24.020. Prior:

1957 c 83 § 3; 1955 c 179 § 3; 1953 c 193 § 1; 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.24.030 Acquisition of rights of way—Condemnation proceedings. The department is authorized to acquire rights of way, by purchase, gift, or condemnation for any such streets, highways, bridges, and wharves. Any such condemnation proceedings shall be exercised in the manner provided by law for condemnation proceedings to acquire lands required for state highways. [1984 c 7 § 151; 1961 c 13 § 47.24.030. Prior: 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

Severability—1984 c 7: See note following RCW 47.01.141.
Right of way donations: Chapter 47.14 RCW.

47.24.040 Street fund—Expenditures on streets forming part of state highway. All funds accruing to the credit of incorporated cities and towns in the motor vehicle fund shall be paid monthly to such incorporated cities and towns and shall, by the respective cities and towns, be placed in a fund to be designated as "city street fund" and disbursed as authorized and directed by the legislative authority of the city or town, as agents of the state, for salaries and wages, material, supplies, equipment, purchase or condemnation of right of way, engineering or any other proper highway or street purpose in connection with the construction, alteration, repair, improvement or maintenance of any city street or bridge, or viaduct or underpassage along, upon or across such streets. Such expenditure may be made either independently or in conjunction with any federal, state or any county funds. [1961 c 13 § 47.24.040. Prior: 1949 c 220 § 4; 1947 c 96 § 1; 1943 c 82 § 9; 1939 c 181 § 8; 1937 c 187 § 60; Rem. Supp. 1949 § 6450-60.]

47.24.050 Aid on streets by state or county—Payment. If a city or town, whether or not any of its streets are designated as forming a part of a state highway, is unable to construct, repair, or maintain its streets for good cause, or if it is in need of engineering assistance to construct, repair, or maintain any of its streets, it may authorize the department to perform such construction, repair, or maintenance, or it may secure necessary engineering assistance from the department, to the extent of the funds credited or to be credited in the motor vehicle fund for payment to the city or town. Any sums due from a city or town for such purposes shall be paid on vouchers approved and submitted by the department from moneys credited to the city or town in the motor vehicle fund, and the amount of the payments shall be deducted from funds which would otherwise be paid to the city or town from the motor vehicle fund. The department may in certain special cases, in its discretion, enter into an agreement with the governing officials of the city or town for the performance of such work or services, the terms of which shall provide for

reimbursement of the motor vehicle fund for the benefit of the state's share of the fund by the city or town of the cost thereof from any funds of the city or town on hand and legally available for the work or services. The city or town may, by resolution, authorize the legislative authority of the county in which it is located, to perform any such construction, repair, or maintenance, and the work shall be paid for by the city or town at the actual cost thereof as provided for payment for work performed on city streets, and any payment received therefor by a county shall be deposited in the county road fund to be expended under the same provisions as are imposed upon the funds used to perform the construction, repair, or maintenance. [1984 c 7 § 152; 1961 c 13 § 47.24.050. Prior: 1951 c 54 § 1; 1949 c 220 § 6; 1943 c 82 § 11; 1937 c 187 § 63; Rem. Supp. 1949 § 6450-63.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 47.26

DEVELOPMENT IN URBAN AREAS—URBAN ARTERIALS

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47.26.010 Declaration of intent. Due to unprecedented industrial development and population increases, the state of Washington is confronted with emergency needs for improvement of state highways, county roads, and city streets in urban areas. It is the intent of the legislature to provide sufficient new highway revenues to alleviate and prevent intolerable traffic congestion in urban areas without the disruption of the long range state-wide highway program essential to the economic well-being of the people of this state. [1967 ex.s. c 83 § 1.]

Reviser's note: Throughout chapter 47.26 RCW the term "this 1967 amendatory act" has been translated to "this chapter." This 1967 amendatory act [1967 ex.s. c 83] consists of chapter 47.26 RCW and RCW 35.77.010, 36.81.121, 46.16.040, 46.16.070, 46.16.111, 46.16.121, 46.16.125, 46.68.100, 46.68.150, 82.36.020, 82.36.100, 82.37.030, 82.37.190, 82.40.020, 82.40.290, and the repeal of RCW 46.16.072, 46.16.075, 46.16.110, and 46.16.120.

47.26.020 Motor vehicle fuel tax—Tax imposed—Rate—Allocation of proceeds. See RCW 82.36.020.

47.26.022 Motor vehicle fuel tax—Tax required of persons not classed as distributors—Duties—Procedure—Distribution of proceeds—Penalties. See RCW 82.36.100.

47.26.024 Motor vehicle fuel importer tax—Tax imposed—Rate. See RCW 82.37.030.

47.26.026 Motor vehicle fuel importer tax—Disposition of revenues. See RCW 82.37.190.

47.26.028 Special fuel tax—Tax imposed—Rate. See RCW 82.38.030.

47.26.030 Special fuel tax—Disposition of funds. See RCW 82.38.290.

47.26.032 Allocation of net tax amount in motor vehicle fund. See RCW 46.68.100.

47.26.034 Construction and improvement of urban area highways—Expenditure of motor vehicle fuel taxes and bond proceeds. See RCW 46.68.150.

47.26.040 "Urban area" defined. The term "urban area" means every area of this state designated as an urban area by the department with the approval of the federal secretary of transportation in accordance with federal law, hereafter referred to as federally approved urban areas, or areas within incorporated cities. [1984 c 7 § 153; 1977 ex.s. c 317 § 12; 1975 1st ex.s. c 253 § 1; 1967 ex.s. c 83 § 10.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.042 "Preliminary proposal" defined. The term "preliminary proposal" as used in this chapter means the preliminary engineering, right of way appraisal and the data collection, analysis and reporting of the environmental impact of a project. [1973 1st ex.s. c 126 § 4.]

47.26.043 "Construction project" defined. The term "construction project" as used in this chapter shall mean all work and necessities subsequent to the preliminary proposal and through to completion. [1973 1st ex.s. c 126 § 5.]

47.26.050 Urban areas grouped into regions for purpose of apportioning urban state highway funds. For the purpose of apportioning urban state highway funds, the urban areas of the state are grouped within five regions of the state as follows:

(1) Puget Sound region shall include those urban areas within the counties of King, Pierce and Snohomish.

(2) Northwest region shall include those urban areas within the counties of Clallam, Jefferson, Island, Kitsap, San Juan, Skagit and Whatcom.

(3) Northeast region shall include those urban areas within the counties of Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens and Whitman.

(4) Southeast region shall include those urban areas within the counties of Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla and Yakima.

(5) Southwest region shall include those urban areas within the counties of Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston and Wahkiakum. [1967 ex.s. c 83 § 11.]

47.26.060 Apportionment of funds to regions—Manner and basis—Biennial adjustment. Funds available for expenditure by the department of transportation pursuant to RCW 46.68.150 shall be apportioned to the five regions for expenditure upon state highways in urban areas in the following manner:

(1) One-third in the ratio which the population of the urban areas of each region bears to the total population of all of the urban areas of the state as last determined by the office of financial management;

(2) One-third in the ratio which the vehicle-miles traveled on state highways (other than interstate highways) within the urban areas of each region bears to the total vehicle-miles traveled on all state highways (other than interstate highways) within all urban areas of the state as last determined by the department of transportation; and

(3) One-third in the ratio which the state highway category A needs on state highways (other than interstate highways) within the urban areas of each region bears to the total category A needs on state highways (other than interstate highways) within all urban areas of the state as last revised by the department of transportation.

The department of transportation shall adjust the schedule for apportionment of such funds to the five regions in the manner provided herein prior to the commencement of each biennium. [1981 c 315 § 1; 1967 ex.s. c 83 § 12.]

Effective date—1981 c 315: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 315 § 14.]

47.26.070 Apportioned funds to be budgeted and expended for projects in urban areas—Priority programming—Long-range objectives. Funds available for expenditure by the department pursuant to RCW 46.68-.150 and apportioned to the five regions of the state shall be budgeted and expended, pursuant to proper appropriations, for specific state highway improvement projects within the urban areas of each region in accordance with the priority programming procedures established in chapter 47.05 RCW. Such expenditures in urban areas shall be additional to expenditures from all other construction funds regularly programmed for state highway improvements throughout the state pursuant to chapter 47.05 RCW. The department is authorized to establish separate long-range objectives in terms of the percentages of completion of construction needs for the several functional classes of highways within the urban areas of each region. [1984 c 7 § 154; 1967 ex.s. c 83 § 13.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.080 Urban arterial trust account—Created in motor vehicle fund—Expenditures from. There is hereby created in the motor vehicle fund the urban arterial trust account. All moneys deposited in the motor vehicle fund to be credited to the urban arterial trust account shall be expended for the construction and improvement of city arterial streets and county arterial roads within urban areas, for expenses of the transportation improvement board, or for the payment of principal or interest on bonds issued for the purpose of constructing or improving city arterial streets and county arterial roads within urban areas, or for reimbursement to the state, counties, cities, and towns in accordance with RCW 47.26.4252 and 47.26.4254, the amount of any payments made on principal or interest on urban arterial trust account bonds from motor vehicle or special fuel tax revenues which were distributable to the

state, counties, cities, and towns. [1988 c 167 § 13; 1981 c 315 § 2; 1979 c 5 § 1; 1977 ex.s. c 317 § 22; 1967 ex.s. c 83 § 14.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective date—1981 c 315: See note following RCW 47.26.060.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.084 Transportation improvement account—Allocation of funds. The transportation improvement account is hereby created in the motor vehicle fund. The board shall adopt rules and procedures which shall govern the allocation of funds in the transportation improvement account at such time as funds become available.

The board shall allocate funds from the account by June 30 of each year for the ensuing fiscal year and shall endeavor to provide geographical diversity in selecting improvement projects to be funded from the account.

Of the amount made available to the transportation improvement board from the transportation improvement account for improvement projects:

(1) Eighty-seven percent shall be allocated to counties, to cities with a population of over five thousand, and to transportation benefit districts. Improvement projects may include, but are not limited to, multi-agency and suburban arterial improvement projects.

To be eligible to receive these funds, a project must be (a) consistent with state, regional, and local transportation plans and consideration shall be given to the project's relationship, both actual and potential, with rapid mass transit and at such time as a rail plan is developed by the rail development commission, projects must be consistent therewith, (b) necessitated by existing or reasonably foreseeable congestion levels attributable to economic development or growth, and (c) partially funded by local government or private contributions, or a combination of such contributions. The board shall, for those projects meeting the eligibility criteria, determine what percentage of each project is funded by local and/or private contribution. Priority consideration shall be given to those projects with the greatest percentage of local and/or private contribution.

Within one year after board approval of an application for funding, a county, city, or transportation benefit district shall provide written certification to the board of the pledged local and/or private funding. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board.

(2) Thirteen percent shall be allocated by the board to cities with a population of five thousand or less for street improvement projects in a manner determined by the board. [1988 c 167 § 2.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.090 "Arterial" defined. The term "arterial" as used in this chapter means any state highway, county

road, or city street, in an urban area, that is functionally classified by the federal highway administration as a principal arterial, minor arterial, or collector street. [1988 c 167 § 14. Prior: 1967 ex.s. c 83 § 15.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.100 "City" defined. The term "city" as used in *this chapter shall include incorporated towns. [1967 ex.s. c 83 § 16.]

***Reviser's note:** The term "this chapter" has been substituted for "this 1967 amendatory act." See note following RCW 47.26.010 for codification of "this 1967 amendatory act" [1967 ex.s. c 83].

47.26.110 "Urban arterial" defined. The term "urban arterial" as used in *this chapter means an arterial within an urban area. [1967 ex.s. c 83 § 17.]

***Reviser's note:** The term "this chapter" has been substituted for "this 1967 amendatory act." See note following RCW 47.26.010 for codification of "this 1967 amendatory act" [1967 ex.s. c 83].

47.26.121 Transportation improvement board—Membership—Appointments—Terms—Chair—Expenses. (1) There is hereby created a transportation improvement board of fifteen members, six of whom shall be county members and six of whom shall be city members. The remaining members shall be: (a) The assistant secretary of the department of transportation whose primary responsibilities relate to planning and public transportation; (b) the assistant secretary for highways of the department of transportation; and (c) the state aid engineer of the department of transportation.

(2) Of the county members of the board, one member shall be a county engineer from a county of the first class or larger; one member shall be a county engineer from a county of the second class or smaller; one member shall be an engineer occupying the position of county road administration engineer, created by RCW 36.78-.060; two members shall be county executives, council members, or commissioners from counties of the first class or larger; one member shall be a county executive, council member, or commissioner from a county of the second class or smaller. All county members of the board, except the county road administration engineer, shall be appointed. Not more than one county member of the board shall be from any one county. For the purposes of this subsection, the term county engineer shall mean the director of public works in any county in which such a position exists.

(3) Of the city members of the board two shall be chief city engineers, public works directors, or other city employees with responsibility for public works activities, of cities over twenty thousand population; one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city of less than twenty thousand population; two shall be mayors, commissioners, or city council members of cities of more than twenty thousand population; and one shall be a mayor, commissioner, or council member of a city of less than twenty thousand population. All of

the city members shall be appointed. Not more than one city member of the board shall be from any one city.

(4) Appointments of county and city representatives shall be made by the secretary of the department of transportation, with initial appointments to be made by July 1, 1988. Appointees shall be chosen from a list of two persons for each position nominated by the Washington state association of counties for county members and the association of Washington cities for city members. Except as provided in subsection (5) of this section, terms of appointment are four years. In the case of a vacancy, the appointment shall be only for the remainder of the unexpired term in which the vacancy has occurred. A vacancy shall be deemed to have occurred on the board when any member elected to public office completes that term of office or is removed therefrom for any reason or when any member employed by a political subdivision terminates such employment for whatsoever reason.

(5) The initial appointment to the board for three county representatives and three city representatives shall be for terms of two years and the remainder of the appointments shall be for terms of four years. Terms of all appointed members shall expire on June 30th of even-numbered years.

(6) The board shall elect a chair from among its members for a two-year term.

(7) Expenses of the board, including administration of the transportation improvement program, shall be paid from the urban arterial account. [1988 c 167 § 1.]

References to urban arterial board—1988 c 167: "References in the Revised Code of Washington to the urban arterial board shall be construed to mean the transportation improvement board." [1988 c 167 § 35.]

Savings—1988 c 167: "All rules and all pending business before the urban arterial board shall be continued and acted upon by the transportation improvement board. All existing contracts and obligations of the urban arterial board shall remain in full force and shall be performed by the transportation improvement board." [1988 c 167 § 36.]

Severability—1988 c 167: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 167 § 37.]

47.26.130 Transportation improvement board—Travel expenses of members. Members of the transportation improvement board shall receive no compensation for their services on the board, but shall be reimbursed for travel expenses incurred while attending meetings of the board or while engaged on other business of the board when authorized by the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1988 c 167 § 15; 1975-'76 2nd ex.s. c 34 § 139; 1975 1st ex.s. c 1 § 2; 1969 ex.s. c 171 § 2; 1967 ex.s. c 83 § 19.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

47.26.140 Transportation improvement board—Staff services and facilities—Payment of costs and

expenses—Executive secretary. The transportation improvement board shall appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board, and may employ additional staff as it deems appropriate. All costs associated with staff, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060, shall be paid from the urban arterial trust account in the motor vehicle fund. [1988 c 167 § 16; 1977 ex.s. c 151 § 58; 1975-'76 2nd ex.s. c 34 § 140; 1969 ex.s. c 171 § 3; 1967 ex.s. c 83 § 20.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

47.26.150 Transportation improvement board—Meetings. The transportation improvement board shall meet at least once quarterly and upon the call of its chairman and shall from time to time adopt rules and regulations for its own government and as may be necessary for it to discharge its duties and exercise its powers under this chapter. [1988 c 167 § 17. Prior: 1967 ex.s. c 83 § 21.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.160 Transportation improvement board—Powers and duties. The transportation improvement board shall:

(1) Adopt rules necessary to implement the provisions of this chapter relating to the allocation of funds;

(2) Adopt reasonably uniform design standards for city and county arterials that meet the requirements for urban development;

(3) Report biennially on the first day of November of the even-numbered years to the department and to the chairs of the house and senate transportation committees, including one copy to the staff of each of the committees, regarding progress of cities and counties in developing long-range plans for their urban arterial construction, programming of urban arterial construction work, and the allocation of funds. [1988 c 167 § 18; 1987 c 505 § 51; 1984 c 7 § 155; 1977 ex.s. c 235 § 17; 1971 ex.s. c 291 § 1; 1967 ex.s. c 83 § 22.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.163 Report to legislative transportation committee. In addition to any other reports required by law, beginning July 1, 1989, and annually thereafter, the board shall submit a report to the legislative transportation committee covering board activities and expenditures for the previous fiscal year and planned activities and expenditures for the ensuing fiscal year. Each report shall include information on administrative expenditures as well as expenditures for improvement projects. [1988 c 167 § 5.]

Report on implementing 1988 c 167: "In addition to any other reports required by law, by January 15, 1989, the transportation improvement board shall submit to the legislative transportation

committee a report setting forth its plans for implementing the provisions of chapter 167, Laws of 1988. The report shall include the criteria intended to be applied in allocating funds in the transportation improvement account, the local and/or private contribution requirements, and the procedures to be followed by applicants." [1988 c 167 § 4.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.165 Department and board to coordinate long range needs studies. See RCW 47.01.240.

47.26.170 Long-range arterial construction plans—Counties and cities to prepare and submit to board—Revision. The legislative authority of each county or city lying within or having within its boundaries an urban area shall prepare, adopt, and submit to the transportation improvement board a long-range plan for arterial construction, taking into account the comprehensive land use plan of each such jurisdiction and setting forth arterial construction needs through a six-year advance planning period. The long-range arterial construction plans shall be revised by the counties and cities every two years to show the current arterial construction needs through the advanced planning period, and as revised shall be submitted to the transportation improvement board during the first week of January of every even-numbered year. The long-range plans shall be prepared pursuant to guidelines established by the transportation improvement board. Upon receipt of the long-range arterial construction plans of the several counties and cities, the transportation improvement board shall revise the construction needs for urban arterials set forth in the plans as necessary to conform with its uniform standards for establishing construction needs of the counties and cities. [1988 c 167 § 19; 1984 c 7 § 156; 1971 ex.s. c 291 § 2; 1967 ex.s. c 83 § 23.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

Revisions to include bicycle route systems: RCW 47.26.315.

47.26.180 Division of roads or streets into arterial or access roads or streets—Classification of arterials—Review and revision by board. Arterial designation and classification, as provided for by this chapter, shall be required to be an integral and coordinated portion of its planning process as authorized by chapters 35.63 or 36.70 RCW. The legislative authority of each county and city lying within or having within its boundaries an urban area shall with the advice and assistance of its chief engineer and its planning office divide all of its roads or streets into arterial roads or streets and access roads or streets and shall further subdivide the arterials into three functional classes to be known as principal arterials, minor arterials, and collector arterials: *Provided*, That incorporated cities lying outside federally approved urban areas shall not be required to subdivide arterials into functional classes. Upon receipt of the classification plans of the several counties and cities, the transportation improvement board shall review and revise the classification for the urban arterials as

necessary to conform with (1) existing designated federal route classifications, or (2) uniform classification standards established by the transportation improvement board. [1988 c 167 § 20; 1979 ex.s. c 122 § 8; 1977 ex.s. c 317 § 13; 1975 1st ex.s. c 253 § 2; 1967 ex.s. c 83 § 24.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.185 Qualifications for administering and supervising projects—Rules by board. The transportation improvement board may adopt rules establishing qualifications for cities and counties administering and supervising the design and construction of projects financed in part from the urban arterial trust account or the transportation improvement account. The rules establishing qualification shall take into account the resources and population of the city or county, its permanent engineering staff, its design and construction supervision experience, and other factors the board deems appropriate. Any city or county failing to meet the qualifications established by the board for administering and supervising a project shall contract with a qualified city or county or the department for the administration and supervision of the design and construction of any approved project as a condition for receiving account funds for the project. [1988 c 167 § 21; 1984 c 7 § 157; 1975 1st ex.s. c 253 § 4.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.190 Apportionment of funds in urban arterial trust account among regions. (1) At the beginning of each biennium for the urban arterial trust account, the transportation improvement board shall establish apportionment percentages for the five regions defined in RCW 47.26.050 in the following manner:

(a) One-third in the ratio which the population of the urban areas of each region bears to the total population of all of the urban areas of the state as last determined by the office of financial management;

(b) One-third in the ratio which the vehicle to mile ratio traveled on the classified arterial system prescribed in RCW 47.26.180, within the urban areas of each region bears to the total vehicle to mile ratio traveled on all classified urban arterials; and

(c) One-third in the ratio which the city and county urban arterial needs within the urban areas of each region bears to the total urban arterial needs on city and county urban arterials within all urban areas of the state as last revised by the transportation improvement board.

Except as otherwise provided in subsection (3) of this section, such apportionment percentages shall be used once each calendar quarter by the transportation improvement board to apportion funds credited to the urban arterial trust account which are available for

expenditure for urban arterial projects: *Provided*, That any funds credited to the urban arterial trust account subsequent to July 1, 1987, resulting from bond sales in accordance with RCW 47.26.420 through 47.26.427 shall be apportioned according to the percentages for the five regions established for the biennium when the bonding authority was obligated to projects.

(2) All amounts credited to the urban arterial trust account, except those provided for in subsection (3) of this section and any excise tax revenues that may be required to repay the three series of urban arterial bonds or the interest thereon when due, after apportionment to each region, shall be divided on the basis of relative population established at the beginning of each biennium by the office of financial management between (a) the group of cities and that portion of those counties within federally approved urban areas and (b) the group of incorporated cities outside the boundaries of federally approved urban areas: *Provided*, That funds credited to the urban arterial trust account subsequent to July 1, 1987, resulting from the sale of bonds in accordance with RCW 47.26.420 through 47.26.427 shall be divided on the basis of relative population percentages established for the biennium when the bonding authority was obligated to projects. Within each region, funds divided between the groups identified under (a) and (b) of this subsection shall then be allocated by the transportation improvement board to incorporated cities and counties, as the case may be, for the construction of specific urban arterial projects in accordance with the procedures set forth in RCW 47.26.240.

(3) At the beginning of each biennium the transportation improvement board shall establish apportionment percentages for each of the five regions for the apportionment of the proceeds from the sale of fifteen million dollars of series II bonds and sixteen million dollars of series III bonds authorized by RCW 47.26.420, as now or hereafter amended, in the ratio which the population of the incorporated cities and towns lying outside the boundaries of federally approved urban areas of each region bears to the total population of all incorporated cities and towns of the state lying outside the boundaries of federally approved urban areas, as such populations are determined at the beginning of each biennium by the office of financial management. Such apportionment percentages shall be used once each calendar quarter by the transportation improvement board to apportion funds credited to the urban arterial trust account which are available for expenditure for urban arterial projects under this subsection: *Provided*, That any funds credited to the urban arterial trust account subsequent to July 1, 1987, resulting from the sale of bonds in accordance with RCW 47.26.420 through 47.26.427 shall be apportioned with percentages for the five regions established for the biennium when the bonding authority was obligated to projects. Funds apportioned to each region shall be allocated by the transportation improvement board to incorporated cities lying outside the boundaries of federally approved urban areas, for the construction of specific urban arterial projects in accordance with the procedures set forth in RCW 47.26.240. [1988 c 167 §

22; 1987 c 360 § 1; 1981 c 315 § 4; 1979 c 151 § 162; 1977 ex.s. c 317 § 14; 1973 1st ex.s. c 126 § 2; 1971 ex.s. c 291 § 3; 1969 ex.s. c 171 § 4; 1967 ex.s. c 83 § 25.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective date—1981 c 315: See note following RCW 47.26.060.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Population determinations, office of financial management: Chapter 43.62 RCW.

47.26.200 Counties—Perpetual advanced plans for coordinated road program—Six-year program for arterial road construction. See RCW 36.81.121.

47.26.210 Cities—Perpetual advanced plans for coordinated street program—Six-year program for arterial street construction. See RCW 35.77.010.

47.26.220 Six-year programs—Rating factors for selection of projects. Counties and cities, in preparing their respective six year programs relating to urban arterial improvements to be funded by the urban arterial trust account, shall select specific priority improvement projects for each functional class of arterial based on the rating of each arterial section proposed to be improved in relation to other arterial sections within the same functional class, taking into account the following:

- (1) Its structural ability to carry loads imposed upon it;
- (2) Its capacity to move traffic and persons at reasonable speeds without undue congestion;
- (3) Its adequacy of alignment and related geometrics;
- (4) Its accident experience; and
- (5) Its fatal accident experience.

The six year construction programs shall remain flexible and subject to annual revision as provided in RCW 36.81.121 and 35.77.010. [1989 c 160 § 1; 1988 c 167 § 23; 1967 ex.s. c 83 § 28.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.230 Joint planning of urban arterial development—Arterial in city crossing into unincorporated area or adjacent city—Arterial affected by state highway—Rules. Whenever an urban arterial in a city crosses into an unincorporated urban area or into an adjacent city, the proper city and county officials shall jointly plan the development of the arterial in their respective long-range plans, arterial classification plans, and six-year construction programs. Whenever an urban arterial connects with and will be substantially affected by a programmed construction project on a state highway, the proper county or city officials shall jointly plan the development of the connecting arterial with the appropriate department of transportation district administrator. The transportation improvement board shall adopt rules providing for the system development of county-city arterials and urban arterials with state highways. [1988 c 167 § 24; 1984 c 7 § 158; 1967 ex.s. c 83 § 29.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.240 Review of six-year program by board—Revision. Upon receipt of a county's or city's revised six year program, the transportation improvement board as soon as practicable shall review and may revise the construction program as it relates to urban arterials for which urban arterial trust account moneys are requested as necessary to conform to (1) the priority rating of the proposed project, based upon the factors in RCW 47.26.220, in relation to proposed projects in all other urban arterial construction programs submitted by the cities and counties, and within each region, projects proposed by the group of cities and counties within federally approved urban areas shall be evaluated separately from the projects proposed by the group of incorporated cities outside the boundaries of federally approved urban areas; and (2) the amount of urban arterial trust account funds which the transportation improvement board estimates will be apportioned to the region, and further divided between the group of cities and counties within federally approved urban areas and the group of incorporated cities outside the boundaries of federally approved urban areas, in the ensuing six year period. [1988 c 167 § 25; 1977 ex.s. c 317 § 15; 1967 ex.s. c 83 § 30.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.260 Vouchers for payment from urban arterial trust account—Completion of preliminary proposal—Completion of project—During work progress. (1) Upon completion of a preliminary proposal, the county, city, or transportation benefit district submitting said proposal shall submit to the transportation improvement board its voucher for payment of the urban arterial trust account or transportation improvement account, both hereinafter referred to in this section as account, share of the cost. Upon the completion of an approved construction project, the county, city, or transportation benefit district constructing the project shall submit to the transportation improvement board its voucher for the payment of the appropriate account share of the cost. The chairman of the transportation improvement board or his designated agent shall approve such voucher when proper to do so, for payment from the appropriate account to the county, city, or transportation benefit district submitting the voucher.

(2) The transportation improvement board may adopt regulations providing for the approval of payments of funds in the account to a county, city, or transportation benefit district for costs of preliminary proposal, and costs of construction of an approved project from time to time as work progresses. These payments shall at no time exceed the account share of the costs of construction incurred to the date of the voucher covering such payment. [1988 c 167 § 26; 1973 1st ex.s. c 126 § 1; 1967 ex.s. c 83 § 32.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.265 Payment of transportation improvement account's share of project cost. Any county, city, or transportation benefit district constructing a project using transportation improvement account funds shall submit to the board its voucher for payment of the transportation improvement account share of the cost. The chair of the board or the chair's designee shall approve the voucher, when proper to do so, for payment from the account.

The board may adopt rules providing for the approval of payments of funds in the account for costs of construction of an approved project for work in progress and when the project is complete. These payments shall at no time exceed the account share of the costs of construction incurred to the date of the voucher covering the payment. [1988 c 167 § 3.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.270 Matching funds requirements for counties and cities receiving funds from urban arterial trust account. Counties and cities receiving funds from the urban arterial trust account for construction of arterials shall provide such matching funds as shall be established by regulations adopted by the transportation improvement board. Matching requirements shall be established after appropriate studies by the board taking into account (1) financial resources available to counties and cities to meet arterial needs, (2) the amounts and percentages of funds available for road or street construction traditionally expended by counties and cities on arterials, (3) in the case of counties, the relative needs of arterials lying outside urban areas, and (4) the requirements necessary to avoid diversion of funds traditionally expended for arterial construction to other street or road purposes or to nonhighway purposes: *Provided however*, That for projects funded subsequent to July 1, 1977, cities and counties may use as matching funds any moneys received from any source, except such moneys which by law may not be used for the purposes set forth in this chapter. [1988 c 167 § 27; 1983 1st ex.s. c 49 § 22; 1977 ex.s. c 317 § 16; 1967 ex.s. c 83 § 33.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900, 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.300 Bicycle routes—Legislative declaration. The state of Washington is confronted with emergency shortages of energy sources utilized for the transportation of its citizens and must seek alternative methods of providing public mobility.

Bicycles are suitable for many transportation purposes, and are pollution-free in addition to using a minimal amount of resources and energy. However, the increased use of bicycles for both transportation and

recreation has led to an increase in both fatal and non-fatal injuries to bicyclists.

The legislature therefore finds that the establishment, improvement, and upgrading of bicycle routes is necessary to promote public mobility, conserve energy, and provide for the safety of the bicycling and motoring public. [1974 ex.s. c 141 § 1.]

47.26.305 Bicycle routes—Establishment of system authorized and directed—Use of urban arterial trust funds. Each city and county eligible for receipt of urban arterial trust funds is hereby authorized and directed to establish a system of bicycle routes throughout its jurisdiction. Such routes shall, when established in accordance with standards adopted by the transportation improvement board, be eligible for establishment, improvement, and upgrading with urban arterial trust funds when accomplished in connection with an arterial project. [1988 c 167 § 28; 1974 ex.s. c 141 § 2.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.310 Bicycle routes—Standards for designation of bicycle route systems. The transportation improvement board shall adopt:

(1) Standards for the designation of a bicycle route system which shall include, but need not be limited to, consideration of:

(a) Existing and potential bicycle traffic generating activities, including but not limited to places of employment, schools, colleges, shopping areas, and recreational areas;

(b) Directness of travel and distance between potential bicycle traffic generating activities; and

(c) Safety for bicyclists and avoidance of conflict with vehicular traffic which shall include, wherever feasible, designation of bicycle routes on streets parallel but adjacent to existing designated urban arterial routes.

(2) Insofar as is practicable to achieve reasonable uniformity, design standards for bicycle routes shall take into consideration the construction standards and signing system devised by the department pursuant to RCW 47.30.060. [1988 c 167 § 29; 1984 c 7 § 160; 1974 ex.s. c 141 § 3.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.315 Bicycle routes—Revisions to long range arterial construction plans to include bicycle route system plans. The revisions of long range arterial construction plans directed by RCW 47.26.170 shall include plans for a bicycle route system. [1974 ex.s. c 141 § 6.]

BOND ISSUE—STATE HIGHWAYS IN URBAN AREAS

47.26.400 Issuance and sale of general obligation bonds—Authorized—Amount—Declaration of purpose. In order to provide funds necessary to meet the urgent needs for highway construction on state highways

within urban areas, there shall be issued and sold general obligation bonds of the state of Washington in the sum of two hundred million dollars or such amount thereof and at such times as determined to be necessary by the commission. The amount of the bonds issued and sold under the provisions of RCW 47.26.400 through 47.26.407 in any biennium shall not exceed the amount of a specific appropriation therefor from the proceeds of such bonds, for the construction of state highways in urban areas. The issuance, sale, and retirement of the bonds shall be under the supervision and control of the state finance committee which, upon request being made by the commission, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the commission. [1984 c 7 § 161; 1973 1st ex.s. c 169 § 1; 1967 ex.s. c 83 § 36.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.401 Bonds—Term—Terms and conditions—Signatures—Registration—Where payable—Negotiable instruments. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1973 1st ex.s. c 169 § 2; 1967 ex.s. c 83 § 37.]

47.26.402 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If the bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.26.400 through 47.26.407 shall be legal investment for any of the funds of the state, except the permanent school fund. [1967 ex.s. c 83 § 38.]

47.26.403 Bonds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall

be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of state highways within the urban areas of the state, and for payment of the expenses incurred in the printing, issuance, and sale of any such bonds. [1967 ex.s. c 83 § 39.]

47.26.404 Bonds—Statement describing nature of obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.26.400 through 47.26.407 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.26.400 through 47.26.407 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.26.400 through 47.26.407, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.26.400 through 47.26.407. [1973 1st ex.s. c 169 § 3; 1967 ex.s. c 83 § 40.]

*Reviser's note: Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment see chapter 82.38 RCW.

47.26.405 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay such bonds, or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state under the provisions of RCW 46.68.100(6) as now or hereafter amended for construction of state highways in urban areas, and shall never constitute a charge against any allocations of any other such funds to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available to the state for construction of state highways in urban areas proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1977 ex.s. c 317 § 17; 1967 ex.s. c 83 § 41.]

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.406 Bonds—Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.26.405, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year

which shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, hereby created, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1967 ex.s. c 83 § 42.]

47.26.407 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle fuels payable into the bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1967 ex.s. c 83 § 43.]

47.26.410 Expenditures from fuel taxes and bond proceeds for urban state highways in excess of amount apportionable to a region authorized. Notwithstanding the provisions of RCW 47.26.060, the department is authorized in any biennium, subject to proper appropriations, to expend from funds available pursuant to RCW 46.68.150, for urban state highway construction projects within a region, an amount including bond proceeds which may exceed the amount apportionable during the biennium to the region. The total amounts apportioned to each region through 1985 shall meet the apportionment requirements of RCW 47.26.060 for such period. [1984 c 7 § 162; 1967 ex.s. c 83 § 44.]

Severability—1984 c 7: See note following RCW 47.01.141.

BOND ISSUE—COUNTY AND CITY ARTERIALS IN URBAN AREAS

47.26.420 Issuance and sale of general obligation bonds—Authorized—Amount—Declaration of purpose. In order to provide funds necessary to meet the urgent construction needs on county and city arterials within urban areas, there are hereby authorized for issuance general obligation bonds of the state of Washington, the first authorization of which shall be in the sum of two hundred million dollars, and the second authorization of which, to be known as series II bonds, shall be in the sum of sixty million dollars, and the third authorization of which, to be known as series III bonds, shall be in the sum of one hundred million dollars which

shall be issued and sold in such amounts and at such times as determined to be necessary by the state transportation commission. The amount of such bonds issued and sold under the provisions of RCW 47.26.420 through 47.26.427 in any biennium shall not exceed the amount of a specific appropriation therefor, from the proceeds of such bonds, for the construction of county and city arterials in urban areas. The issuance, sale, and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the state transportation commission, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the state transportation commission. [1981 c 315 § 5; 1979 c 5 § 3. Prior: 1977 ex.s. c 317 § 18; 1973 1st ex.s. c 169 § 4; 1967 ex.s. c 83 § 45.]

Effective date—1981 c 315: See note following RCW 47.26.060.

Appropriation—Expenditure limited to bond sale proceeds—1981 c 315: "There is appropriated from the urban arterial trust account in the motor vehicle fund to the urban arterial board for the biennium ending June 30, 1983, the sum of thirty-five million dollars, or so much thereof as may be necessary, to carry out section 5 of this act: *Provided*, That the money available for expenditure under this appropriation may not exceed the amount of money derived from the sale of bonds authorized by section 5 of this act and deposited to the credit of the urban arterial trust account in the motor vehicle fund." [1981 c 315 § 13.] Section 5 of this act is RCW 47.26.420.

Construction—1979 c 5: "Nothing in this 1979 act shall be construed to impair the obligations of any first authorization bonds issued or to be issued under RCW 47.26.420 through 47.26.427, or to enlarge the original authorization thereof over two hundred million dollars, and the retirement of and issuance of the remainder of the authorized amount of such bonds shall proceed in accordance with law under the supervision of the state finance committee." [1979 c 5 § 12.] For codification of 1979 c 5, see Codification Tables, Volume 0.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.421 Bonds—Term—Terms and conditions—Signatures—Registration—Where payable—Negotiable instruments. Each of such first authorization bonds, series II bonds, and series III bonds shall be made payable at any time not exceeding thirty years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, either or both of which signatures may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in Seattle or New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1986 c 290 § 3; 1981 c 315 § 6; 1979 c 5 § 4; 1973 1st ex.s. c 169 § 5; 1967 ex.s. c 83 § 46.]

Effective date—1981 c 315: See note following RCW 47.26.060.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.422 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The first authorization bonds, series II bonds, and series III bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued pursuant to this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. Bonds issued under the provisions of RCW 47.26.420 through 47.26.427 and 47.26.425 shall be legal investment for any of the funds of the state, except the permanent school fund. [1986 c 290 § 4; 1981 c 315 § 7; 1979 c 5 § 5; 1967 ex.s. c 83 § 47.]

Effective date—1981 c 315: See note following RCW 47.26.060.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.423 Bonds—Bond proceeds—Deposit and use. The money arising from the sale of the first authorization bonds, series II bonds, and series III bonds shall be deposited in the state treasury to the credit of the urban arterial trust account in the motor vehicle fund, and such money shall be available only for the construction and improvement of county and city urban arterials, and for payment of the expense incurred in the printing, issuance, and sale of any such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1986 c 290 § 5; 1981 c 315 § 8; 1979 c 5 § 6; 1967 ex.s. c 83 § 48.]

Effective date—1981 c 315: See note following RCW 47.26.060.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.424 Bonds—Statement describing nature of obligation—Pledge of excise taxes. The first authorization bonds, series II bonds, and series III bonds shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest

as the same shall become due. The principal and interest on such bonds shall be first payable in the manner provided in RCW 47.26.420 through 47.26.427, 47.26.425, and 47.26.4254 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds. [1981 c 315 § 9; 1979 c 5 § 7; 1977 ex.s. c 317 § 19; 1973 1st ex.s. c 169 § 6; 1967 ex.s. c 83 § 49.]

Effective date—1981 c 315: See note following RCW 47.26.060.

Construction—1979 c 5: See note following RCW 47.26.420.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.425 Bonds—Designation of funds to repay bonds and interest—Urban arterial trust account. Any funds required to repay the first authorization of two hundred million dollars of bonds authorized by RCW 47.26.420, as amended by section 18, chapter 317, Laws of 1977 ex. sess. or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the urban arterial trust account in the motor vehicle fund, and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the urban arterial trust account proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1977 ex.s. c 317 § 20; 1967 ex.s. c 83 § 50.]

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.4252 Bonds—Series II bonds, 1979 reenactment—Designation of funds to repay bonds and interests—Urban arterial trust account. Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, shall first be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW and which is distributed to the urban arterial trust account in the motor vehicle fund, subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979. If the moneys distributed to the urban arterial trust account shall ever be insufficient to repay the first authorization bonds together with interest thereon, and the series II bonds or the interest thereon when due, the amount required to make such payments on such bonds or interest thereon shall next be taken from that portion

of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.100 as now existing or hereafter amended. Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, shall be repaid from the first moneys distributed to the urban arterial trust account not required for redemption of the first authorization bonds or series II and series III bonds or interest on those bond issues. [1983 1st ex.s. c 49 § 23; 1979 c 5 § 8.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900, 36.79.901.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.4254 Bonds—Series III bonds—Designation of funds to repay bonds and interest—Urban arterial trust account. (1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW and that is distributed to the urban arterial trust account in the motor vehicle fund, subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420. If the moneys so distributed to the urban arterial trust account, after first being applied to administrative expenses of the transportation improvement board and to the requirements of bond retirement and payment of interest on first authorization bonds and series II bonds as provided in RCW 47.26.425 and 47.26.4252, are insufficient to meet the requirements for bond retirement or interest on any series III bonds, the amount required to make such payments on series III bonds or interest thereon shall next be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.100, subject, however, to subsection (2) of this section.

(2) To the extent that moneys so distributed to the urban arterial trust account are insufficient to meet the requirements for bond retirement or interest on any series III bonds, sixty percent of the amount required to make such payments when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state. The remaining forty percent shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the cities and towns pursuant to RCW 46.68.100(1) and to the counties pursuant to RCW *46.68.100(2). Of the counties', cities', and towns' share of any additional amounts required in the fiscal year ending June 30, 1984, fifteen percent shall be taken from the counties' distributive share and eighty-

five percent from the cities' and towns' distributive share. Of the counties', cities', and towns' share of any additional amounts required in each fiscal year thereafter, the percentage thereof to be taken from the counties' distributive share and from the cities' and towns' distributive share shall correspond to the percentage of funds authorized for specific county projects and for specific city and town projects, respectively, from the proceeds of series III bonds, for the period through the first eleven months of the prior fiscal year as determined by the chairman of the transportation improvement board and reported to the state finance committee and the state treasurer not later than the first working day of June.

(3) Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues that are distributable to the state, counties, cities, and towns shall be repaid from the first moneys distributed to the urban arterial trust account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds. [1988 c 167 § 30; 1983 1st ex.s. c 49 § 24; 1981 c 315 § 10.]

***Reviser's note:** Distribution to counties is made pursuant to RCW 46.68.100(3); see 1977 ex.s. c 317 § 9.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900, 36.79.901.

Effective date—1981 c 315: See note following RCW 47.26.060.

47.26.4255 Bonds—Series II bonds, 1979 reenactment—Charge against fuel tax revenues. Except as otherwise provided by statute, the series II bonds issued under authority of RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, the bonds authorized by RCW 47.60.560 through 47.60.640, and any general obligation bonds of the state of Washington which may be authorized by the forty-sixth legislature or thereafter and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1979 c 5 § 9.]

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.426 Bonds—Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such first authorization bonds, series II bonds, and series III bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.26.425, 47.26.4252, and 47.26.4254 the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer, subject to RCW 47.26.425, 47.26.4252, and 47.26.4254, shall thereafter from time to time each month as such funds

are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the highway bond retirement fund, maintained in the office of the state treasurer, which fund shall be available for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1981 c 315 § 11; 1979 c 5 § 10; 1967 ex.s. c 83 § 51.]

Effective date—1981 c 315: See note following RCW 47.26.060.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.427 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1979 c 5 § 11; 1967 ex.s. c 83 § 52.]

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.430 Excess expenditures authorized. Notwithstanding the provisions of RCW 47.26.190 and 47.26.240, the transportation improvement board may, in any biennium, subject to proper appropriations, approve expenditures from the urban arterial trust account for construction of projects on urban arterials within a region, the total amount of which including bond proceeds, exceeds the amount apportionable during the biennium to the region. The total amounts apportioned to each region through 1995 shall meet the apportionment requirements of RCW 47.26.190 and 47.26.240 for such period. [1988 c 167 § 31; 1981 c 315 § 12; 1967 ex.s. c 83 § 53.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective date—1981 c 315: See note following RCW 47.26.060.

47.26.440 Budget for expenditures from urban arterial trust account—Estimate of revenues—Inclusion in transportation budget. Not later than November 1st of each even-numbered year the transportation improvement board shall prepare and present to the commission an adopted budget for expenditures from the urban arterial trust account and the transportation improvement account during the ensuing biennium. The budget shall contain an estimate of the revenues to be credited to the urban arterial trust account and the transportation improvement account and the amount, if any, of bond proceeds which the board determines should be made

available to the urban arterial trust account through the sale of bonds in the ensuing biennium.

The commission shall include the budget for the transportation improvement board as a separate section of the transportation budget which it shall submit to the governor and the legislature at the time of its convening. [1988 c 167 § 32; 1984 c 7 § 163; 1967 ex.s. c 83 § 54.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.450 Inclusion of portion of construction program for next biennial period in budget—Approval of urban arterial trust funds to be expended—Additional projects. At the time the transportation improvement board reviews the six-year program of each county and city each even-numbered year, it shall consider and shall approve for inclusion in its recommended budget, as required by RCW 47.26.440, the portion of the urban arterial construction program scheduled to be performed during the biennial period beginning the following July 1st. Subject to the appropriations actually approved by the legislature, the board shall as soon as feasible approve urban arterial trust account funds to be spent during the ensuing biennium for preliminary proposals in priority sequence as established pursuant to RCW 47.26.240. In the case of projects whose total cost exceeds one million dollars as reflected in the six-year program, the agency with jurisdiction shall furnish to the board a value engineering study performed by an interagency team approved by the board, to determine whether the proposed improvement provides a cost-effective solution for the project before the board may approve urban arterial trust funds for either the preliminary or construction phase of the project. The board may authorize a variance from the value engineering study upon a determination that the study is not warranted. The board may also require a value engineering study for a project whose total cost is less than one million dollars upon a determination by the board that the study is warranted.

The board shall authorize urban arterial trust account funds for the construction project portion of a project previously authorized for a preliminary proposal in the sequence in which the preliminary proposal has been completed and the construction project is to be placed under contract. At such time the board may reserve urban arterial trust account funds for expenditure in future years as may be necessary for completion of preliminary proposals and construction projects to be commenced in the ensuing biennium.

The board may, within the constraints of available urban arterial trust funds, consider additional projects for authorization upon a clear and conclusive showing by the submitting local government that the proposed project is of an emergent nature and that its need was unable to be anticipated at the time the six-year program of the local government was developed. Such proposed projects shall be evaluated on the basis of the priority rating factors specified in RCW 47.26.220. [1988 c 167 § 33; 1987 c 360 § 2; 1973 1st ex.s. c 126 § 3; 1969 ex.s. c 171 § 6.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.460 Increase in urban arterial trust account funds allocated to a project—Regulations—Factors. Whenever the board approves an urban arterial project it shall determine the amount of urban arterial trust account funds to be allocated for such project. The allocation shall be based upon information contained in the six-year plan submitted by the county or city seeking approval of the project and upon such further investigation as the board deems necessary. The board shall adopt reasonable regulations pursuant to which urban arterial trust account funds allocated to a project may be increased upon a subsequent application of the county or city constructing the project. The regulations adopted by the board shall take into account, but shall not be limited to, the following factors: (1) The financial effect of increasing the original allocation for the project upon other urban arterial projects either approved or requested; (2) whether the project for which an additional allocation is requested can be reduced in scope while retaining a usable segment; (3) whether the original cost of the project shown in the applicant's six-year program was based upon reasonable engineering estimates; and (4) whether the requested additional allocation is to pay for an expansion in the scope of work originally approved. [1969 ex.s. c 171 § 7.]

47.26.900 Severability—1967 ex.s. c 83. If any provision of this 1967 amendatory act or the application thereof to any person, firm, or corporation or circumstance is held invalid, in whole or in part, such invalidity shall not affect other provisions of the act which can be given effect without the invalid provisions or application and to this end the provisions of this 1967 amendatory act are declared to be severable. [1967 ex.s. c 83 § 55.]

47.26.910 Effective dates—1967 ex.s. c 83. This 1967 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and sections 1 through 55 and section 56, renumbered "Sec. 62", shall take effect on the first day of the month following the approval of this act by the governor; sections 56 through 61 shall take effect on July 1, 1967 with respect to fees paid on or after July 1, 1967. Fees paid pursuant to RCW 46.16.070, 46.16.072, 46.16.075 or 46.16.120 prior to July 1, 1967 shall not be affected by this act. [1967 ex.s. c 83 § 62.]

Reviser's note: (1) Sections 1 through 55, chapter 83, Laws of 1967 ex. sess. are codified as chapter 47.26 RCW, RCW 35.77.010, 36.81-.121, 46.68.100, 46.68.150, 82.36.020, 82.36.100, 82.37.030, 82.37.190, 82.40.020, and 82.40.290.

(2) Sections 56 through 61, chapter 83, Laws of 1967 ex. sess. consist of RCW 46.16.070, 46.16.111, 46.16.121, 46.16.040, 46.16.125 and the repeal of RCW 46.16.072, 46.16.075, 46.16.110, and 46.16.120.

47.26.930 Construction—1969 ex.s. c 171. The rule of strict construction shall have no application to this 1969 act or to the provisions of chapter 47.26 RCW, and they shall be liberally construed in order to carry

out an effective, efficient and equitable program of financial assistance to urban area cities and counties for arterial roads and streets. [1969 ex.s. c 171 § 8.]

Chapter 47.28

CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

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Contractor's bond to pay labor, etc.: Chapter 39.08 RCW.

County road improvement districts: Chapter 36.88 RCW.

Design standards committee for city streets: Chapter 35.78 RCW.

Liens for labor, materials on public works: Chapter 60.28 RCW.

Size, weight, load of vehicles: Chapter 46.44 RCW.

Viaducts, bridges, elevated roadways, etc., authority of cities to construct: Chapter 35.85 RCW.

47.28.010 Latitude in selecting route. Whenever the general route of any state highway shall be designated and laid out as running to or by way of certain designated points, without specifying the particular route to be followed to or by way of such points, the transportation commission shall determine the particular route to be followed by said state highway to or by way of said designated points, and shall be at liberty to select and adopt as a part of such state highway, the whole or any part of any existing public highway previously designated as a county road, primary road, or secondary road or now or hereafter classified as a county road. The commission need not select and adopt the entire routes

for such state highways at one time, but may select and adopt parts of such routes from time to time as it deems advisable. Where a state highway is designated as passing by way of a certain point, this shall not require the commission to cause such state highway to pass through or touch such point but such designation is directional only and may be complied with by location in the general vicinity. The department of transportation is empowered to construct as a part of any state highway as designated and in addition to any portion meeting the limits of any incorporated city or town a bypass section either through or around any such incorporated city or town. [1977 ex.s. c 151 § 59; 1961 c 13 § 47.28.010. Prior: 1937 c 53 § 31; RRS § 6400-31.]

47.28.020 Width of right of way. From and after April 1, 1937, the width of one hundred feet is the necessary and proper right of way width for state highways unless the department, for good cause, adopts and designates a different width. This section shall not be construed to require the department to acquire increased right of way for any state highway in existence on such date. [1984 c 7 § 164; 1961 c 13 § 47.28.020. Prior: 1937 c 53 § 30; RRS § 6400-30; 1913 c 65 § 8; RRS § 6831.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.025 Description and plan of new or limited access highway—Recording. Whenever the department establishes the location, width, and lines of any new highway, or declares any such new highway as a limited access facility and schedules the acquisition of the right of way for the highway or facility within the ensuing two years, it may cause the description and plan of any such highway to be made, showing the center line of the highway and the established width thereof, and attach thereto a certified copy of the resolution. Such description, plan, and resolution shall then be recorded in the office of the county auditor of the proper county in a separate book kept for such purposes, which shall be furnished to the county auditor of the county by the department at the expense of the state. [1984 c 7 § 165; 1977 ex.s. c 225 § 1; 1961 c 13 § 47.28.025. Prior: 1955 c 161 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.026 Description and plan of new or limited access highway—Buildings and improvements prohibited, when. (1) No owner or occupier of lands, buildings, or improvements may erect any buildings or make any improvements within the limits of any such highway, the location, width, and lines of which have been established and recorded as provided in RCW 47.28.025. If any such erection and improvements are made, no allowances may be had therefor by the assessment of damages. No permits for improvements within the limits may be issued by any authority. The establishment of any highway location as set forth in RCW 47.28.025 is ineffective after one year from the filing thereof if no action to condemn or acquire the property within the limits has been commenced within that time.

(2) Unless and until the department causes a plan of a proposed new highway or limited access facility to be recorded in the office of the county auditor as authorized in RCW 47.28.025, nothing contained in RCW 47.28.025 or 47.28.026 may be deemed to restrict or restrain in any manner the improvement, development, or other use by owners or occupiers of lands, buildings, or improvements within the limits of any proposed new or limited access highway or any proposed relocated or widened highway. Because of the uncertainties of federal aid and the state level of funding of proposed construction or improvement of state highways, plans for such improvements approved by the department shall be deemed tentative until filed with the county auditor as authorized in RCW 47.28.025 or until the department commences action to condemn or otherwise acquire the right of way for the highway improvements. [1984 c 7 § 166; 1977 ex.s. c 225 § 2; 1961 c 13 § 47.28.026. Prior: 1955 c 161 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.030 Contracts—State forces—Monetary limits—Small businesses, minority, and women contractors—Rules. A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right of way purposes may be repaired or renovated pending the use of such right of way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof is less than thirty thousand dollars: *Provided*, That when delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than fifty thousand dollars. When the department of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor. To enable a larger number of small businesses, and minority, and women contractors to effectively compete for highway department contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed fifty thousand dollars. The rules adopted under this section:

(1) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

(2) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, materialmen, mechanics, and subcontractors from the previous partial payment; and

(3) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and

procedures under RCW 47.28.070 shall always be sufficient.

The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39.19 RCW. [1984 c 194 § 1; 1983 c 120 § 15; 1977 ex.s. c 225 § 3; 1973 c 116 § 1; 1971 ex.s. c 78 § 1; 1969 ex.s. c 180 § 2; 1967 ex.s. c 145 § 40; 1961 c 233 § 1; 1961 c 13 § 47.28.030. Prior: 1953 c 29 § 1; 1949 c 70 § 1, part; 1943 c 132 § 1, part; 1937 c 53 § 41, part; Rem. Supp. 1949 § 6400-41, part.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.

Office of minority and women's business enterprises: Chapter 39.19 RCW.

47.28.035 Cost of project, defined. The cost of any project for the purposes of RCW 47.28.030 shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously. The department shall not permit the construction of any project by state forces by dividing a project into units of work or classes of work to give the appearance of compliance with RCW 47.28.030. [1984 c 194 § 2.]

47.28.040 Precontract preparation of maps, plans, and specifications—Filing. Before entering into any contract for the construction, alteration, repair, or improvement of any state highway the department shall cause the highway to be surveyed throughout the entire length of the proposed construction, alteration, repair, or improvement and cause to be prepared maps, plans, and specifications, together with an estimate of the cost of the proposed work, and such information and directions as will enable a contractor to carry them out. The maps, plans, specifications, and directions shall be approved by the department and a copy thereof filed permanently in the department's office. [1984 c 7 § 167; 1961 c 13 § 47.28.040. Prior: 1937 c 53 § 32, part; RRS § 6400-32, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.050 Call for bids. Except as may be provided by rules and regulations adopted under RCW 47.28.030 as now or hereafter amended the department of transportation shall publish a call for bids for the construction of the highway according to the maps, plans, and specifications, once a week for at least two consecutive weeks, next preceding the day set for receiving and opening the bids, in not less than one trade paper of general circulation in the state. The call shall state the time, place, and date for receiving and opening the bids, give a brief description of the location and extent of the work, and contain such special provisions or specifications as the department deems necessary. When necessary to implement chapter 39.19 RCW and the rules

adopted to implement that chapter, the department shall include in its call for bids provisions or specifications requiring bidders to comply with chapter 39.19 RCW and the rules adopted to implement it: *Provided*, That when the estimated cost of any contract to be awarded is less than fifty thousand dollars, the call for bids need only be published in at least one paper of general circulation in the county where the major part of the work is to be performed: *Provided further*, That when the estimated cost of a contract to be awarded is seven thousand five hundred dollars or less, including the cost of materials, supplies, engineering, and equipment, the department of transportation need not publish a call for bids: *Provided further*, That after a bid call has been advertised for two consecutive weeks it may be postponed and the bids opened one week later. [1983 c 120 § 16; 1979 ex.s. c 69 § 1; 1977 c 65 § 1; 1973 c 116 § 2; 1969 ex.s. c 180 § 1; 1961 c 13 § 47.28.050. Prior: 1959 c 319 § 33; 1955 c 147 § 1; 1937 c 53 § 33; RRS § 6400-33.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.

Office of minority and women's business enterprises: Chapter 39.19 RCW.

47.28.060 Copy of map, plans, etc.—Charge. Any person, firm, or corporation is entitled to receive copies of the maps, plans, specifications, and directions for any work upon which call for bids has been published, upon request therefor and subsequent payment to the department of a reasonable sum as required by the department in the call for bids for each copy of such maps, plans, and specifications. Any money so received shall be certified by the department to the state treasurer and deposited to the credit of the motor vehicle fund. The department may deliver with or without charge informational copies of maps, plans, specifications, and directions at such places as it may designate. [1985 c 242 § 1; 1984 c 7 § 168; 1971 c 36 § 1; 1965 ex.s. c 64 § 1; 1961 c 13 § 47.28.060. Prior: 1937 c 53 § 34; RRS § 6400-34.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.070 Form of bid—Data required—Requirements—Refusal to furnish form—Appeal. Bid proposals upon any construction or improvement of any state highway shall be made upon contract proposal form supplied by the department and in no other manner. The department shall, before furnishing any person, firm, or corporation desiring to bid upon any work for which a call for bid proposals has been published with a contract proposal form, require from the person, firm, or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of the person, firm, or corporation in performing state highway, road, or other public work. The questionnaire and financial statement shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds, and shall be submitted once a year and at such other times as the department may require. Whenever the department is not satisfied with the

sufficiency of the answers contained in the questionnaire and financial statement or whenever the department determines that the person, firm, or corporation does not meet all of the requirements set forth in this section it may refuse to furnish the person, firm, or corporation with a contract proposal form, and any bid proposal of the person, firm, or corporation must be disregarded. In order to obtain a contract proposal form, a person, firm, or corporation shall have all of the following requirements:

(1) Adequate financial resources or the ability to secure such resources;

(2) The necessary experience, organization, and technical qualifications to perform the proposed contract;

(3) The ability to comply with the required performance schedule taking into consideration all of its existing business commitments;

(4) A satisfactory record of performance, integrity, judgment, and skills; and

(5) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

The refusal is conclusive unless appeal therefrom to the superior court of Thurston county is taken within five days, which appeal shall be heard summarily within ten days after it is taken and on five days' notice thereof to the department. [1984 c 7 § 169; 1967 ex.s. c 145 § 39; 1961 c 13 § 47.28.070. Prior: 1937 c 53 § 35; RRS § 6400-35.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.075 Financial information not open to public inspection. The department of transportation shall not be required to make available for public inspection and copying financial information supplied by any person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for highway construction or improvement as required by RCW 47.28.070. [1981 c 215 § 1.]

47.28.080 Withdrawal of bids—New bids—Time fixed in call controls. Any person, firm, or corporation proposing a bid for the construction or improvement of any state highway in response to a call for bids published therefor may withdraw the bid proposal without forfeiture and without prejudice to the right of the bidder to file a new bid proposal before the time fixed for the opening of the bid proposals. The request for the withdrawal shall be made in writing, signed by the person proposing the bid or his duly authorized agent, and filed at the place and before the time fixed in the call for bids for receipt of the bid proposals. No bid proposal may be considered that has not been filed with the department before the time fixed for the receipt of bid proposals. In any provisions regarding the filing or withdrawing of bid proposals the time fixed for the receipt of bid proposals in the call for bid proposals as published shall control without regard for the time when the bid proposals are actually opened. [1985 c 242 § 2; 1984 c 7 § 170; 1961 c 13 § 47.28.080. Prior: 1937 c 53 § 36; RRS § 6400-36.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.090 Opening of bids and award of contract—Deposit. At the time and place named in the call for bids the department of transportation shall publicly open and read the final figure in each of the bid proposals that have been properly filed and read only the unit prices of the three lowest bids, and shall award the contract to the lowest responsible bidder unless the department has, for good cause, continued the date of opening bids to a day certain, or rejected that bid. Any bid may be rejected if the bidder has previously defaulted in the performance of and failed to complete a written public contract, or has been convicted of a crime arising from a previous public contract. If the lowest responsible bidder fails to meet the provisions or specifications requiring compliance with chapter 39.19 RCW and the rules adopted to implement that chapter, the department may award the contract to the next lowest responsible bidder which does meet the provisions or specifications or may reject all bids and readvertise. All bids shall be under sealed cover and accompanied by deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the amount of the bid, and a bid shall not be considered unless the deposit is enclosed with it. [1985 c 242 § 3; 1983 c 120 § 17; 1971 ex.s. c 21 § 2; 1961 c 13 § 47.28.090. Prior: 1955 c 83 § 1; 1949 c 64 § 1; 1937 c 53 § 37; Rem. Supp. 1949 § 6400-37.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.
Office of minority and women's business enterprises: Chapter 39.19 RCW.

47.28.100 Contract and bond—Forfeiture and return of deposits—Rejection of all bids—Readvertisement. If the successful bidder fails to enter into the contract and furnish satisfactory bond as provided by law within twenty days from the award, exclusive of the day of the award, his deposit shall be forfeited to the state and deposited by the state treasurer to the credit of the motor vehicle fund, and the department may award the contract to the second lowest responsible bidder. If the second lowest responsible bidder fails to enter into the contract and furnish bond within twenty days after award to him, forfeiture of his deposit shall also be made, and the contract may be awarded to the third lowest responsible bidder, and in like manner until the contract and bond are executed by a responsible bidder to whom award is made, or further bid proposals are rejected, or the number of bid proposals are exhausted. If the contract is not executed or no contractor's bond provided within the time required, and there appear circumstances that are deemed to warrant an extension of time, the department may extend the time for execution of the contract or furnishing bond for not to exceed twenty additional days. After awarding the contract the deposits of unsuccessful bidders shall be returned, but the department may retain the deposit of the next lowest responsible bidder or bidders as it desires until such time as the contract is entered into and satisfactory bond is

provided by the bidder to whom the award is ultimately made.

If in the opinion of the department the acceptance of the bid of the lowest responsible bidder or bidders, or on prior failure of the lowest responsible bidder or bidders the acceptance of the bid of the remaining lowest responsible bidder or bidders, will not be for the best interest of the state, it may reject all bids or all remaining bids and republish a call for bids in the same manner as for an original publication thereof. [1984 c 7 § 171; 1961 c 13 § 47.28.100. Prior: 1953 c 53 § 1; 1937 c 53 § 38; RRS § 6400–38.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.110 Sureties—Qualifications—Additional sureties. At any time and as often as it may be deemed necessary, the department may require any or all sureties or any surety company to appear and qualify themselves upon any contractor's bond. Whenever the surety or sureties upon any contractor's bond become insufficient or are deemed by the department to have become insufficient, the department may demand in writing that the contracting person, firm, or corporation furnish such further contractor's bond or bonds or additional surety in an amount not exceeding that originally required as may be deemed necessary considering the extent of the work remaining to be done upon the contract. No further payments may be made on the contract until such additional surety as is required is furnished. [1984 c 7 § 172; 1961 c 13 § 47.28.110. Prior: 1937 c 53 § 39; RRS § 6400–39.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.120 Actions for labor and materials—Limitation of action. Any contracting person, firm, or corporation performing any labor or furnishing any materials upon their contract or otherwise for public work or improvement under the direction of the department or any person claiming any right of action upon any such contract with the state of Washington or who claims a cause of action against the state of Washington arising out of any such contract must bring such suit in the proper court in Thurston county before the expiration of one hundred and eighty days from and after the final acceptance and the approval of the final estimate of such work by the department; otherwise the action is forever barred. [1984 c 7 § 173; 1961 c 13 § 47.28.120. Prior: 1937 c 53 § 40; RRS § 6400–40.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.140 Agreements to benefit or improve highways, roads, or streets, establish urban public transportation system—Labor or contract—Costs. When in the opinion of the governing authorities representing the department and any agency, instrumentality, municipal corporation, or political subdivision of the state of Washington, any highway, road, or street will be benefited or improved by constructing, reconstructing, locating, relocating, laying out, repairing, surveying, altering,

improving, or maintaining, or by the establishment adjacent to, under, upon, within, or above any portion of any such highway, road, or street of an urban public transportation system, by either the department or any agency, instrumentality, municipal corporation, or political subdivision of the state, and it is in the public interest to do so, the authorities may enter into cooperative agreements wherein either agrees to perform the work and furnish the materials necessary and pay the cost thereof, including necessary engineering assistance, which costs and expenses shall be reimbursed by the party whose responsibility it was to do or perform the work or improvement in the first instance. The work may be done by either day labor or contract, and the cooperative agreement between the parties shall provide for the method of reimbursement. In the case of some special benefit or improvement to a state highway derived from the construction of any public works project, including any urban public transportation system, the department may contribute to the cost thereof by making direct payment to the particular state department, agency, instrumentality, municipal corporation, or political subdivision on the basis of benefits received, but such payment shall be made only after a cooperative agreement has been entered into for a specified amount or on an actual cost basis prior to the commencement of the particular public works project. [1984 c 7 § 174; 1967 c 108 § 6; 1961 c 13 § 47.28.140. Prior: 1955 c 384 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.
Urban public transportation system defined: RCW 47.04.082.

47.28.150 Underpasses, overpasses constructed with aid of federal funds—Apportionment of maintenance cost between railroad and state. Notwithstanding any of the provisions of RCW 81.53.090, where the cost of constructing an overpass or underpass which is part of the state highway system has been paid for in whole or in part by the use of federal funds, the state shall at its expense maintain the entire overpass structure and the approaches thereto, and the railroad company shall at its expense maintain the entire underpass structure, including the approaches thereto. The state shall at its expense maintain the roadway, and the railroad company shall at its expense maintain its roadbed and tracks on or under all such structures. [1961 c 13 § 47.28.150. Prior: 1959 c 319 § 34.]

47.28.170 Emergency protection and restoration of highways. (1) Whenever the commission finds that as a consequence of accident, natural disaster, or other emergency, an existing state highway is in jeopardy or is rendered impassible in one or both directions and the commission further finds that prompt reconstruction, repair, or other work is needed to preserve or restore the highway for public travel, the commission may authorize the department to obtain at least three written bids for the work without publishing a call for bids and award a contract forthwith to the lowest responsible bidder.

The department shall notify any association or organization of contractors filing a request to regularly receive

notification. Notification to an association or organization of contractors shall include: (a) The location of the work to be done; (b) the general anticipated nature of the work to be done; and (c) the date determined by the department as reasonable in view of the nature of the work and emergent nature of the problem after which the department will not receive bids.

(2) Whenever the commission finds it necessary to protect a highway facility from imminent damage or to perform emergency work to reopen a highway facility, the commission may authorize the department to contract for such work on a negotiated basis not to exceed force account rates for a period not to exceed thirty working days.

(3) When the engineer's estimate of the cost of work authorized in either subsections (1) or (2) of this section is less than one hundred thousand dollars, the secretary may make findings as provided hereinabove, and pursuant thereto the department may award contracts as authorized by this section.

(4) Any person, firm, or corporation awarded a contract for work must be prequalified pursuant to RCW 47.28.070 and may be required to furnish a bid deposit or performance bond. [1984 c 7 § 175; 1971 ex.s. c 89 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.180 Pilot program—Project cost evaluation. (Effective until June 30, 1991.) The legislature recognizes the importance of cost-effective spending on roadway and maintenance projects in its responsibility to the citizens of the state to develop and maintain the best transportation network possible with the funds available. It is the intent and purpose of RCW 47.28.180 through 47.28.210 to determine whether existing practices should be modified or retained. A pilot program using the project cost evaluation methodology recommended in the 1986 study made by the legislative transportation committee may be implemented by and under the direction of the legislative transportation committee.

The key issues identified in the study include cost accounting systems, level playing field, local tax impact of contracting out work, overhead cost allocation, accounting for materials and equipment, inspection and quality control requirements, impact of bid limits, labor and union agreements, interagency contracting, self-insurance costs, definitions of construction and maintenance, and essential services provided by governmental agencies.

The program shall be in two parts. Part one shall consist of cities and counties that have volunteered and subsequently have been approved by the legislative transportation committee in consultation with the Association of Washington Cities and the Washington State Association of Counties and represent the various demographic and geographic components of the state. Jurisdictions participating in part one of the programs shall use the project cost evaluation methodology for evaluation of projects. The projects shall be performed based on the lowest estimated cost regardless of who had performed the work historically. Competitive bidding procedures currently in use by public agencies shall be used

by the participating counties and cities. No public employee shall be displaced or terminated as a result of the operation of this pilot program. Part two shall consist of a portion of a district or districts chosen by the department of transportation. The department shall use the project cost evaluation methodology to evaluate its projects and draw conclusions as to which projects would have been done in-house and which would have been contracted out had the department been operating under the requirements of part one of the pilot program. [1987 c 424 § 1.]

Expiration date—1989 c 182; 1987 c 424: "RCW 47.28.180 through 47.28.210 shall expire on June 30, 1991, unless extended by law." [1989 c 182 § 3; 1987 c 424 § 5.]

47.28.190 Pilot program—Bidding and day labor limits suspended. (Effective until June 30, 1991.) The legislature finds that if the legislative transportation committee decides to implement the pilot program it is necessary to temporarily suspend the application of certain statutes regulating bid and day labor limits for roadway construction and maintenance projects for the purposes of this pilot program. The following statutes are suspended as to the participating cities and counties chosen under RCW 47.28.180 for the period July 1, 1987, through June 30, 1991, and only insofar as the statutes relate to bid and day labor limits for roadway construction and maintenance projects: RCW 35.22.620, 35.23.352, 35A.40.210, 36.77.020, 36.77.065, 36.33A.010, and 39.12.020. [1989 c 182 § 1; 1987 c 424 § 2.]

Expiration date—1989 c 182; 1987 c 424: See note following RCW 47.28.180.

47.28.200 Pilot program—Reports to legislature. (Effective until June 30, 1991.) The department of transportation and each of the participating cities and counties shall report to the legislature on the outcome of this pilot program on or before February 15, 1991, and shall provide to the legislative transportation committee such reports and other items as the committee may desire. [1989 c 182 § 2; 1987 c 424 § 3.]

Expiration date—1989 c 182; 1987 c 424: See note following RCW 47.28.180.

47.28.210 Pilot program—Reimbursement of additional costs. (Effective until June 30, 1991.) The participating cities and counties shall apply to and be reimbursed by the department of transportation for all reasonable additional costs directly relating to their participation in the pilot project. [1987 c 424 § 4.]

Expiration date—1989 c 182; 1987 c 424: See note following RCW 47.28.180.

Chapter 47.30

TRAILS AND PATHS

Sections	
47.30.005	Definitions.
47.30.010	Severance or destruction of recreational trail—Alternative, construction or reconstruction required—Signing.

- 47.30.020 Facilities for pedestrians, equestrians, or bicyclists to be provided—Joint usage of rights of way.
- 47.30.030 Facilities for pedestrians, equestrians, or bicyclists authorized—Expenditure of available funds.
- 47.30.040 Establishing paths and trails—Factors to be considered.
- 47.30.050 Expenditures for paths and trails—Minimum amount.
- 47.30.060 Expenditures deemed to be for highway, road, and street purposes—Powers and duties of department of transportation—Restrictions on use of paths and trails.

Recreation trails system: Chapter 67.32 RCW.

47.30.005 Definitions. For the purposes of this chapter, "trail" or "path" means a public way constructed primarily for and open to pedestrians, equestrians, or bicyclists, or any combination thereof, other than a sidewalk constructed as a part of a city street or county road for the exclusive use of pedestrians. The term "trail" or "path" also includes a widened shoulder of a highway, street, or road when the extra shoulder width is constructed to accommodate bicyclists consistent with a comprehensive plan or master plan for bicycle trails or paths adopted by a state or local governmental authority either prior to such construction or prior to January 1, 1980. [1979 ex.s. c 121 § 4.]

47.30.010 Severance or destruction of recreational trail—Alternative, construction or reconstruction required—Signing. (1) No limited access highway shall be constructed that will result in the severance or destruction of an existing recreational trail of substantial usage for pedestrians, equestrians or bicyclists unless an alternative recreational trail, satisfactory to the authority having jurisdiction over the trail being severed or destroyed, either exists or is reestablished at the time the limited access highway is constructed. If a proposed limited access highway will sever a planned recreational trail which is part of a comprehensive plan for trails adopted by a state or local governmental authority, and no alternative route for the planned trail exists which is satisfactory to the authority which adopted the comprehensive plan for trails, the state or local agency proposing to construct the limited access highway shall design the facility and acquire sufficient right of way to accommodate future construction of the portion of the trail which will properly lie within the highway right of way. Thereafter when such trail is developed and constructed by the authority having jurisdiction over the trail, the state or local agency which constructed the limited access highway shall develop and construct the portion of such trail lying within the right of way of the limited access highway.

(2) Where a highway other than a limited access highway crosses a recreational trail of substantial usage for pedestrians, equestrians, or bicyclists, signing sufficient to insure safety shall be provided.

(3) Where the construction or reconstruction of a highway other than a limited access highway would destroy the usefulness of an existing recreational trail of substantial usage for pedestrians, equestrians, or bicyclists or of a planned recreational trail for pedestrians,

equestrians, or bicyclists incorporated into the comprehensive plans for trails of the state or any of its political subdivisions, replacement land, space, or facilities shall be provided and where such recreational trails exist at the time of taking, reconstruction of said recreational trails shall be undertaken. [1971 ex.s. c 130 § 1.]

47.30.020 Facilities for pedestrians, equestrians, or bicyclists to be provided—Joint usage of rights of way. Facilities for pedestrians, equestrians, or bicyclists shall be incorporated into the design of highways and freeways along corridors where such facilities do not exist upon a finding that such facilities would be of joint use and conform to the comprehensive plans of public agencies for the development of such facilities, will not duplicate existing or proposed routes, and that safety to both motorists and to pedestrians, equestrians, and bicyclists would be enhanced by the segregation of traffic.

In planning and design of all highways, every effort shall be made consistent with safety to promote joint usage of rights of way for trails and paths in accordance with the comprehensive plans of public agencies. [1971 ex.s. c 130 § 2.]

47.30.030 Facilities for pedestrians, equestrians, or bicyclists authorized—Expenditure of available funds. Where an existing highway severs, or where the right of way of an existing highway accommodates a trail for pedestrians, equestrians, or bicyclists or where the separation of motor vehicle traffic from pedestrians, equestrians, or bicyclists will materially increase the motor vehicle safety, the provision of facilities for pedestrians, equestrians, or bicyclists which are a part of a comprehensive trail plan adopted by federal, state, or local governmental authority having jurisdiction over the trail is hereby authorized. The department of transportation, or the county or city having jurisdiction over the highway, road, or street, or facility is further authorized to expend reasonable amounts out of the funds made available to them, according to the provisions of RCW 46.68.100, as necessary for the planning, accommodation, establishment, and maintenance of such facilities. [1979 ex.s. c 121 § 1; 1974 ex.s. c 141 § 12; 1972 ex.s. c 103 § 2.]

Severability—1972 ex.s. c 103: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 103 § 8.]

47.30.040 Establishing paths and trails—Factors to be considered. Before establishing paths and trails, the following factors shall be considered:

- (1) Public safety;
- (2) The cost of such paths and trails as compared to the need or probable use;
- (3) Inclusion of the trail in a plan for a comprehensive trail system adopted by a city or county in a state or federal trails plan. [1972 ex.s. c 103 § 3.]

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

47.30.050 Expenditures for paths and trails—
Minimum amount. (1) The amount expended by a city, town, or county as authorized by RCW 47.30.030, as now or hereafter amended, shall never in any one fiscal year be less than one-half of one percent of the total amount of funds received from the motor vehicle fund according to the provisions of RCW 46.68.100: *Provided*, That this section does not apply to a city or town in any year in which the one-half of one percent equals five hundred dollars or less, or to a county in any year in which the one-half of one percent equals three thousand dollars or less: *Provided further*, That a city, town, or county in lieu of expending the funds each year may credit the funds to a financial reserve or special fund, to be held for not more than ten years, and to be expended for the purposes required or permitted by RCW 47.30.030.

(2) In each fiscal year the department of transportation shall expend, as a minimum, for the purposes mentioned in RCW 47.30.030, as now or hereafter amended, a sum equal to three-tenths of one percent of all funds, both state and federal, expended for the construction of state highways in such year, or in order to more efficiently program trail improvements the department may defer any part of such minimum trail or path expenditures for a fiscal year for a period not to exceed four years after the end of such fiscal year. Any fiscal year in which the department expends for trail or path purposes more than the minimum sum required by this subsection, the amount of such excess expenditure shall constitute a credit which may be carried forward and applied to the minimum trail and path expenditure requirements for any of the ensuing four fiscal years.

(3) The department of transportation, a city, or a county in computing the amount expended for trails or paths under their respective jurisdictions may include the cost of improvements consistent with a comprehensive plan or master plan for bicycle trails or paths adopted by a state or local governmental authority either prior to such construction or prior to January 1, 1980. [1979 ex.s. c 121 § 2; 1972 ex.s. c 103 § 4.]

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

Six-year program for arterial road construction—Expenditures for bicycles, pedestrians, and equestrian purposes: RCW 36.81.121.

47.30.060 Expenditures deemed to be for highway, road, and street purposes—Powers and duties of department of transportation—Restrictions on use of paths and trails. For the purposes of this chapter, the establishment of paths and trails and the expenditure of funds as authorized by RCW 47.30.030, as now or hereafter amended, shall be deemed to be for highway, road, and street purposes. The department of transportation shall, when requested, and subject to reimbursement of costs, provide technical assistance and advice to cities, towns, and counties in carrying out the purposes of RCW 47.30.030, as now or hereafter amended. The department shall recommend construction standards for paths and trails. The department shall provide a uniform

system of signing paths and trails which shall apply to paths and trails under the jurisdiction of the department and of cities, towns, and counties. The department and cities, towns, and counties may restrict the use of paths and trails under their respective jurisdictions to pedestrians, equestrians, and nonmotorized vehicles. [1979 ex.s. c 121 § 3; 1972 ex.s. c 103 § 5.]

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

Chapter 47.32

OBSTRUCTIONS ON RIGHT OF WAY

Sections

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Fences: Chapter 16.60 RCW.

Mobile home movement permits and decals: RCW 46.44.170 through 46.44.175.

Removal of disabled vehicle: RCW 46.55.113.

47.32.010 Order to remove obstructions—Removal by state. Whenever the department determines and orders that it is necessary for the convenience and safety of public travel and the use of (or construction, alteration, repair, improvement, or maintenance of) any state highway to have the full width of right of way of any such state highway or of any portion of the right of way of any such state highway free from any and all obstructions, encroachments, and occupancy, other than pole lines, pipe lines, or other structures maintained thereon for public or quasi-public utilities by virtue of a valid franchise, and causes due notice of the order to be given as provided by law, the obstructions, encroachments, and means of occupancy, and any structure, building, improvement, or other means of occupancy of any of the right of way of the state highway not removed within the time allowed by law shall become an unlawful property and may be confiscated, removed, and sold or destroyed by the state of Washington according to procedure as provided in this chapter, without any right in anyone to make any claim therefor, either by reason of the removal thereof or otherwise. It is unlawful for any person to keep, maintain, or occupy any such unlawful structure.

[1984 c 7 § 176; 1961 c 13 § 47.32.010. Prior: 1937 c 53 § 68; RRS § 6400–68.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.020 Notice of order, contents, posting—Return. Whenever the department determines that the right of way of any state highway or any portion of the right of way of any state highway shall be made free from any and all obstructions, encroachments, and occupancy it shall forthwith cause to be posted, by a competent person eighteen years of age or over upon any and all structures, buildings, improvements, and other means of occupancy of the state highway or portion thereof, other than property of public or quasi-public utilities, by virtue of a valid franchise, a notice bearing a copy of the order and dated as of the date of posting, to all whom it may concern to vacate the right of way and to remove all property from the right of way within ten days after the posting of the notice, exclusive of the date of posting. The department shall also require the filing of duplicate affidavits in proof of the postings, showing upon what structures, buildings, improvements, or other means of occupancy of the state highway or portions thereof, respectively, copies of the notice were posted and the date of each such posting, sworn to by the person making the posting. [1984 c 7 § 177; 1971 ex.s. c 292 § 46; 1961 c 13 § 47.32.020. Prior: 1937 c 53 § 69; RRS § 6400–69.]

Severability—1984 c 7: See note following RCW 47.01.141.

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

47.32.030 Proceedings in rem authorized—Records certified. In case the property or any portion thereof described in the notice is not removed from the right of way within ten days after the date of the posting, exclusive of the date of posting, all such property upon the right of way of the state highway or portion thereof becomes unlawful, and the department shall commence proceedings in the name of the state of Washington for the removal thereof by court action. The department shall thereupon prepare two original copies of the order together with two copies each of the notice posted and of the affidavits in proof of posting thereof and duplicate copies of a certificate by the department describing with reasonable certainty and with due reference to the center line stationing of the state highway and to proper legal subdivisional points, each structure, building, improvement, encroachment, or other means of occupancy, other than pole lines, pipe lines, or other structures maintained for public and quasi-public utilities, on the state highway or portion thereof specified in the order that remain upon the right of way as aforesaid. Thereupon action shall be commenced in rem for the purpose of removal of all such unlawful property, in the superior court of the county in which the state highway or portion thereof containing the structures is situated, entitled and in the name of the state of Washington as plaintiff and describing each unlawful structure, building, improvement, encroachment, or other means of occupancy, which structures, buildings, improvements, encroachments, or other means of occupancy shall be

briefly named as defendants. [1984 c 7 § 178; 1961 c 13 § 47.32.030. Prior: 1937 c 53 § 70; RRS § 6400–70; prior: 1925 ex.s. c 131 § 3; RRS § 6837–3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.040 Complaint, contents. The complaint shall, in such action, describe the property unlawfully remaining upon the right of way of the state highway or portion thereof with reasonable certainty by reference to the certificate of the department, which shall be attached to and filed with the complaint, and pray that an order be entered for the removal from the right of way of the state highway or portion thereof of all the described property unlawfully thereon and the disposal thereof. [1984 c 7 § 179; 1961 c 13 § 47.32.040. Prior: 1937 c 53 § 71; RRS § 6400–71; prior: 1925 ex.s. c 131 § 4; RRS § 6837–4.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.050 Notice, action, service, contents—Proceedings void when. Service of such complaint shall be given by publication of notice thereof once a week for two successive weeks in a newspaper of general circulation in the county in which such action is commenced, which notice shall briefly state the objects of the action and contain a brief description of each structure, building, improvement, encroachment or other means of occupancy sought to be removed from the right of way of the state highway, describe such state highway or portion thereof by number and location and state the time and place when and where the action will come before the court or judge thereof; and a copy of such notice shall also be posted at least ten days before the date of hearing of such action upon each such structure, building, improvement, encroachment or other means of occupancy described therein. Posting may be made by any person qualified to serve legal process. Want of posting upon, or failure to describe any such structure, building, improvement, encroachment or other means of occupancy shall render subsequent proceedings void as to those not posted upon or described but all others described and posted upon shall be bound by the subsequent proceedings. [1961 c 13 § 47.32.050. Prior: 1937 c 53 § 72; RRS 6400–72; prior: 1925 ex.s. c 131 § 5; RRS § 6837–5.]

47.32.060 Hearing—Findings—Order—Appellate review. At the time and place appointed for hearing upon the complaint, which hearing shall be by summary proceedings, if the court or judge thereof finds that due notice has been given by posting and publication and that the order of the department was duly made, and is further satisfied and finds that the state highway or portion thereof described is legally a state highway having the width of right of way specified in the order and that the structure, buildings, improvements, or other means of occupancy of the state highway or portion thereof as stated in the certificate of the department do in fact encroach, or that any portion thereof encroach, upon the state highway right of way, the court

or judge thereof shall thereupon make and enter an order establishing that each of the structures, buildings, improvements, and other means of occupancy specified in the order is unlawfully maintained within the right of way and is subject to confiscation and sale and that they be forthwith confiscated, removed from the right of way, and sold, and providing that six days after the entry of the order, a writ shall issue from the court directed to the sheriff of the county, commanding the sheriff to seize and remove from the right of way of the state highway each such structure, building, improvement, or other means of occupancy specified in the order forthwith on receipt of a writ based on the order and to take and hold the property in his custody for a period of ten days, unless redelivered earlier as provided for by law, and if not then so redelivered to sell the property at public or private sale and to pay the proceeds thereof into the registry of the court within sixty days after the issuance of the writ, and further in such action, including costs of posting original notices of the department, the costs of posting and publishing notices of hearing as part thereof and any cost of removal, be paid by the clerk to the state treasurer and credited to the motor vehicle fund. The order shall be filed with the clerk of the court and recorded in the minutes of the court, and is final unless appellate review thereof is sought within five days after filing of the order. [1988 c 202 § 45; 1984 c 7 § 180; 1961 c 13 § 47.32.060. Prior: 1937 c 53 § 73; RRS § 6400-73; prior: 1925 ex.s. c 131 § 7; RRS § 6837-7.]

Severability—1988 c 202: See note following RCW 2.24.050.

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.070 Writ, execution of—Return—Disposition of unsold property. Six days after filing of the order above provided for, if no review thereof be taken to the supreme court or the court of appeals of the state, the clerk of the court shall issue under seal of such court a writ directed to the sheriff of the county in which such court is held commanding him to remove, take into custody and dispose of the property described in such order and make returns thereof as provided for such writ by said order. On receipt of such writ it shall be the duty of such sheriff to obey the command thereof, proceed as therein directed and make return within the time fixed by such writ; and said sheriff shall be liable upon his official bond for the faithful discharge of such duties. Upon filing of such return the clerk of court shall make payments as provided for in the order of court. If by the sheriff's return any of the property seized and removed pursuant to such writ is returned as unsold and as of no sale value, and if the court or judge thereof be satisfied that such is the fact, the court or judge thereof may make further order directing the destruction of such property, otherwise directing the sheriff to give new notice and again offer the same for sale, when, if not sold, the same may on order of court be destroyed. [1971 c 81 § 115; 1961 c 13 § 47.32.070. Prior: 1937 c 53 § 74; RRS § 6400-74; prior: 1925 ex.s. c 131 § 8; RRS § 6837-8.]

47.32.080 Property reclaimed—Bond. At any time within ten days after the removal by virtue of such writ of any such property from the right of way of such state highway any person, firm, association or corporation claiming ownership or right of possession of any such property may have the right to demand and to receive the same from the sheriff upon making an affidavit that such claimant owns such property or is entitled to possession thereof, stating on oath the value thereof satisfactory to said sheriff, or which value shall be raised to a value satisfactory to said sheriff, which value shall be indorsed on said affidavit and signed both by said claimant and said sheriff before such sheriff shall be required to accept the bond hereinafter provided for, and deliver to the sheriff a bond with sureties in double the value of such property, conditioned that such claimant will appear in the superior court of such county within ten days after the bond is accepted by the sheriff and make good such claim of title thereto and pay all accrued costs of service of notice to remove, all costs and disbursements to be assessed to such property and the costs of removal and custody thereof and will hold said sheriff and the state of Washington free from any and all claims on account of such property or will return such property or pay its value to said sheriff, and that such claimant will at all times thereafter keep such property off the right of way of the state highway in question. [1961 c 13 § 47.32.080. Prior: 1937 c 53 § 75; RRS § 6400-75; prior: 1925 ex.s. c 131 § 9; RRS § 6837-9.]

47.32.090 Sureties on bond—Hearing on claim. The sureties on such bond shall justify as in other cases if the sheriff requires it and in case they do not so justify when required, the sheriff shall retain and sell or dispose of the property; and if the sheriff does not require the sureties to justify, he shall stand good for their sufficiency. He shall date and indorse his acceptance upon the bond, and shall return the affidavit, bond and justification, if any, to the office of the clerk of such superior court, whereupon such clerk shall set the hearing thereof as a separate case for trial, in which such claimant shall be the plaintiff and the sheriff and the state of Washington defendants: *Provided*, That no costs shall, in such case, be assessed against the sheriff or the state of Washington in the event the plaintiff should prevail. [1961 c 13 § 47.32.090. Prior: 1937 c 53 § 76; RRS § 6400-76; prior: 1925 ex.s. c 131 § 10; RRS § 6837-10.]

47.32.100 Procedure when claimant wins or loses. If the claimant makes good the claimant's title to or right to possession of the property, upon payment into the registry of the court of the costs of service or posting of original notice issued by the department with respect to the property, the cost of posting notice of hearing in the court and such proportion of the cost of publication of the notice as the court may fix and direct to be entered and the clerk's fees of filing the affidavit and bond as a separate action and of entry of judgment therein at the amounts provided for in civil actions, judgment shall be entered restoring the property to the claimant without

any confirmation of title as to any other claimant thereto, relieving the sheriff from necessity of selling the property and making return thereon, and continuing the effect of the bond for a period of six years thereafter for the benefit of such adverse claimants to the property, if any, as may thereafter make claim to the property. If the claimant does not make good such claim of title to or right to possession of the property, judgment shall be rendered against the claimant and the sureties of the claimant for the value of the property as finally shown by the affidavit as above provided for, together with such fees for filing the affidavit and bond as a separate action and for entry of judgment therein and other costs and disbursements as taxed in any civil action including the statutory attorney fee as part thereof, for all of which execution may accordingly issue, and relieving the sheriff from the necessity of selling the property or making return thereon. [1984 c 7 § 181; 1961 c 13 § 47.32.100. Prior: 1937 c 53 § 77; RRS § 6400-77; prior: 1925 ex.s. c 131 § 11; RRS § 6837-11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.110 Merchandising structures—Permit—Removal. It is unlawful for any person to build, erect, establish, operate, maintain, or conduct along and upon the right of way of any state highway any platform, box, stand, or any other temporary or permanent device or structure used or to be used for the purpose of receiving, vending, or delivering any milk, milk cans, vegetables, fruits, merchandise, produce, or any other thing or commodity of any nature unless a permit therefor has first been obtained from the department. The department shall in each instance determine where any platform, box, stand, or any other temporary or permanent device or structure shall be permitted. Upon the existence of any such device or structure without a permit having been first obtained, it shall be considered an obstruction unlawfully upon the right of way of the state highway, and the department may proceed to effect its removal. [1984 c 7 § 182; 1961 c 13 § 47.32.110. Prior: 1937 c 53 § 78; RRS § 6400-78; 1927 c 309 § 48; RRS § 6362-48; 1923 c 181 § 10; RRS § 6358-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.120 Business places along highway. It is unlawful for any person to erect a structure or establishment or maintain a business, the nature of which requires the use by patrons or customers of property adjoining the structure or establishment unless the structure or establishment is located at a distance from the right of way of any state highway so that none of the right of way thereof is required for the use of the patrons or customers of the establishment. Any such structure erected or business maintained that makes use of or tends to invite patrons to use the right of way or any portion thereof of any state highway by occupying it while a patron is a public nuisance, and the department may fence the right of way of the state highway to prevent such unauthorized use thereof. [1984 c 7 § 183;

1961 c 13 § 47.32.120. Prior: 1937 c 53 § 79; RRS § 6400-79.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.130 Dangerous objects and structures as nuisances—Logs—Abatement—Removal. (1) Whenever there exists upon the right of way of any state highway or off the right of way thereof in sufficiently close proximity thereto, any structure, device, or natural or artificial thing that threatens or endangers the state highway or portion thereof, or that tends to endanger persons traveling thereon, or obstructs or tends to obstruct or constitutes a hazard to vehicles or persons traveling thereon, the structure, device, or natural or artificial thing is declared to be a public nuisance, and the department is empowered to take such action as may be necessary to effect its abatement. Any such structure, device, or natural or artificial thing considered by the department to be immediately or eminently dangerous to travel upon a state highway may be forthwith removed, and the removal in no event constitutes a breach of the peace or trespass.

(2) Logs dumped on any state highway roadway or in any state highway drainage ditch due to equipment failure or for any other reason shall be removed immediately. Logs remaining within the state highway right of way for a period of thirty days shall be confiscated and removed or disposed of as directed by the department. [1984 c 7 § 184; 1961 c 13 § 47.32.130. Prior: 1947 c 206 § 3; 1937 c 53 § 80; Rem. Supp. 1947 § 6400-80.]

Severability—1984 c 7: See note following RCW 47.01.141.

Obstructing highway, public nuisance: RCW 9.66.010.

Placing dangerous substances or devices on highway: RCW 9.66.050, 46.61.645, 70.93.060.

47.32.140 Railroad crossings, obstructions—Hearing. Each railroad company shall keep its right of way clear of all brush and timber in the vicinity of a railroad grade crossing with a state highway for a distance of one hundred feet from the crossing in such manner as to permit a person upon the highway to obtain an unobstructed view in both directions of an approaching train. The department shall cause brush and timber to be cleared from the right of way of a state highway in the proximity of a railroad grade crossing for a distance of one hundred feet from the crossing in such manner as to permit a person upon the highway to obtain an unobstructed view in both directions of an approaching train. It is unlawful to erect or maintain a sign, signboard, or billboard, except official highway signs and traffic devices and railroad warning or operating signs, outside the corporate limits of any city or town within a distance of one hundred feet from the point of intersection of the highway and railroad grade crossing unless, after thirty days notice to the Washington utilities and transportation commission and the railroad operating the crossing, the department determines that it does not obscure the sight distance of a person operating a vehicle or train approaching the grade crossing.

When a person who has erected or who maintains such a sign, signboard, or billboard or when a railroad

company permits such brush or timber in the vicinity of a railroad grade crossing with a state highway or permits the surface of a grade crossing to become inconvenient or dangerous for passage and who has the duty to maintain it, fails, neglects, or refuses to remove or cause to be removed such brush, timber, sign, signboard, or billboard, or maintain the surface of the crossing, the utilities and transportation commission upon complaint of the department or upon complaint of any party interested, or upon its own motion, shall enter upon a hearing in the manner now provided for hearings with respect to railroad-highway grade crossings, and make and enforce proper orders for the removal of the brush, timber, sign, signboard or billboard, or maintenance of the crossing. However, nothing in this section prevents the posting or maintaining of any legal notice or sign, signal, or traffic device required or permitted to be posted or maintained, or the placing and maintaining thereon of highway or road signs or traffic devices giving directions or distances for the information of the public when the signs are approved by the department. The department shall inspect highway grade crossings and make complaint of the violation of any provisions of this section. [1983 c 19 § 2; 1961 c 13 § 47.32.140. Prior: 1955 c 310 § 7; 1937 c 53 § 81; RRS § 6400-81; prior: 1923 c 129 §§ 1-6; RRS § 10510-1—10510-6.]

Railroad grade crossings, obstructions: RCW 36.86.100.

47.32.150 Approach roads, other appurtenances—
Permit. No person, firm, or corporation may be permitted to build or construct on state highway rights of way any approach road or any other facility, thing, or appurtenance not heretofore permitted by law, without first obtaining written permission from the department. [1984 c 7 § 185; 1961 c 13 § 47.32.150. Prior: 1947 c 201 § 1; Rem. Supp. 1947 § 6402-50.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.160 Approach roads, other appurtenances—
Rules—Construction, maintenance of approach roads. The department is hereby authorized and empowered at its discretion to adopt reasonable rules governing the issuance of permits under RCW 47.32.150 for the construction of any approach road, facility, thing, or appurtenance, upon state highway rights of way. The rules shall be designed to achieve and preserve reasonable standards of highway safety and the operational integrity of the state highway facility. Any permit issued may contain such terms and conditions as may be prescribed. All such construction shall be under the supervision of the department and at the expense of the applicant. After completion of the construction of the particular approach road, facility, thing, or appurtenance, it shall be maintained at the expense of the applicant and in accordance with the directions of the department. [1987 c 227 § 1; 1984 c 7 § 186; 1961 c 13 § 47.32.160. Prior: 1947 c 201 § 2; Rem. Supp. 1947 § 6402-51.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.170 Approach roads, other appurtenances—
Removal of installations from right of way for default. Upon failure of the applicant to construct or maintain the particular approach road, facility, thing, or appurtenance in accordance with the conditions of the permit and in accordance with the rules of the department, the department may, after the expiration of thirty days following transmittal of a written notice to the applicant, remove all installations upon the right of way at the expense of the applicant, which expense may be recovered from the applicant by the department for the state in any court of competent jurisdiction. [1984 c 7 § 187; 1961 c 13 § 47.32.170. Prior: 1947 c 201 § 3; Rem. Supp. 1947 § 6402-52.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 47.36

TRAFFIC CONTROL DEVICES

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47.36.260	Signs indicating proper lane usage.
47.36.270	Regional shopping center directional signs.

County roads, signs, signals, guideposts—Standards: RCW 36.86.040.

Range areas, signs: RCW 16.24.060.

Rules of the road: Chapter 46.61 RCW.

47.36.010 Restoration of United States survey markers. The department shall fix permanent monuments at the original positions of all United States government monuments at township corners, section corners, quarter

section corners, meander corners, and witness markers, as originally established by the United States government survey whenever any such original monuments or markers fall within the right of way of any state highway, and aid in the reestablishment of any such corners, monuments, or markers destroyed or obliterated by the construction of any state highway by permitting inspection of the records in the department's office. [1984 c 7 § 188; 1961 c 13 § 47.36.010. Prior: 1937 c 53 § 42; RRS § 6400-42; 1931 c 117 § 1; RRS § 6830-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.020 Traffic control signals. The secretary of transportation shall adopt specifications for a uniform system of traffic control signals consistent with the provisions of this title for use upon public highways within this state. Such uniform system shall correlate with and so far as possible conform to the system current as approved by the American Association of State Highway Officials and as set out in the manual of uniform traffic control devices for streets and highways. [1977 ex.s. c 151 § 60; 1961 c 13 § 47.36.020. Prior: 1937 c 53 § 50; RRS § 6400-50; prior: 1927 c 309 § 6; RRS § 6362-6.]

47.36.030 Traffic control devices—Specifications to be furnished to counties and cities. The secretary of transportation shall have the power and it shall be its duty to adopt and designate a uniform state standard for the manufacture, display, erection, and location of all signs, signals, signboards, guideposts, and other traffic devices erected or to be erected upon the state highways of the state of Washington for the purpose of furnishing information to persons traveling upon such state highways regarding traffic regulations, directions, distances, points of danger, and conditions requiring caution, and for the purpose of imposing restrictions upon persons operating vehicles thereon. Such signs shall conform as nearly as practicable to the manual of specifications for the manufacture, display, and erection of uniform traffic control devices for streets and highways and all amendments, corrections, and additions thereto. The department of transportation shall prepare plans and specifications of the uniform state standard of traffic devices so adopted and designated, showing the materials, colors, and designs thereof, and shall upon the issuance of any such plans and specifications or revisions thereof and upon request, furnish to the boards of county commissioners and the governing body of any incorporated city or town, a copy thereof. Signs, signals, signboards, guideposts, and other traffic devices erected on county roads shall conform in all respects to the specifications of color, design, and location approved by the secretary. Traffic devices hereafter erected within incorporated cities and towns shall conform to such uniform state standard of traffic devices so far as is practicable. [1977 ex.s. c 151 § 61; 1961 c 13 § 47.36.030. Prior: 1945 c 178 § 1, part; 1937 c 53 § 48, part; Rem. Supp. 1945 § 6400-48, part; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; 1917 c 78 § 1, part; RRS § 6303, part.]

47.36.040 Furnished by department, paid for by counties and cities. The department, upon written request, shall cause to be manufactured, painted, and printed, and shall furnish to any county legislative authority or the governing body of any incorporated city or town, directional signboards, guide boards, and posts of the uniform state standard of color, shape, and design for the erection and maintenance thereof by the county legislative authority or the governing body of any incorporated city or town upon the roads and streets within their respective jurisdictions. The directional signboards, guide boards, and posts shall be manufactured and furnished, as aforesaid, pursuant to written request showing the number of signs desired and the directional or guide information to be printed thereon. The department shall fix a charge for each signboard, guide board, and post manufactured and furnished as aforesaid, based upon the ultimate cost of the operations to the department, and the county legislative authority, from the county road fund, and the governing body of any incorporated city or town, from the street fund, shall pay the charges so fixed for all signboards, guide boards, and posts so received from the department. [1984 c 7 § 189; 1961 c 13 § 47.36.040. Prior: 1945 c 178 § 1, part; 1937 c 53 § 48, part; Rem. Supp. 1945 § 6400-48, part; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; 1917 c 78 § 1, part; RRS § 6303, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.050 Duty to erect traffic devices on state highways and railroad crossings. The department shall erect and maintain upon every state highway in the state of Washington suitable and proper signs, signals, signboards, guideposts, and other traffic devices according to the adopted and designated state standard of design, erection, and location, and in the manner required by law. The department shall erect and maintain upon all state highways appropriate stop signs, warning signs, and school signs. Any person, firm, corporation, or municipal corporation, building, owning, controlling, or operating a railroad that crosses any state highway at grade shall construct, erect, and maintain at or near each point of crossing, or at such point or points as will meet the approval of the department, a sign of the type known as the saw buck crossing sign with the lettering "railroad crossing" inscribed thereon and also a suitable inscription indicating the number of tracks. The sign must be of standard design that will comply with the plans and specifications furnished by the department. Additional safety devices and signs may be installed at any time when required by the utilities and transportation commission as provided by laws regulating railroad-highway grade crossings. [1984 c 7 § 190; 1961 c 13 § 47.36.050. Prior: 1937 c 53 § 49; RRS § 6400-49; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; RRS § 6303, part; 1919 c 146 § 1; 1917 c 78 § 2; RRS § 6304. FORMER PART OF SECTION: 1937 c 53 § 51 now in RCW 47.36.053.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.053 General duty to place and maintain traffic devices on state highways and railroad crossings. The department shall place and maintain such traffic devices conforming to the manual and specifications adopted upon all state highways as it deems necessary to carry out the provisions of this title or to regulate, warn, or guide traffic. [1984 c 7 § 191; 1961 c 13 § 47.36.053. Prior: 1937 c 53 § 51; RRS § 6400–51. Formerly RCW 47.36.050, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.060 Traffic devices on county roads and city streets. Local authorities in their respective jurisdictions shall place and maintain such traffic devices upon public highways under their jurisdiction as are necessary to carry out the provisions of the law or local traffic ordinances or to regulate, warn, or guide traffic. Cities and towns, which as used in this section mean cities and towns having a population of over fifteen thousand according to the latest federal census, shall adequately equip with traffic devices, streets that are designated as forming a part of the route of a primary or secondary state highway and streets which constitute connecting roads and secondary state highways to such cities and towns. The traffic devices, signs, signals, and markers shall comply with the uniform state standard for the manufacture, display, direction, and location thereof as designated by the department. The design, location, erection, and operation of traffic devices and traffic control signals upon such city or town streets constituting either the route of a primary or secondary state highway to the city or town or connecting streets to the primary or secondary state highways through the city or town shall be under the direction of the department, and if the city or town fails to comply with any such directions, the department shall provide for the design, location, erection, or operation thereof, and any cost incurred therefor shall be charged to and paid from any funds in the motor vehicle fund of the state that have accrued or may accrue to the credit of the city or town, and the state treasurer shall issue warrants therefor upon vouchers submitted and approved by the department. [1984 c 7 § 192; 1961 c 13 § 47.36.060. Prior: 1955 c 179 § 4; 1939 c 81 § 1; 1937 c 53 § 52; RRS § 6400–52.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.070 Failure to erect signs, procedure. Whenever any person, firm, corporation, municipal corporation, or local authorities responsible for the erection and maintenance, or either, of signs at any railroad crossing or point of danger upon any state highway fails, neglects, or refuses to erect and maintain, or either, the sign or signs as required by law at highway–railroad grade crossings, the utilities and transportation commission shall upon complaint of the department or upon complaint of any party interested, or upon its own motion, enter upon a hearing in the manner provided by law for hearings with respect to railroad–highway grade crossings and make and enforce proper orders for the erection

or maintenance of the signs, or both. [1984 c 7 § 193; 1961 c 13 § 47.36.070. Prior: 1937 c 53 § 54; RRS § 6400–54.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.080 Signs at railroad crossings. Wherever it is considered necessary or convenient the department may erect approach and warning signs upon the approach of any state highway to a highway–railroad grade crossing situated at a sufficient distance therefrom to make the warning effective. The department may further provide such additional or other highway–railroad grade crossing markings as may be considered to serve the interests of highway safety. [1984 c 7 § 194; 1961 c 13 § 47.36.080. Prior: 1937 c 53 § 57; RRS § 6400–57.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.090 Cooperation with United States on road markers. Standard federal road markers shall be placed on state highways in the manner requested by the department of transportation of the United States. The department of transportation of the state of Washington is authorized and empowered to cooperate with the several states and with the federal government in promoting, formulating, and adopting a standard and uniform system of numbering or designating state highways of an interstate character and in promoting, formulating, and adopting uniform and standard specifications for the manufacture, display, erection, and location of road markers and signs, for the information, direction, and control of persons traveling upon public highways. [1984 c 7 § 195; 1961 c 13 § 47.36.090. Prior: 1937 c 53 § 55; RRS § 6400–55; prior: 1925 c 24 § 1; RRS § 6303–1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.095 Establishment of continuing system for designation of highways—Signs. The department is hereby authorized to establish a continuing system for the designating of state highways and branches or portions thereof, heretofore established by the legislature of the state of Washington, to give designations to such state highways and branches, or portions thereof, in accord with that system, and to install signs in accord therewith on such state highways and branches, or portions thereof. The system may be changed from time to time and shall be extended to new state highways and branches, or portions thereof, as they are hereafter established by the legislature. [1984 c 7 § 196; 1967 ex.s. c 145 § 43; 1963 c 24 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Classification of highways: RCW 47.04.020.

47.36.097 Establishment of continuing system for designation of highways—Filing designations with secretary of state and county auditors. Designations or redesignations assigned under the system by the department pursuant to RCW 47.36.095 as each is made, shall be filed with the secretary of state and with the auditor of each county. Thereafter such highways

shall be so designated for all purposes. [1984 c 7 § 197; 1967 ex.s. c 145 § 46.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.100 Directional, caution, and stop signs. Directional signs showing distance and direction to points of importance may be placed at all crossings and intersections of primary and secondary state highways. The department may place such directional signs as it deems necessary upon any city streets designated by it as forming a part of the route of any primary or secondary state highway through any incorporated city or town. Caution and warning signs or signals shall be placed wherever practicable on all primary and secondary state highways in a manner provided by law. Stop signs shall be placed, erected, and maintained by the department as follows: Upon all county roads at the point of intersection with any arterial primary or secondary state highway; upon all primary and secondary state highways at the point of intersection with any county road that has been designated by the department as an arterial having preference over the traffic on the state highway; and upon at least one state highway at the intersection of two state highways. [1984 c 7 § 198; 1967 ex.s. c 145 § 38; 1961 c 13 § 47.36.100. Prior: 1947 c 206 § 1; 1937 c 53 § 56; Rem. Supp. 1947 § 6400-56.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.110 Stop signs, "Yield" signs—Duties of persons using highway. In order to provide safety at intersections on the state highway system, the department may require persons traveling upon any portion of such highway to stop before entering the intersection. For this purpose there may be erected a standard stop sign as prescribed in the state department of transportation's "Manual on Uniform Traffic Control Devices for Streets and Highways." All persons traveling upon the highway shall come to a complete stop at such a sign, and the appearance of any sign so located is sufficient warning to a person that he is required to stop. A person stopping at such a sign shall proceed through that portion of the highway in a careful manner and at a reasonable rate of speed not to exceed twenty miles per hour. It is unlawful to fail to comply with the directions of any such stop sign. When the findings of a traffic engineering study show that the condition of an intersection is such that vehicles may safely enter the major artery without stopping, the department or local authorities in their respective jurisdictions shall install and maintain a "Yield" sign. [1984 c 7 § 199; 1963 ex.s. c 3 § 49; 1961 c 13 § 47.36.110. Prior: 1955 c 146 § 6; 1937 c 53 § 59; RRS § 6400-59.]

Severability—1984 c 7: See note following RCW 47.01.141.

Arterial highways designated—Stopping on entering: RCW 46.61.195.

47.36.120 City limit signs. The department shall erect wherever it deems necessary upon state highways at or near their point of entrance into cities and towns, signs of the standard design designating the city or town

limits of the cities or towns. [1984 c 7 § 200; 1961 c 13 § 47.36.120. Prior: 1937 c 53 § 58; RRS § 6400-58.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.130 Meddling with signs prohibited. No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic control signal, traffic device or railroad sign or signal, or any inscription, shield, or insignia thereon, or any other part thereof. [1961 c 13 § 47.36.130. Prior: 1937 c 53 § 53; RRS § 6400-53.]

Imitation of signs: RCW 46.61.075.

Penalty for defacing, injuring, or destroying signs: RCW 46.61.080.

Structures concealing signs prohibited: RCW 46.61.075.

Unlawful erection of traffic devices: RCW 46.61.075.

47.36.180 Forbidden devices—Penalty. It is unlawful to erect or maintain at or near a city street, county road, or state highway any structure, sign, or device:

(1) Visible from a city street, county road, or state highway and simulating any directional, warning, or danger sign or light likely to be mistaken for such a sign or bearing any such words as "danger," "stop," "slow," "turn," or similar words, figures, or directions likely to be construed as giving warning to traffic;

(2) Visible from a city street, county road, or state highway and displaying any red, green, blue, or yellow light or intermittent or blinking light or rotating light identical or similar in size, shape, and color to that used on any emergency vehicle or road equipment or any light otherwise likely to be mistaken for a warning, danger, directional, or traffic control signal or sign;

(3) Visible from a city street, county road, or state highway and displaying any lights tending to blind persons operating vehicles upon the highway, city street, or county road, or any glaring light, or any light likely to be mistaken for a vehicle upon the highway or otherwise to be so mistaken as to constitute a danger; or

(4) Visible from a city street, county road, or state highway and flooding or intending to flood or directed across the roadway of the highway with a directed beam or diffused light, whether or not the flood light is shielded against directing its flood beam toward approaching traffic on the highway, city street, or county road.

Any structure or device erected or maintained contrary to the provisions of this section is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the owner thereof that it constitutes a public nuisance and must be removed, and if the owner fails to do so, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town may abate the nuisance.

If the owner fails to remove any such structure or device within fifteen days after being notified to remove the structure or device, he is guilty of a misdemeanor. [1984 c 7 § 201; 1961 c 13 § 47.36.180. Prior: 1957 c 204 § 1; 1937 c 53 § 62; RRS § 6400-62.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.200 Signs or flagmen at thoroughfare work sites. When construction, repair, or maintenance work is conducted on or adjacent to a public highway, county road, street, bridge, or other thoroughfare commonly traveled and when the work interferes with the normal and established mode of travel on the highway, county road, street, bridge, or thoroughfare, the location shall be properly posted by prominently displayed signs or flagmen or both. Signs used for posting in such an area shall be consistent with the provisions found in the state of Washington "Manual on Uniform Traffic Control Devices for Streets and Highways" obtainable from the department of transportation. [1984 c 7 § 202; 1961 c 13 § 47.36.200. Prior: 1957 c 95 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.210 Signs or flagmen at thoroughfare work sites—Compliance enjoined. Any contractor, firm, corporation, political subdivision, or other agency performing such work shall comply with RCW 47.36.200 through 47.36.230. [1961 c 13 § 47.36.210. Prior: 1957 c 95 § 2.]

47.36.220 Signs or flagmen at thoroughfare work sites—Drivers of vehicles engaged in work must obey signs or flagmen. Each driver of a motor vehicle used in connection with such construction, repair, or maintenance work shall obey traffic signs posted for, and flagman stationed at such location in the same manner and under the same restrictions as is required for the driver of any other vehicle. [1961 c 13 § 47.36.220. Prior: 1957 c 95 § 3.]

47.36.230 Signs or flagmen at thoroughfare work sites—Penalty. A violation of or a failure to comply with any provision of RCW 47.36.200 through 47.36.220 shall be a misdemeanor. Each day upon which there is a violation, or there is a failure to comply, shall constitute a separate violation. [1961 c 13 § 47.36.230. Prior: 1957 c 95 § 4.]

47.36.250 Dangerous road conditions requiring special tires, chains, or traction equipment—Signs or devices—Penalty. If the department or its delegate determines at any time for any part of the public highway system that the unsafe conditions of the roadway require particular tires, tire chains, or traction equipment in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of such equipment for all persons using such public highway:

(1) Dangerous road conditions, chains or other approved traction devices recommended.

(2) Dangerous road conditions, chains or other approved traction devices required.

(3) Dangerous road conditions, chains required.

Any equipment that may be required by this section shall be approved by the state patrol as authorized under RCW 46.37.420.

The department shall place and maintain signs and other traffic control devices on the public highways that indicate the tire, tire chain, or traction equipment recommendation or requirement determined under this section. Such signs or traffic control devices shall in no event prohibit the use of studded tires from November 1st to April 1st, but when the department determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to all types of tires including studded tires. The signs or traffic control devices may specify different recommendations or requirements for four wheel drive vehicles in gear.

Failure to obey a requirement indicated by a sign or other traffic control device placed or maintained under this section is a misdemeanor. [1987 c 330 § 747; 1984 c 7 § 203; 1975 1st ex.s. c 255 § 1; 1969 ex.s. c 7 § 2.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1984 c 7: See note following RCW 47.01.141.

Restrictions as to tire equipment, metal studs: RCW 46.37.420.

47.36.260 Signs indicating proper lane usage. The department shall erect signs on multilane highways indicating proper lane usage. [1986 c 93 § 6.]

Keep right except when passing, etc: RCW 46.61.100.

47.36.270 Regional shopping center directional signs. Regional shopping center directional signs shall be erected and maintained on state highway right of way if they meet each of the following criteria:

(1) There shall be at least five hundred thousand square feet of retail floor space available for lease at the regional shopping center;

(2) The regional shopping center shall contain at least three major department stores that are owned by a national or regional retail chain organization;

(3) The shopping center shall be located within one mile of the roadway;

(4) The center shall generate at least nine thousand daily one-way vehicle trips to the center;

(5) There is sufficient space available for installation of the directional sign as specified in the Manual On Uniform Traffic Control Devices;

(6) Supplemental follow-through directional signing is required at key decision points to direct motorists to the shopping center if it is not clearly visible from the point of exit from the main traveled way.

The department shall collect from the regional shopping center a reasonable fee based upon the cost of erection and maintenance of the directional sign. [1987 c 469 § 1.]

Chapter 47.38

ROADSIDE AREAS—SAFETY REST AREAS

Sections

47.38.010	Rules governing use and control of rest areas, historic sites, viewpoints, etc.
47.38.020	Limitations on use of rest areas.
47.38.030	Penalty.
47.38.040	Information centers.
47.38.050	Recreational vehicle sanitary disposal systems.

Acquisition of property for safety rest areas, buffers, viewpoints, historic sites: RCW 47.12.250.

47.38.010 Rules governing use and control of rest areas, historic sites, viewpoints, etc. Pursuant to chapter 34.05 RCW, the department shall adopt rules consistent with the safety of the traveling public to govern the use and control of rest areas and other areas as designated in RCW 47.12.250. Nothing herein may be construed as limiting the powers of the department as provided by law. [1984 c 7 § 204; 1967 ex.s. c 145 § 29.]

Severability—1984 c 7: See note following RCW 47.01.141.

Roadside areas—Safety rest areas, provisions of scenic and recreational highway act concerning: Chapter 47.39 RCW.

47.38.020 Limitations on use of rest areas. Except where specifically authorized by the department, it is unlawful for any person or persons to stop, stand, or park any vehicle, including but not limited to trailers, campers, and motorcycles, for more than eight hours, or for any person or persons to camp or to maintain a camp, tent, or other sleeping accommodation or facility, in any rest area or safety rest area within the limits of the right of way of interstate highways or other state highways or in other areas of state or interstate highways as designated in RCW 47.12.250. This section does not apply to disabled vehicles. [1984 c 7 § 205; 1967 ex.s. c 145 § 30.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.38.030 Penalty. Any person violating RCW 47.38.020 or any rule or regulation adopted or promulgated pursuant to RCW 47.38.020 above shall be guilty of a misdemeanor: *Provided*, That violation of a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [1979 ex.s. c 136 § 102; 1967 ex.s. c 145 § 31.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

47.38.040 Information centers. In order to provide information in the specific interest of the traveling public, the department may establish information centers at safety rest areas and permit maps, informational directories, and advertising pamphlets to be made available there for the purpose of informing the public of places of interest within the state and providing such other information as the department deems desirable. [1984 c 7 § 206; 1967 ex.s. c 145 § 32.]

(1989 Ed.)

Severability—1984 c 7: See note following RCW 47.01.141.

47.38.050 Recreational vehicle sanitary disposal systems. The department of transportation shall construct and maintain recreational vehicle sanitary disposal systems in the following rest areas lying along highways which are a part of the interstate highway system:

(1) Gee Creek rest area, northbound and southbound on Interstate 5 in Clark county;

(2) Sea-Tac rest area, northbound on Interstate 5 in King county;

(3) Silver Lake rest area, southbound on Interstate 5 in Snohomish county;

(4) Winchester Wasteway rest area, eastbound and westbound on Interstate 90 in Grant county;

(5) Sprague rest area, eastbound on Interstate 90 in Lincoln county; and

(6) Selah Creek rest area, northbound and southbound on Interstate 82 in Yakima county. [1980 c 60 § 1.]

Effective date—1980 c 60: "This act shall take effect July 1, 1980." [1980 c 60 § 4.]

Chapter 47.39

SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

Sections

47.39.010	System created—Standards.
47.39.020	Designation of portions of existing highways as part of system.
47.39.030	Development and maintenance of system by department of transportation and parks and recreation commission—Allocation of costs.
47.39.040	Planning and design standards to be established by department of community development.
47.39.050	Planning and design standards to be established by office of community affairs—Facilities and factors to be considered.
47.39.060	Designation of system on maps or other descriptive material.
47.39.900	Short title.
47.39.910	Severability—1967 ex.s. c 85.

47.39.010 System created—Standards. There is hereby created a scenic and recreational highway system. Highways in this system shall be developed and maintained in accordance with general standards for state highways of comparable classification and usage. [1967 ex.s. c 85 § 1.]

47.39.020 Designation of portions of existing highways as part of system. The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin;

(2) State route number 3, beginning at a junction with state route number 106 in the vicinity of Belfair,

thence in a northeasterly direction to a junction with Arsenal Way south of Bremerton; also

Beginning at a junction of Erlands Point Road north of Bremerton thence northeasterly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(4) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(5) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynooche river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at the Burlington Northern Railroad bridge approximately 3.4 miles west of Dixie, thence in a northerly and easterly direction by way of Dayton, Dodge, and Pomeroy to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(6) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence in an easterly direction by way of Stevenson to a westerly junction with state route number 97 in the vicinity of Maryhill; also

Beginning at the easterly junction with state route number 97 in the vicinity of Maryhill, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(7) State route number 17, beginning at a junction with state route number 395 in the vicinity of Eltopia, thence in a northwesterly direction to the south end of the overcrossing of state route number 90, in the vicinity of Moses Lake; also

Beginning at a junction with Grape Drive in the vicinity of Moses Lake, thence northwesterly and northerly by way of Soap Lake to a junction with state route number 2 west of Coulee City;

(8) State route number 20, beginning at the Keystone ferry slip on Whidbey Island, thence easterly and northerly to a junction with Rhododendron road in the vicinity east of Coupeville; also

Beginning at a junction with Sherman road in the vicinity west of Coupeville, generally northerly to a junction with Miller road in the vicinity southwest of Oak Harbor; also

Beginning at a junction with Torpedo road in the vicinity northeast of Oak Harbor, thence northerly by way of Deception Pass to a junction with state route number 20 north in the vicinity southeast of Anacortes; also

Beginning at the crossing of Hanson creek approximately 6.0 miles west of Lyman, thence easterly by way of Concrete, Marblemount, Diablo Dam, and Twisp to a junction with state route number 153 southeast of Twisp; also

Beginning at a junction with state route number 21 approximately three miles east of Republic, thence in an

easterly direction to a junction with state route number 395 at the west end of the crossing over the Columbia river at Kettle Falls; also

Beginning at a junction with a county road 2.76 miles east of the junction with state route number 395 in Colville, thence in a northeasterly direction to a junction with state route number 31 at Tiger; thence in a southerly direction to a junction with state route number 2 at Newport;

(9) State route number 21, beginning at the Keller ferry slip on the north side of Roosevelt lake, thence in a northerly direction to the crossing of Granite creek approximately fifty-four miles north of the Keller ferry;

(10) State route number 90, beginning at the CMSTPP railroad overcrossing approximately 2.3 miles southeast of North Bend, thence in an easterly direction by way of Snoqualmie pass to the crossing of the Cle Elum river approximately 2.6 miles west of Cle Elum;

(11) State route number 97, beginning at the crossing of the Columbia river at Biggs Rapids, thence in a northerly direction to the westerly junction with state route number 14 in the vicinity of Maryhill;

(12) State route number 101, beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the west boundary of the Olympic national park in the vicinity of Lake Crescent; also

Beginning at Sequim Bay state park, thence in a southeasterly and southerly direction to a junction with the Airport road north of Shelton; also

Beginning at a junction with state route number 3 south of Shelton, thence in a southerly and southeasterly direction to the west end of the Black Lake road overcrossing in the vicinity northeast of Tumwater;

(13) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the vicinity of Shine on Hood Canal; also

Beginning at a junction with state route number 3 east of the Hood Canal crossing, thence northeasterly to Port Gamble;

(14) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

(15) State route number 106, beginning at a junction with state route number 101 in the vicinity of Union, thence northeasterly to a junction with state route number 3 in the vicinity of Belfair;

(16) State route number 109, beginning at a junction with a county road approximately 3.0 miles northwest of the junction with state route number 101 in Hoquiam, thence in a northwesterly direction by way of Ocean City, Copalis, Pacific Beach, and Moclips to a junction with state route number 101 in the vicinity of Queets;

(17) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence

in an easterly direction to the vicinity of Laird's corner on state route number 101;

(18) State route number 126, beginning at a junction with state route number 12 in the vicinity of Dayton, thence in a northeasterly direction to a junction with state route number 12 in the vicinity west of Pomeroy;

(19) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

(20) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence in a northeasterly direction to the boundary of the federal reservation at the Grand Coulee dam; also

Beginning at a junction with a county road 2.07 miles north of the junction with 12th street in Elmer City, thence in a northwesterly direction to the west end of the crossing of Omak creek east of Omak;

(21) State route number 206, Mt. Spokane Park Drive, beginning at a junction with state route number 2 near the north line of section 3, township 26 N, range 43 E, thence northeasterly to a point in section 28, township 28 N, range 45 E at the entrance to Mt. Spokane state park;

(22) State route number 395, beginning at a point approximately 2.6 miles north of Pasco thence in a northerly direction to a junction with state route number 17 in the vicinity of Eltopia; also

Beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

(23) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

(24) State route number 504, beginning at a junction with state route number 5 in the vicinity north of Castle Rock, thence in an easterly direction by way of St. Helens and Spirit lake to Mt. St. Helens;

(25) State route number 525, beginning at a junction with Maxwellton road in the southern portion of Whidbey Island, thence northwesterly to a junction with state route number 20 east of the Keystone ferry slip;

(26) State route number 542, beginning at the Nugent crossing over the Nooksack river approximately 7.7 miles northeast of Bellingham, thence easterly to the vicinity of Austin pass in Whatcom county;

(27) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange. [1975 c 63 § 8; 1973 1st ex.s. c 151 § 10; 1971 ex.s. c 73 § 29; 1970 ex.s. c 51 § 177; 1969 ex.s. c 281 § 6; 1967 ex.s. c 85 § 2.]

47.39.030 Development and maintenance of system by department of transportation and parks and recreation commission—Allocation of costs. (1) The department shall pay from motor vehicle funds appropriated for

construction of state highways, the following costs of developing and constructing scenic and recreational highways: (a) Acquisition of the right of way necessary for state highway purposes; (b) construction of the portion of the highway designed primarily for motor vehicle travel; (c) exit and entrance roadways providing access to scenic observation points; (d) safety rest areas; (e) roadside landscaping within the portion of the highway right of way acquired by the department for state highway purposes; (f) the uniform signs and markers designating the various features and facilities of the scenic and recreational highways; and (g) any additional costs of constructing and developing the scenic and recreational highways, including property acquisition adjacent to highways as authorized by RCW 47.12.250, for which the department shall receive reimbursement from the federal government or any other source.

(2) The parks and recreation commission shall pay the costs of developing and constructing the scenic and recreational highways not provided for in subsection (1) of this section from any funds appropriated for such purposes.

(3) The costs of maintaining the scenic and recreational highway system shall be allocated between the department and the parks and recreation commission in the same manner that costs of developing and constructing such highways are allocated in subsections (1) and (2) of this section. [1984 c 7 § 207; 1967 ex.s. c 85 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

Safety rest areas: Chapter 47.38 RCW.

47.39.040 Planning and design standards to be established by department of community development. The establishment of planning and design standards for items provided for in RCW 47.39.050 shall be coordinated by the state department of community development. The department of transportation, parks and recreation commission, and any other departments or commissions whose interests are affected shall prepare, submit, and file with the state department of community development standards relating to the scenic and recreational highway system. If varying planning and design standards are filed, the state department of community development shall consult with the submitting agencies on the merits of the several proposals and, based upon such consultation, establish a set of standards. Pursuant to the planning and design standards so established, the department of transportation and the parks and recreation commission shall develop the highways and areas adjacent thereto to accomplish the purposes of this chapter, but the department shall retain exclusive authority over the highway right of way.

Responsibility for construction and maintenance is hereby established between the department and the parks and recreation commission with the department responsible for activities financed with funds provided for under RCW 47.39.030(1) and the parks and recreation commission responsible for activities financed from other sources of funds. By mutual consent, responsibility for development and/or maintenance may be transferred

between the two agencies. [1985 c 6 § 16; 1984 c 7 § 208; 1967 ex.s. c 85 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.
Department of community development: Chapter 43.63A RCW.

47.39.050 Planning and design standards to be established by office of community affairs—Facilities and factors to be considered. Planning and design standards established for highways falling within the scenic and recreational highways system may include, but shall not be limited to, provision for the following:

- (1) Hiking, bicycle, and bridle trails, including regulations for their use;
- (2) Campsites and shelters;
- (3) Boat launching sites;
- (4) Access trails to lakes, rivers and streams, and easements along their shores;
- (5) Safety rest areas;
- (6) Historic and geologic interpretative facilities;
- (7) Scenic observation facilities;
- (8) Roadside landscaping, restoration and aesthetic enhancement;
- (9) Specifically delineated highway corridors and means for the preservation of natural beauty, historic sites, or viewpoints;
- (10) A uniform system of signs and markers designating the various features and facilities of the scenic and recreational highway systems. [1967 ex.s. c 85 § 5.]

47.39.060 Designation of system on maps or other descriptive material. The department and the parks and recreation commission shall on any maps, or in any relevant descriptive material they may prepare at state expense, include reference to those portions of highways designated in RCW 47.39.020 by appropriate color or code designation. [1984 c 7 § 209; 1967 ex.s. c 85 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.39.900 Short title. RCW 47.39.010 through 47.39.910 shall constitute a new chapter in Title 47 RCW and shall be known and may be cited as the "Scenic and Recreational Highway Act of 1967." [1967 ex.s. c 85 § 7.]

47.39.910 Severability—1967 ex.s. c 85. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 85 § 8.]

Chapter 47.40 ROADSIDE IMPROVEMENT AND BEAUTIFICATION

Sections

47.40.010	Improvement and beautification a highway purpose.
47.40.020	Use of funds authorized.
47.40.030	Permit to private persons.
47.40.040	Application for permit, contents.
47.40.050	Survey—Report—Permit.
47.40.060	Agreement to maintain project.

47.40.070	Damaging project unlawful.
47.40.080	Penalty for destroying native flora on state lands, highways, parks.
47.40.090	Glass bottles and containers along highways—Collection and removal.

City streets, parkways, boulevards, etc.: Title 35 RCW.

State parks and recreation commission may plant trees along highway: RCW 43.51.040.

Withdrawal of public lands abutting highway: RCW 43.51.100.

47.40.010 Improvement and beautification a highway purpose. The planting and cultivating of any shrubs, trees, hedges or other domestic or native ornamental growth, the improvement of roadside facilities and view points, and the correction of unsightly conditions, upon the right of way of any state highway is hereby declared to be a proper state highway purpose. [1961 c 13 § 47.40.010. Prior: 1937 c 53 § 88; RRS § 6400–88.]

47.40.020 Use of funds authorized. Whenever funds are available for the planting or cultivation of any shrubs, trees, hedges, or other domestic or native ornamental growth, the improvement of roadside facilities and view points, the correction of unsightly conditions upon the right of way of any state highway, and for roadside development and beautification, the department is empowered to expend such funds, either independently or in conjunction with the funds of any county, political subdivision, or any person, firm, corporation, association, or organization. [1984 c 7 § 210; 1961 c 13 § 47.40.020. Prior: 1937 c 53 § 89; RRS § 6400–89.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.40.030 Permit to private persons. Any person, firm, corporation, association, or organization owning lands abutting upon any state highway and desiring to plant, cultivate, and grow any hedge, shade trees, or ornamental trees or shrubs along the right of way thereof, or to clear and cultivate a portion of the state highway right of way for the purpose of growing crops and destroying noxious weeds, or any person, firm, corporation, association, or organization interested in public improvement and desiring to improve and beautify any state highway right of way or any portion thereof by planting, cultivating, or growing any hedge or shade or ornamental trees or cultivate along or upon the right of way thereof, may upon application to the department, be granted a permit therefor as provided by law. [1984 c 7 § 211; 1961 c 13 § 47.40.030. Prior: 1937 c 53 § 90; RRS § 6400–90; prior: 1927 c 242 § 1; RRS § 6437–1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.40.040 Application for permit, contents. Each application for a permit to plant, cultivate and grow any hedge, shade or ornamental trees or shrubbery along or upon the right of way of any state highway or improve such right of way shall be in writing, signed by the applicant, and shall describe the state highway or portion thereof along or upon the right of way of which permit to plant, cultivate, grow or improve is sought, by name, number, or other reasonable description, and the lands bordering thereon by governmental subdivisions, and

shall state the names, places or residence and post office addresses of the applicant or applicants owning the land abutting upon such state highway or the name of the person, firm, corporation, association or organization applying for the permit and the names of its officers and their places of residence and their post office addresses, and shall state definitely the purpose for which the permit is sought, giving a description of the kind of hedge, or variety of shrubbery or trees desired to be planted or the kinds of crops to be grown, or improvement to be made, with a diagram illustrating the location and number of hedges, trees or shrubs or the area of cultivation desired or plans of the improvement proposed to be made. [1961 c 13 § 47.40.040. Prior: 1937 c 53 § 91; RRS § 6400-91; prior: 1927 c 242 § 2; RRS § 6437-2.]

47.40.050 Survey—Report—Permit. Upon the filing of such application, the department shall cause a survey of the state highway to be made with reference to the application and a report of the findings and recommendations as to the granting of the permit, and if it appears to the satisfaction of the department that the use of a portion of the state highway for the purpose set out in the application will not interfere with the use of the state highway for public travel and will beautify and improve the state highway, a permit may be granted and issued to the applicant to plant, cultivate, and grow any hedge, shade or ornamental trees, shrubbery, or crops, or make such improvement along or upon the right of way of such portion of the state highway as is definitely described in the permit, and to construct and maintain such temporary and substantial fence on and along the portion of the right of way of the state highway described in the permit as is specified in the permit. The permit shall specify the exact location of all hedges, shade or ornamental trees, or shrubbery to be planted and grown, or the area to be cultivated under the permit, or the area to be improved to which specified location the person, firm, corporation, association, or organization receiving the permit shall specifically conform. The department may in its discretion refuse to issue the permit, and any such permit that is granted is revocable at the will of the department and nothing in this title may be construed as in anywise affecting the title of the state to the lands included in the state highway, or the right to use the lands for state highway purposes, or to remove or destroy any of such hedges, trees, shrubbery, or crops for the purpose of construction, alteration, repair, improvement, or maintenance of the state highway, or for any other purpose and at any time. [1984 c 7 § 212; 1961 c 13 § 47.40.050. Prior: 1937 c 53 § 92; RRS § 6400-92; prior: 1927 c 242 § 3, part; RRS § 6437, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.40.060 Agreement to maintain project. If any such permit is granted, the department shall enter into an agreement with the person, firm, corporation, association, or organization agreeing that such roadside development or beautification shall be maintained and kept up by the state through the department or by the person, firm, corporation, association, or organization. If any

such person, firm, corporation, association, or organization so agreeing fails or neglects to maintain the roadside development or beautification, the department is empowered to do so, and the expense thereof shall be a charge against the person, firm, corporation, association, or organization. [1984 c 7 § 213; 1961 c 13 § 47.40.060. Prior: 1937 c 53 § 93; RRS § 6400-93; prior: 1927 c 242 § 3, part; RRS § 6437-3, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.40.070 Damaging project unlawful. It is unlawful for any person to injure, destroy, or remove any hedge, shade or ornamental trees, shrubbery, or crops, planted, cultivated, and grown or improvement made upon or along any portion of any state highway under permit from the department or otherwise, or to injure, destroy, or remove any fence erected under any such permit or otherwise. However, nothing in this section may be construed to prevent any person with the department to do so or the officers of the state charged with the duty of constructing and maintaining any such state highway, from removing any hedges, trees, shrubbery, or crops planted or improvements or fences built under permit, where in their judgment they interfere with or are detrimental to, the use of the state highway for public travel, or such removal is necessary for the construction, alteration, repair, improvement, or maintenance of the state highway. [1984 c 7 § 214; 1961 c 13 § 47.40.070. Prior: 1937 c 53 § 94; RRS § 6400-94; prior: 1927 c 242 § 4; RRS § 6437-4.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.40.080 Penalty for destroying native flora on state lands, highways, parks. Any person who shall break or cut from any lands owned by the state of Washington or shall cut down, remove, destroy or uproot any rhododendron, evergreen, huckleberry, native dogwood or any other native tree, shrub, fern, herb, bulb or wild plants, or any part thereof, within three hundred feet of the center line of any state or county road, or who shall cut down, remove or destroy any flowering or ornamental tree or shrub, or any native flowering plant, fern, herb or bulb, either perennial or annual, situate, growing or being on any public street or highway, state or city park, in the state of Washington, unless such person be engaged in the work of constructing or repairing such highway or street under authority and direction of the legally constituted public officials being charged by law with the duty of constructing or repairing such highways or streets, state or city parks, shall be guilty of a misdemeanor. [1961 c 13 § 47.40.080. Prior: 1933 c 133 § 1; 1925 ex.s. c 59 § 1; RRS § 2787-1.]

47.40.090 Glass bottles and containers along highways—Collection and removal. The department and any other governmental subdivision shall, with the staff, equipment, and material under their control, or by contract with others, take all necessary actions to collect and remove any or all glass bottles or glass containers along the right of way of any public road or public highway. [1984 c 7 § 215; 1969 ex.s. c 281 § 48.]

Severability—1984 c 7: See note following RCW 47.01.141.
Deposit of unwholesome substance: RCW 9.66.050.
Removal of glass after accident: RCW 46.61.645.
Throwing glass on highway: RCW 70.93.060, 46.61.645.

Chapter 47.41

JUNKYARDS ADJACENT TO INTERSTATE AND PRIMARY HIGHWAYS

Sections

47.41.010	Legislative declaration—Purpose.
47.41.020	Definitions.
47.41.030	Junkyards adjacent to highways prohibited— Exceptions.
47.41.040	Screening feasibility determination—Notice—Ac- quisition of property by department—Screening or removal of junkyard.
47.41.050	Administrative rules—Review of action.
47.41.060	Other laws not affected.
47.41.070	Violations—Penalty—Abatement as public nuisance.
47.41.080	Agreements with United States secretary of transportation.
47.41.900	Severability—1971 ex.s. c 101.

Motor vehicle wreckers: Chapter 46.80 RCW.

47.41.010 Legislative declaration—Purpose. For the purpose of promoting the public safety, health, welfare, convenience, and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and federal-aid primary systems within this state. The legislature hereby finds and declares that junkyards which do not conform to the requirements of this chapter are public nuisances. [1971 ex.s. c 101 § 1.]

47.41.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(2) "Automobile graveyard" means any establishment or place of business that is maintained, used, or operated by storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(3) "Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard, and the term includes garbage dumps and sanitary fills.

(4) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated or as may

hereafter be so designated by the department and approved by the United States secretary of transportation under Title 23 United States Code.

(5) "Federal-aid primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the department and approved by the United States secretary of transportation as the federal-aid primary system pursuant to the provisions of Title 23 United States Code.

(6) "Department" means the Washington state department of transportation. [1984 c 7 § 216; 1971 ex.s. c 101 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.030 Junkyards adjacent to highways prohibited—Exceptions. No person may establish, operate, or maintain a junkyard any portion of which is within one thousand feet of the nearest edge of the right of way of any interstate or federal-aid primary highway, except the following:

(1) Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the system or otherwise removed from sight;

(2) Those located within areas which are zoned for industrial use under authority of law;

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by rules adopted by the department and approved by the United States secretary of transportation; and

(4) Those which are not visible from the main-traveled way of the system. [1984 c 7 § 217; 1971 ex.s. c 101 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.040 Screening feasibility determination—Notice—Acquisition of property by department—Screening or removal of junkyard. Before July 1, 1971, the department shall determine whether or not the topography of the land adjoining the highway will permit adequate screening of any junkyard lawfully in existence located outside of a zoned industrial area or an unzoned industrial area as defined under RCW 47.41.030 on August 9, 1971, that is within one thousand feet of the nearest edge of the right of way and visible from the main traveled way of any highway on the interstate and primary system and whether screening of the junkyard would be economically feasible. Within thirty days thereafter the department shall notify by certified mail the record owner of the land upon which the junkyard is located, or the operator thereof, of its determination.

If it is economically feasible to screen the junkyard, the department shall screen the junkyard so that it will not be visible from the main-traveled way of the highway. The department is authorized to acquire by gift, purchase, exchange, or condemnation such lands or interest in lands as may be required for these purposes.

If it is not economically feasible to screen the junkyard, the department shall acquire by purchase, gift, or

condemnation an interest in the real property used for junkyard purposes that is visible from the main traveled way of the highway, restricting any owner of the remaining interest to use of the real estate for purposes other than a junkyard. In addition to compensation for the real property interest, the operator of a junkyard shall receive the actual reasonable expenses in moving his business personal property to a location within the same general area where a junkyard may be lawfully established, operated, and maintained. This section shall be interpreted as being in addition to all other rights and remedies of a junkyard owner or operator and shall not be interpreted as a limitation on or alteration of the law of compensation in eminent domain. [1984 c 7 § 218; 1971 ex.s. c 101 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.050 Administrative rules—Review of action. The department shall adopt rules for the administration of this chapter consistent with the policy of this chapter and the national policy set forth in 23 U.S.C. Sec. 136, and the regulations promulgated thereunder by the United States secretary of transportation. Proceedings for review of any action taken by the department pursuant to this chapter shall be instituted by filing a petition only in the superior court of Thurston county. [1984 c 7 § 219; 1971 ex.s. c 101 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.060 Other laws not affected. Nothing in this chapter shall be construed to permit a person to maintain any junkyard that is otherwise prohibited by statute or by the resolution or ordinance of any county, city, or town, nor to abrogate or affect the lawful provisions of any statute, ordinance, regulation, or resolution which are more restrictive than the provisions of this chapter. [1971 ex.s. c 101 § 6.]

47.41.070 Violations—Penalty—Abatement as public nuisance. If the owner of the land upon which any such junkyard is located, or the operator thereof, as the case may be, fails to comply with the notice or remove any such junk within the time provided in this chapter after being so notified, he is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling compliance with this chapter. Each day the junkyard is maintained in a manner so as not to comply with this chapter constitutes a separate offense.

If the operator of the junkyard or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the property upon which it is located with a notice that the junkyard constitutes a public nuisance and that the junk thereon must be removed as provided in this chapter. If the notice is not complied with, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and remove the junk, and

for that purpose may enter upon private property without incurring liability for doing so. [1984 c 7 § 220; 1971 ex.s. c 101 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.080 Agreements with United States secretary of transportation. The department is authorized to enter into agreements with the United States secretary of transportation as provided in Title 23 United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and to take action in the name of the state to comply with the terms of the agreement. [1984 c 7 § 221; 1971 ex.s. c 101 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.900 Severability—1971 ex.s. c 101. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 101 § 9.]

Chapter 47.42

HIGHWAY ADVERTISING CONTROL ACT—
SCENIC VISTAS ACT

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47.42.920	Federal requirements—Conflict and accord.

47.42.010 Declaration of purpose. The control of signs in areas adjacent to state highways of this state is hereby declared to be necessary to promote the public health, safety, welfare, convenience and enjoyment of public travel, to protect the public investment in the interstate system and other state highways, and to attract visitors to this state by conserving the natural beauty of areas adjacent to the interstate system, and of scenic areas adjacent to state highways upon which they travel in great numbers, and to insure that information in the specific interest of the traveling public is presented safely and effectively. [1961 c 96 § 1.]

47.42.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Department" means the Washington state department of transportation.

(2) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(3) "Interstate system" means any state highway which is or does become part of the national system of interstate and defense highways as described in section 103(d) of title 23, United States Code.

(4) "Maintain" means to allow to exist.

(5) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual or individuals.

(6) "Primary system" means any state highway which is or does become part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(7) "Scenic system" means (a) any state highway within any public park, federal forest area, public beach, public recreation area, or national monument, (b) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic system, or (c) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025.

(8) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing that is designed, intended, or used

to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway.

(9) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code, or if unzoned by a county or municipal code, that area occupied by three or more separate and distinct commercial or industrial activities, or any combination thereof, within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, or storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which the activities are located. Measurements shall be along or parallel to the edge of the main traveled way of the highway. The following shall not be considered commercial or industrial activities:

(a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;

(b) Transient or temporary activities;

(c) Railroad tracks and minor sidings;

(d) Signs;

(e) Activities more than six hundred and sixty feet from the nearest edge of the right of way;

(f) Activities conducted in a building principally used as a residence.

If any commercial or industrial activity that has been used in defining or delineating an unzoned area ceases to operate for a period of six continuous months, any signs located within the former unzoned area become nonconforming and shall not be maintained by any person.

(10) "Specific information panel" means a panel, rectangular in shape, located in the same manner as other official traffic signs readable from the main traveled ways, and consisting of:

(a) The words "GAS," "FOOD," or "LODGING" and directional information; and

(b) One or more individual business signs mounted on the panel.

(11) "Business sign" means a separately attached sign mounted on the specific information panel or roadside area information panel to show the brand or trademark and name, or both, of the motorist service available on the crossroad at or near the interchange. Nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants, and motels shall be used when applicable. The brand or trademark identification symbol used on the business sign shall be reproduced with the colors and general shape consistent with customary use. Any messages, trademarks, or brand symbols which interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal, or device are prohibited.

(12) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest

area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(13) "Tourist-oriented directional sign" means a sign on a specific information panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.

(14) "Qualified tourist-oriented business" means any lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

(15) "Temporary agricultural directional sign" means a sign on private property adjacent to state highway right of way to provide directional information to places of business offering for sale seasonal agricultural products on the property where the sale is taking place. [1987 c 469 § 2; 1985 c 376 § 2; 1984 c 7 § 222; 1977 ex.s. c 258 § 1; 1974 ex.s. c 80 § 1; 1971 ex.s. c 62 § 1; 1961 c 96 § 2.]

Legislative intent—1985 c 376: "It is the intent of the legislature that state highway information and directional signs provide appropriate guidance to all motorists traveling throughout the state. Such guidance should include the identity, location, and types of recreational, cultural, educational, entertainment, or unique or unusual commercial activities whose principle source of visitation is derived from motorists not residing in the immediate locale of the activity. Such informational and directional signs shall comply with Title 23, United States Code and the rules adopted by the department under RCW 47.42.060." [1985 c 376 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.025 Exclusions from scenic system. The following sections of the scenic and recreational highway system are excluded from the scenic system as defined in subsection (7) of RCW 47.42.020:

(1) Beginning on state route number 101 at the junction with Airport Road north of Shelton, thence north to a point two thousand feet north of Airport Road.

(2) Beginning on state route number 101 at the junction with Mill Creek Road south of Forks, thence north two and four-tenths miles to the Calawah River bridge.

(3) Beginning on state route number 105 at a point one-half mile southwest of the boundary of Aberdeen, thence northeast to the boundary of Aberdeen.

(4) Beginning on state route number 17 at a point nine-tenths of a mile west of Grape Drive in the vicinity of Moses Lake, thence easterly to a junction of Grape Drive.

(5) Beginning on state route number 12 at a point one-half mile south of the south boundary of Dayton, thence northerly to the south boundary of Dayton.

(6) Beginning on state route number 14 one-half mile west of the west boundary of Bingen, thence east to a point one-half mile east of the east boundary of Bingen. [1971 ex.s. c 62 § 2.]

47.42.030 Signs visible from interstate, primary, or scenic systems restricted. Except as permitted under this chapter, no person shall erect or maintain a sign which is

visible from the main traveled way of the interstate system, the primary system, or the scenic system. In case a highway or a section of highway is both a part of the primary system and the scenic system, only those signs permitted along the scenic system shall be erected or maintained. [1971 ex.s. c 62 § 3; 1961 c 96 § 3.]

47.42.040 Permissible signs classified. It is declared to be the policy of the state that no signs which are visible from the main traveled way of the interstate system, primary system, or scenic system shall be erected or maintained except the following types:

(1) Directional or other official signs or notices that are required or authorized by law;

(2) Signs advertising the sale or lease of the property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, and the national standards promulgated thereunder by the secretary of commerce or the secretary of transportation, advertising activities being conducted at a location within twelve miles of the point at which such signs are located: *Provided*, That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;

(5) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, and the regulations promulgated thereunder by the secretary of commerce or the secretary of transportation, designed to give information in the specific interest of the traveling public: *Provided*, That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;

(6) Signs lawfully in existence on October 22, 1965, determined by the commission, subject to the approval of the United States secretary of transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of chapter 47.42 RCW;

(7) Public service signs, located on school bus stop shelters, which:

(a) Identify the donor, sponsor, or contributor of said shelters;

(b) Contain safety slogans or messages which occupy not less than sixty percent of the area of the sign;

(c) Contain no other message;

(d) Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the

city, county, or state agency controlling the highway involved; and

(e) Do not exceed thirty-two square feet in area. Not more than one sign on each shelter may face in any one direction.

Subsection (7) of this section notwithstanding, the department of transportation shall adopt regulations relating to the appearance of school bus shelters, the placement, size, and public service content of public service signs located thereon, and the prominence of the identification of the donors, sponsors, or contributors of the shelters.

(8) Temporary agricultural directional signs, with the following restrictions:

(a) Signs shall be posted only during the period of time the seasonal agricultural product is being sold;

(b) Signs shall not be placed adjacent to the interstate highway system unless the sign qualifies as an on-premise sign;

(c) Signs shall not be placed within an incorporated city or town;

(d) Premises on which the seasonal agricultural products are sold must be within fifteen miles of the state highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway;

(e) Signs must be located so as not to restrict sight distances on approaches to intersections;

(f) The department shall establish a permit system and fee schedule and rules for the manufacturing, installation, and maintenance of these signs in accordance with the policy of this chapter;

(g) Signs in violation of these provisions shall be removed in accordance with the procedures in RCW 47.42.080.

Only signs of types 1, 2, 3, 7, and 8 may be erected or maintained within view of the scenic system. Signs of types 7 and 8 may also be erected or maintained within view of the federal aid primary system. [1985 c 376 § 3; 1979 c 69 § 1; 1975 1st ex.s. c 271 § 1; 1971 ex.s. c 62 § 4; 1961 c 96 § 4.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.42.045 Number of signs—Spacing—Tourist facility, business or agricultural signs. (1) Not more than one type 3 sign visible to traffic proceeding in any one direction on an interstate system, primary system outside an incorporated city or town or commercial or industrial area, or scenic system highway may be permitted more than fifty feet from the advertised activity;

(2) A type 3 sign, other than one along any portion of the primary system within an incorporated city or town or within any commercial or industrial area, permitted more than fifty feet from the advertised activity pursuant to subsection (1) of this section shall not be erected or maintained a greater distance from the advertised activity than one of the following options selected by the owner of the business being advertised:

(a) One hundred fifty feet measured along the edge of the protected highway from the main entrance to the activity advertised (when applicable);

(b) One hundred fifty feet from the main building of the advertised activity; or

(c) Fifty feet from a regularly used parking lot maintained by and contiguous to the advertised activity.

(3) In addition to signs permitted by subsections (1) and (2) of this section, the commission may adopt regulations permitting one type 3 sign visible to traffic proceeding in any one direction on an interstate, primary or scenic system highway on premises which, on June 25, 1976, are used wholly or in part as an operating business, farm, ranch or orchard which sign bears only the name of the business, farm, ranch or orchard and a directional arrow or short directional message. Regulations adopted under this subsection shall prohibit the erection or maintenance of such type 3 signs on narrow strips of land a substantial distance from but connected with a business, farm, ranch or orchard. Signs permitted under this subsection shall not exceed fifty square feet in area.

(4) The commission with advice from the parks and recreation commission shall adopt specifications for a uniform system of official tourist facility directional signs to be used on the scenic system highways. Official directional signs shall be posted by the commission to inform motorists of types of tourist and recreational facilities available off the scenic system which are accessible by way of public or private roads intersecting scenic system highways. [1975-'76 2nd ex.s. c 55 § 2; 1974 ex.s. c 154 § 1; 1974 ex.s. c 138 § 1; 1971 ex.s. c 62 § 5.]

47.42.046 Specific information panels—Interstate right of way—"Gas," "Food," or "Lodging"—Directional information—Individual business signs. The department is authorized to erect and maintain specific information panels within the right of way of the interstate highway system to give the traveling public specific information as to gas, food, or lodging available on a crossroad at or near an interchange. Specific information panels shall include the words "GAS," "FOOD," or "LODGING" and directional information and may contain one or more individual business signs maintained on the panel. Specific information panels are authorized within the corporate limits of cities and towns and areas zoned for commercial or industrial uses at locations where there is adequate distance between interchanges to ensure compliance with the provisions of Title 23 C.F.R. sec. 655.307(a). The erection and maintenance of specific information panels shall conform to the national standards promulgated by the United States secretary of transportation pursuant to sections 131 and 315 of Title 23, United States Code and rules adopted by the state department of transportation. A motorist service business located within one mile of a state highway shall not be permitted to display its name, brand, or trademark on a specific information panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building. The department shall

charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance. The restriction for on-premise signs shall not apply if the sign is not visible from the highway. The department may, on a case-by-case basis, waive the height restriction when an on-premise sign is visible from the rural interstate system. [1987 c 469 § 3; 1986 c 114 § 1; 1985 c 142 § 1; 1984 c 7 § 223; 1974 ex.s. c 80 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.047 Specific information panels, tourist-oriented directional signs—Primary and scenic systems right of way—"Gas," "Food," "Recreation," "Lodging"—Directional information—Individual business signs. The department is authorized to erect and maintain specific information panels within the right of way of both the primary system and the scenic system to give the traveling public specific information as to gas, food, recreation, or lodging available off the primary or scenic highway accessible by way of highways intersecting the primary or scenic highway. Such specific information panels and tourist-oriented directional signs shall be permitted only at locations within the corporate limits of cities and towns and areas zoned for commercial or industrial uses where there is adequate distance between interchanges to ensure compliance with the provisions of Title 23 C.F.R. secs. 655.308(a) and 655.309(a). Specific information panels shall include the words "GAS," "FOOD," "RECREATION," or "LODGING" and directional information and may contain one or more individual business signs maintained on the panel. The erection and maintenance of specific information panels along primary or scenic highways shall conform to the national standards promulgated by the United States secretary of transportation pursuant to sections 131 and 315 of Title 23 United States Code and rules adopted by the state department of transportation including the manual on uniform traffic control devices for streets and highways. A motorist service business located within one mile of a state highway shall not be permitted to display its name, brand, or trademark on a specific information panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building.

The department shall adopt rules for the erection and maintenance of tourist-oriented directional signs with the following restrictions:

(1) Where installed, they shall be placed in advance of the "GAS," "FOOD," "RECREATION," or "LODGING" specific information panels previously described in this section;

(2) Signs shall not be placed to direct a motorist to an activity visible from the main traveled roadway;

(3) Premises on which the qualified tourist-oriented business is located must be within fifteen miles of the state highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway.

The department shall charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance. [1986 c 114 § 2; 1985 c 376 § 4; 1985 c 142 § 2; 1984 c 7 § 224; 1974 ex.s. c 80 § 4.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.0475 Specific information panels—Maximum signs and distances. (1) Not more than six business signs may be permitted on specific information panels authorized by RCW 47.42.046 and 47.42.047.

(2) The maximum distance that eligible service facilities may be located on either side of an interchange or intersection to qualify for a business sign are as follows:

(a) On fully-controlled, limited access highways, gas, food, or lodging activities shall be located within three miles. Camping activities shall be within five miles.

(b) On highways with partial access control or no access control, gas, food, lodging, or camping activities shall be located within five miles.

(3) If no eligible services are located within the distance limits prescribed in subsection (2) of this section, the distance limits shall be increased until an eligible service of a type being considered is reached, up to a maximum of fifteen miles. [1985 c 142 § 3.]

47.42.048 Signs prohibited by statute, resolution, or ordinance. Nothing in this chapter shall be construed to permit a person to erect or maintain a sign that is otherwise prohibited by statute or by the resolution or ordinance of any county, city or town of the state of Washington. [1974 ex.s. c 80 § 3.]

47.42.050 Information signs by governmental units. Information signs may be erected and maintained by the state, any county, city, or town. [1961 c 96 § 5.]

47.42.052 Supplemental directional signs—Erection by local governments. (1) The legislative authority of any county, city, or town may erect, or permit the erection of, supplemental directional signs directing motorists to motorist service businesses qualified for specific information panels pursuant to RCW 47.42.047 in any location on, or adjacent to, the right of way of any roads or streets within their jurisdiction.

(2) Appropriate fees may be charged to cover the cost of issuing permits, installation, or maintenance of such signs.

(3) Supplemental signs and their locations shall comply with all applicable provisions of this chapter, sections 131 and 315 of Title 23 United States Code, and such rules as may be adopted by the department including the manual on uniform traffic control devices for streets and highways. [1986 c 114 § 3.]

47.42.055 Roadside area information panels or displays. The department is authorized to erect roadside area information panels or displays adjacent to the state highway system within this state. The department may

contract with private persons for the erection and operation of the information panels or displays. Compensation to the contractors shall be derived solely from the reasonable fees that the contractors will be permitted to charge participating businesses for making and exhibiting business signs and displays and for rendering services to tourists. [1985 c 376 § 5; 1984 c 7 § 225; 1977 ex.s. c 258 § 2.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.060 Rules for signs visible from interstate and scenic systems—Judicial review. The department shall adopt rules for the erection and maintenance of signs that are visible from the main traveled way of the interstate system and the scenic system and that are permitted by this chapter and other rules for the administration of this chapter consistent with the policy of this chapter and the national policy set forth in section 131, title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342 and the regulations promulgated thereunder by the secretary of commerce or the secretary of transportation. Proceedings for review of any action taken by the department pursuant to this chapter shall be instituted by filing a petition only in the superior court of Thurston county. [1984 c 7 § 226; 1971 ex.s. c 62 § 6; 1961 c 96 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.062 Signs visible from primary system in commercial and industrial areas—Requirements, restrictions, and prohibitions. Signs within six hundred and sixty feet of the nearest edge of the right of way which are visible from the main traveled way of the primary system within commercial and industrial areas and whose size, lighting, and spacing are consistent with the customary use of property for the effective display of outdoor advertising as set forth in this section may be erected and maintained: *Provided*, That this section shall not serve to restrict type 3 signs located along any portion of the primary system within an incorporated city or town or within any commercial or industrial area.

(1) General: Signs shall not be erected or maintained which (a) imitate or resemble any official traffic sign, signal, or device; (b) are erected or maintained upon trees or painted or drawn upon rocks or other natural features and which are structurally unsafe or in disrepair; or (c) have any visible moving parts.

(2) Size of signs:

(a) The maximum area for any one sign shall be six hundred seventy-two square feet with a maximum height of twenty-five feet and maximum length of fifty feet inclusive of any border and trim but excluding the base or apron, supports and other structural members: *Provided*, That cut-outs and extensions may add up to twenty percent of additional sign area.

(b) For the purposes of this subsection, double-faced, back-to-back, or V-type signs shall be considered as two signs.

(c) Signs which exceed three hundred twenty-five square feet in area may not be double-faced (abutting and facing the same direction).

(3) Spacing of signs:

(a) Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.

(b) On limited access highways established pursuant to chapter 47.52 RCW no two signs shall be spaced less than one thousand feet apart, and no sign may be located within three thousand feet of the center of an interchange, a safety rest area, or information center, or within one thousand feet of an intersection at grade. Double-faced signs shall be prohibited. Not more than a total of five sign structures shall be permitted on both sides of the highway per mile.

(c) On noncontrolled access highways inside the boundaries of incorporated cities and towns not more than a total of four sign structures on both sides of the highway within a space of six hundred sixty feet shall be permitted with a minimum of one hundred feet between sign structures. In no event, however, shall more than four sign structures be permitted between platted intersecting streets or highways. On noncontrolled access highways outside the boundaries of incorporated cities and towns minimum spacing between sign structures on each side of the highway shall be five hundred feet.

(d) For the purposes of this subsection, a back-to-back sign and a V-type sign shall be considered one sign structure.

(e) Official signs, and signs advertising activities conducted on the property on which they are located shall not be considered in determining compliance with the above spacing requirements. The minimum space between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply to signs located on the same side of the highway.

(4) Lighting: Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the state.

[1975 1st ex.s. c 271 § 3; 1974 ex.s. c 154 § 2; 1974 ex.s. c 138 § 2; 1971 ex.s. c 62 § 7.]

47.42.063 Signs visible from primary system in commercial and industrial areas—Preexisting signs—Permissible signs—Spacing. (1) Signs within six hundred and sixty feet of the nearest edge of the right of way lawfully erected and maintained which are visible from the main traveled way of the primary system within commercial and industrial areas on June 1, 1971 shall be permitted to remain and be maintained.

(2) Signs within six hundred and sixty feet of the nearest edge of the right of way which are visible from the main traveled way of the primary system within commercial and industrial areas whose size, lighting, and spacing are consistent with customary use as set forth in RCW 47.42.062 may be erected and maintained. Signs lawfully erected and maintained on June 1, 1971 shall be included in the determination of spacing requirements for additional signs. [1975 1st ex.s. c 271 § 4; 1971 ex.s. c 62 § 8.]

47.42.065 Signs viewable from other highways or streets—Requirements. Notwithstanding any other provision of chapter 47.42 RCW, signs may be erected and maintained more than six hundred and sixty feet from the nearest edge of the right of way which are visible from the main traveled way of the interstate system, primary system, or scenic system when designed and oriented to be viewed from highways or streets other than the interstate system, primary system, or the scenic system and the advertising or informative contents of which may not be clearly comprehended by motorists using the main traveled way of the interstate system, primary system or scenic system. [1975 1st ex.s. c 271 § 5; 1971 ex.s. c 62 § 9.]

47.42.070 State and local prohibitions. Nothing in this chapter shall be construed to permit a person to erect or maintain any sign that is otherwise prohibited by statute or by the resolution or ordinance of any county, city, or town of the state of Washington. [1961 c 96 § 7.]

47.42.080 Public nuisance—Abatement—Penalty. (1) Any sign erected or maintained contrary to the provisions of this chapter or rules adopted hereunder that is designed to be viewed from the interstate system, the primary system, or the scenic system is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the permittee or, if there is no permittee, the owner of the property on which the sign is located, by certified mail at his last known address, that it constitutes a public nuisance and must comply with the chapter or be removed.

(2) If the permittee or owner, as the case may be, fails to comply with the chapter or remove any such sign within fifteen days after being notified to remove the sign he is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may

be entered compelling removal of the sign. Each day the sign is maintained constitutes a separate offense.

(3) If the permittee or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the sign and property upon which it is located with a notice that the sign constitutes a public nuisance and must be removed. If the sign is not removed within fifteen days after such posting, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and destroy the sign, and for that purpose may enter upon private property without incurring liability for doing so.

(4) Nothing in this section may be construed to affect the provisions contained in RCW 47.42.102 requiring the payment of compensation upon the removal of any signs compensable under state law.

(5) Any sign erected or maintained on state highway right of way contrary to this chapter or rules adopted under it is a public nuisance, and the department is authorized to remove any such sign without notice. [1985 c 376 § 6; 1984 c 7 § 227; 1975-'76 2nd ex.s. c 55 § 1; 1971 ex.s. c 62 § 10; 1961 c 96 § 8.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.090 Revocation of permit. If any person is convicted of a violation of this chapter, or any rule adopted hereunder, the department may revoke any permit issued to that person under this chapter. [1984 c 7 § 228; 1961 c 96 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.100 Preexisting signs—Moratorium. (1) No sign lawfully erected in a protected area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to March 11, 1961, within a commercial or industrial zone within the boundaries of any city or town, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control but which does not comply with the provisions of this chapter or any regulations promulgated hereunder, shall be maintained by any person after March 11, 1965.

(2) No sign lawfully erected in a protected area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to March 11, 1961, other than within a commercial or industrial zone within the boundaries of a city or town as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control but which does not comply with the provisions of this chapter or any regulations promulgated hereunder, shall be maintained by any person after three years from March 11, 1961.

(3) No sign lawfully erected in a scenic area as defined by section 2, chapter 96, Laws of 1961 (before the

amendment thereof), prior to the effective date of the designation of such area as a scenic area shall be maintained by any person after three years from the effective date of the designation of any such area as a scenic area.

(4) No sign visible from the main traveled way of the interstate system, the primary system (other than type 3 signs along any portion of the primary system within an incorporated city or town or within a commercial or industrial area), or the scenic system which was there lawfully maintained immediately prior to May 10, 1971, but which does not comply with the provisions of chapter 47.42 RCW as now or hereafter amended, shall be maintained by any person (a) after three years from May 10, 1971, or (b) with respect to any highway hereafter designated by the legislature as a part of the scenic system, after three years from the effective date of the designation. [1974 ex.s. c 154 § 3; 1974 ex.s. c 138 § 3; 1971 ex.s. c 62 § 11; 1963 ex.s. c 3 § 55; 1961 c 96 § 10.]

47.42.102 Compensation for removal of signs—Authorized—Applicability. (1) Except as otherwise provided in subsection (3) of this section, just compensation shall be paid upon the removal of any sign (pursuant to the provisions of chapter 47.42 RCW), lawfully erected under state law, which is visible from the main traveled way of the interstate system or the primary system.

(2) Such compensation shall be paid for the following:

(a) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(3) In no event, however, shall compensation be paid for the taking or removal of signs adjacent to the interstate system and the scenic system which became subject to removal pursuant to chapter 96, Laws of 1961 as amended by section 55, chapter 3, Laws of 1963 ex. sess. prior to May 10, 1971. [1975 1st ex.s. c 271 § 2; 1971 ex.s. c 62 § 12.]

47.42.103 Compensation for removal—Action determining amount—Payment—State's share. (1) Compensation as required by RCW 47.42.102 shall be paid to the person or persons entitled thereto for the removal of such signs. If no agreement is reached on the amount of compensation to be paid, the department may institute an action by summons and complaint in the superior court for the county in which the sign is located to obtain a determination of the compensation to be paid. If the owner of the sign is unknown and cannot be ascertained after diligent efforts to do so, the department may remove the sign upon the payment of compensation only to the owner of the real property on which the sign is located. Thereafter the owner of the sign may file an action at any time within one year after the removal of the sign to obtain a determination of the amount of compensation he should receive for the loss of the sign.

If either the owner of the sign or the owner of the real property on which the sign is located cannot be found within the state, service of the summons and complaint on such person for the purpose of obtaining a determination of the amount of compensation to be paid may be by publication in the manner provided by RCW 4.28.100.

(2) If compensation is determined by judicial proceedings, the sum so determined shall be paid into the registry of the court to be disbursed upon removal of the sign by its owner or by the owner of the real property on which the sign is located. If the amount of compensation is agreed upon, the department may pay the agreed sum into escrow to be released upon the removal of the sign by its owner or the owner of the real property on which the sign is located.

(3) The state's share of compensation shall be paid from the motor vehicle fund, or if a court having jurisdiction enters a final judgment declaring that motor vehicle funds may not be used, then from the general fund. [1984 c 7 § 229; 1971 ex.s. c 62 § 13.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.104 Compensation for removal—Federal share—Acceptance. The department may accept any allotment of funds by the United States, or any agency thereof, appropriated to carry out the purposes of section 131 of title 23, United States Code, as now or hereafter amended. The department shall take such steps as may be necessary from time to time to obtain from the United States, or the appropriate agency thereof, funds allotted and appropriated, pursuant to section 131, for the purpose of paying the federal share of the just compensation to be paid to sign owners and owners of real property under the terms of subsection (g) of section 131 and RCW 47.42.102, 47.42.103, and 47.42.104. [1984 c 7 § 230; 1971 ex.s. c 62 § 14.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.105 Unavailability of federal share. No sign, display, or device shall be required to be removed if the federal share of the just compensation to be paid upon the removal of such sign, display, or device is not available to make such payment. [1971 ex.s. c 62 § 15.]

47.42.107 Compensation for removal under local authority. (1) Just compensation shall be paid upon the removal of any existing sign pursuant to the provisions of any resolution or ordinance of any county, city, or town of the state of Washington by such county, city, or town if:

(a) Such sign was lawfully in existence on May 10, 1971 (the effective date of the Scenic Vistas Act of 1971); or

(b) Such sign was erected subsequent to May 10, 1971 (the effective date of the Scenic Vistas Act of 1971), in compliance with existing state and local law.

(2) Such compensation shall be paid in the same manner as specified in RCW 47.42.102(2) for the following:

(a) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon. [1977 ex.s. c 141 § 1.]

Severability—1977 ex.s. c 141: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 141 § 2.]

47.42.110 Agreements for federal aid. The department is authorized to enter into agreements (and such supplementary agreements as may be necessary) consistent with this chapter, with the secretary of commerce or the secretary of transportation authorized under section 131(b) of title 23, United States Code, as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, in order that the state may become eligible for increased federal aid as provided for in section 131 of title 23, United States Code, as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342. [1984 c 7 § 231; 1971 ex.s. c 62 § 16; 1961 c 96 § 11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.120 Permits—Fees—Renewal—Permissible acts—Revocation. Notwithstanding any other provisions of this chapter, no sign except a sign of type 1 or 2 or those type 3 signs that advertise activities conducted upon the properties where the signs are located, may be erected or maintained without a permit issued by the department. Application for a permit shall be made to the department on forms furnished by it. The forms shall contain a statement that the owner or lessee of the land in question has consented thereto. The application shall be accompanied by a fee of ten dollars to be deposited with the state treasurer to the credit of the motor vehicle fund. Permits shall be for the calendar year and shall be renewed annually upon payment of this fee for the new year without the filing of a new application. Fees shall not be prorated for fractions of the year. Advertising copy may be changed at any time without the payment of an additional fee. Assignment of permits in good standing is effective only upon receipt of written notice of assignment by the department. A permit may be revoked after hearing if the department finds that any statement made in the application was false or misleading, or that the sign covered is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this chapter, if the false or misleading information has not been corrected and the sign has not been brought into compliance with this chapter within thirty days after written notification. [1984 c 7 § 232; 1971 ex.s. c 62 § 17; 1961 c 96 § 12.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.130 Permit identification number—Permittee's name and number on signs—Presumption of non-compliance. Every permit issued by the department shall be assigned a separate identification number, and each permittee shall fasten to each sign a weatherproof label, not larger than six square inches, that shall be furnished by the department and on which shall be plainly visible the permit number. The permittee shall also place his or her name in a conspicuous position on the front or back of each sign. The failure of a sign to have such a label affixed to it is prima facie evidence that it is not in compliance with the provisions of this chapter. [1984 c 7 § 233; 1961 c 96 § 13.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.140 Scenic areas designated. The following portions of state highways are designated as a part of the scenic system:

(1) State route number 2 beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin.

(2) State route number 7 beginning at a junction with state route number 706 at Elbe, thence in a northerly direction to a junction with state route number 507 south of Spanaway.

(3) State route number 11 beginning at the Blanchard overcrossing, thence in a northerly direction to the limits of Larabee state park (north line of section 36, township 37 north, range 2 east).

(4) State route number 12 beginning at Kosmos southeast of Morton, thence in an easterly direction across White pass to the Oak Flat junction with state route number 410 northwest of Yakima.

(5) State route number 90 beginning at the westerly junction with state route number 901, thence in an easterly direction by way of North Bend and Snoqualmie pass to a junction with state route number 970 at Cle Elum.

(6) State route number 97 beginning at a junction with state route number 970 at Virden, thence via Blewett pass to a junction with state route number 2 in the vicinity of Peshastin.

(7) State route number 123 beginning at a junction with state route number 12 at Ohanapecosh junction in the vicinity west of White pass, thence in a northerly direction to a junction with state route number 410 at Cayuse junction in the vicinity west of Chinook pass.

(8) State route number 165 beginning at the northwest entrance to Mount Rainier national park, thence in a northerly direction to a junction with state route number 162 east of the town of South Prairie.

(9) State route number 305, beginning at the ferry slip at Winslow on Bainbridge Island, thence northwesterly by way of Agate Pass bridge to a junction with state route number 3 approximately four miles northwest of Poulsbo.

(10) State route number 410 beginning at the crossing of Scatter creek approximately six miles east of Enumclaw, thence in an easterly direction by way of

Chinook pass to a junction of state route number 12 and state route number 410.

(11) State route number 706 beginning at a junction with state route number 7 at Elbe thence in an easterly direction to the southwest entrance to Mount Rainier national park.

(12) State route number 970 beginning at a junction with state route number 90 in the vicinity of Cle Elum thence via Teanaway to a junction with state route number 97 in the vicinity of Virden. [1975 c 63 § 9; 1974 ex.s. c 138 § 4. Prior: 1971 ex.s. c 73 § 28; 1971 ex.s. c 62 § 18; 1961 c 96 § 14. Cf. 1974 ex.s. c 154 § 4.]

47.42.160 State park directional signs. Directional signs for state parks within fifteen miles of an interstate highway shall be erected and maintained on the interstate highway by the department despite the existence of additional directional signs on primary or scenic system highways in closer proximity to such state parks. [1985 c 376 § 7.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.42.170 Lodging activity listings—Eligibility. To be eligible for placement of a business sign on a specific information panel a lodging activity shall:

(1) Be licensed or approved by the department of social and health services or county health authority;

(2) Provide adequate sleeping and bathroom accommodations available for rental on a daily basis; and

(3) Provide public telephone facilities. [1985 c 376 § 8.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.42.180 Highway fatality markers. (Effective until December 31, 1992.) (1) The department of transportation shall conduct a demonstration project for the installation of highway fatality markers along state route number 26 between the cities of Vantage and Colfax, state route number 270 from the city of Pullman to the Washington and Idaho border, and state route number 195 between the cities of Colfax and Pullman.

(2) As used in this section "highway fatality marker" means a sign designed by the department and placed at or near the location of a traffic fatality. Each marker designates the loss of one life.

(3) The department shall issue permits for the erection and maintenance of highway fatality markers. Application for a permit shall be made on a form furnished by the department. The application shall contain a consent statement from the owner or lessee of the land upon which the marker is to be placed.

(4) The legislative authority of any county, city, or town, and private individuals and groups located within the demonstration project area may apply for permits for the erection and maintenance of highway fatality markers.

(5) An applicant with an approved permit is responsible for the erection and maintenance of the marker as specified in the permit issued by the department.

(6) A member of the immediate family of the deceased for whom a marker has been erected may request that the marker be removed.

(7) The markers shall be installed as close as practicable to the right of way of the highway. The markers shall be placed in such a manner as to maximize the visibility of the marker without obstructing the view of the motoring public.

(8) Upon request, the department shall provide information regarding the location of fatal traffic accidents within the demonstration area.

(9) The permittee shall immediately remove markers that are unlawfully erected or that are not in compliance with the requirements of their permits.

(10) The department shall adopt rules for the erection and maintenance of highway fatality markers. The department shall confer with affected governmental agencies, individuals, and groups within the demonstration project area in the development of the rules.

(11) This section shall expire December 31, 1992. [1988 c 98 § 1.]

47.42.900 Severability—1961 c 96. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 96 § 16.]

47.42.901 Severability—1963 ex.s. c 3. If any provision of *section 55 of this amendatory act shall be held to be invalid or shall be held to invalidate any provision of chapter 96, Laws of 1961 (chapter 47.42 RCW), then that provision of this amendatory act shall be of no force and effect and the provisions of chapter 96, Laws of 1961 (chapter 47.42 RCW) shall continue in effect. [1963 ex.s. c 3 § 56.]

***Reviser's note:** The reference to "section 55 of this amendatory act" is to the 1963 amendment of RCW 47.42.100.

47.42.902 Severability—1971 ex.s. c 62. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 62 § 20.]

47.42.910 Short title—1961 c 96. This chapter shall be known and may be cited as the highway advertising control act of 1961. [1961 c 96 § 17.]

47.42.911 Short title—1971 ex.s. c 62. This act may be cited as the "Scenic Vistas Act of 1971". [1971 ex.s. c 62 § 19.]

47.42.920 Federal requirements—Conflict and accord. If the secretary of the United States department of transportation finds any part of this chapter to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such

finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [1985 c 142 § 4.]

Chapter 47.44

FRANCHISES ON STATE HIGHWAYS

Sections

47.44.010	Wire and pipe line and tram and railway franchises—Application—Rules on hearing and notice.
47.44.020	Grant of franchise—Conditions—Hearing.
47.44.030	Removal of facilities—Notice—Reimbursement of owner when national system involved.
47.44.031	Removal of facilities—Limitation.
47.44.040	Franchises across joint bridges.
47.44.050	Permit for short distances.
47.44.060	Penalties.
47.44.070	Franchises to use toll facility property.
47.44.150	Measure of damages.

47.44.010 Wire and pipe line and tram and railway franchises—Application—Rules on hearing and notice. The department of transportation may grant franchises to persons, associations, private or municipal corporations, the United States government, or any agency thereof, to use any state highway for the construction and maintenance of water pipes, flume, gas, oil or coal pipes, telephone, telegraph and electric light and power lines and conduits, trams or railways, and any structures or facilities which are part of an urban public transportation system owned or operated by a municipal corporation, agency or department of the state of Washington other than the department of transportation, and any other such facilities. All applications for such franchise shall be made in writing and subscribed by the applicant, and shall describe the state highway or portion thereof over which franchise is desired and the nature of the franchise. The department of transportation shall adopt rules providing for a hearing or an opportunity for a hearing with reasonable public notice thereof with respect to any franchise application involving the construction and maintenance of utilities or other facilities within the highway right of way which the department determines may (1) during construction, significantly disrupt the flow of traffic or use of driveways or other facilities within the right of way, or (2) during or following construction, cause a significant and adverse effect upon the surrounding environment. [1980 c 28 § 1; 1975 1st ex.s. c 46 § 1; 1967 c 108 § 7; 1963 c 70 § 1; 1961 ex.s. c 21 § 26; 1961 c 13 § 47.44.010. Prior: 1943 c 265 § 2; 1937 c 53 § 83; Rem. Supp. 1943 § 6400–83.]

Urban public transportation system defined: RCW 47.04.082.

47.44.020 Grant of franchise—Conditions—Hearing. If the department of transportation deems it to be for the public interest, the franchise may be granted in whole or in part, with or without hearing under such

regulations and conditions as the department may prescribe, with or without compensation, but not in excess of the reasonable cost for investigating, handling, and granting the franchise. The department may require that the utility and appurtenances be so placed on the highway that they will, in its opinion, least interfere with other uses of the highway.

If a hearing is held, it shall be conducted by the department, and may be adjourned from time to time until completed. The applicant may be required to produce all facts pertaining to the franchise, and evidence may be taken for and against granting it.

The facility shall be made subject to removal when necessary for the construction, alteration, repair, or improvement of the highway and at the expense of the franchise holder, except that the state shall pay the cost of such removal whenever the state shall be entitled to receive proportionate reimbursement therefor from the United States in the cases and in the manner set forth in RCW 47.44.030. Renewal upon expiration of a franchise shall be by application. A person constructing or operating such a utility on a state highway is liable to any person injured thereby for any damages incident to the work of installation or the continuation of the occupancy of the highway by the utility, and except as provided above, is liable to the state for all necessary expenses incurred in restoring the highway to a permanent suitable condition for travel. No franchise may be granted for a longer period than fifty years, and no exclusive franchise or privilege may be granted. [1980 c 28 § 2; 1975 1st ex.s. c 46 § 2; 1961 c 13 § 47.44.020. Prior: 1959 c 330 § 1; 1937 c 53 § 84; RRS § 6400–84.]

47.44.030 Removal of facilities—Notice—Reimbursement of owner when national system involved. If the department deems it necessary that a facility be removed from the highway for the safety of persons traveling thereon or for construction, alteration, improvement, or maintenance purposes, it shall give notice to the franchise holder to remove the facility at his or her expense and as the department orders. However, notwithstanding any contrary provision of law or of any existing or future franchise held by a public utility, the department shall pay or reimburse the owner for relocation or removal of any publicly, privately, or cooperatively owned public utility facilities when necessitated by the construction, reconstruction, relocation, or improvement of a highway that is part of the national system of interstate and defense highways for each item of cost for which the state is entitled to be reimbursed by the United States in an amount equal to at least ninety percent thereof under the provisions of section 123 of the federal aid highway act of 1958 and any other subsequent act of congress under which the state is entitled to be reimbursed by the United States in an amount equal to at least ninety percent of the cost of relocation of utility facilities on the national system of interstate and defense highways. [1984 c 7 § 234; 1961 c 13 § 47.44.030. Prior: 1959 c 330 § 2; 1937 c 53 § 85; RRS § 6400–85.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.44.031 Removal of facilities—Limitation. The provisions of RCW 47.44.030 authorizing the department to pay or reimburse the owner of a utility apply only to relocation or removal of utility facilities required by state construction contracts which are advertised for bids by the department after June 30, 1959. [1984 c 7 § 235; 1961 c 13 § 47.44.031. Prior: 1959 c 330 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.44.040 Franchises across joint bridges. Whenever any bridge exists on the route of any state highway and crosses any stream, body of water, gulch, navigable water, swamp, or other topographical formation constituting the boundary of this state or the boundary of a county, city, or town of this state and the bridge is owned or operated by this state jointly with any such county, city, or town, or with any municipal corporation of this state, or with such other state or with any county, city, or town of such other state, the department is empowered to join with the proper officials of the county, city, or town, or the municipal corporation of this state or of such other state or of such county, city, or town of such other state in granting franchises to persons or private or municipal corporations for the construction and maintenance on the bridge of water pipes, flumes, gas pipes, telephone, telegraph, and electric light and power lines and conduits, trams and railways, and any structures or facilities that are part of an urban public transportation system owned or operated by a municipal corporation, agency, or department of the state of Washington other than the department, or any other such facilities. All such franchises shall be granted in the same manner as provided for the granting of like franchises on state highways. Any revenue accruing to the state of Washington from the franchises shall be paid to the state treasurer and deposited to the credit of the fund from which this state's share of the cost of joint operation of the bridge is paid. [1984 c 7 § 236; 1967 c 108 § 8; 1961 c 13 § 47.44.040. Prior: 1937 c 53 § 86; RRS § 6400-86.]

Severability—1984 c 7: See note following RCW 47.01.141.

Urban public transportation system defined: RCW 47.04.082.

47.44.050 Permit for short distances. The department is empowered to grant a permit to construct or maintain on, over, across, or along any state highway any water, gas, telephone, telegraph, light, power, or other such facilities when they do not extend along the state highway for a distance greater than three hundred feet. The department may require such information as it deems necessary in the application for any such permit, and may grant or withhold the permit within its discretion. Any permit granted may be canceled at any time, and any facilities remaining upon the right of way of the state highway after thirty days written notice of the cancellation is [are] an unlawful obstruction and may be removed in the manner provided by law. [1984 c 7 §

237; 1961 c 13 § 47.44.050. Prior: 1943 c 265 § 3; 1937 c 53 § 87; Rem. Supp. 1943 § 6400-87.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.44.060 Penalties. (1) Any person, firm, or corporation who constructs or maintains on, over, across, or along any state highway any water pipe, flume, gas pipe, telegraph, telephone, electric light, or power lines, or tram or railway, or any other such facilities, without having first obtained and having at all times in full force and effect a franchise or permit to do so in the manner provided by law is guilty of a misdemeanor. Each day of violation is a separate and distinct offense.

(2) Any person, firm, or corporation who constructs or maintains on, over, across, or along any state highway any water pipe, flume, gas pipe, telegraph, telephone, electric light or power lines, or tram or railway, or any other such facilities, without having first obtained and having at all times in full force and effect a franchise or permit to do so in the manner provided by law is liable for a civil penalty of one hundred dollars per calendar day beginning forty-five days from the date notice is given and until application is made for a franchise or permit or until the facility is removed as required by notice. The state shall give notice by certified mail that a franchise or permit is required or the facility must be removed and shall include in the notice sufficient information to identify the portion of right of way in question. Notice is effective upon delivery.

(3) If a person, firm or corporation does not apply for a permit or franchise within forty-five days of notice given in accordance with subsection (2) of this section or the state determines that the facility constructed or maintained without a permit or franchise would not be granted a permit or franchise, the state may order the facility to be removed within such time period as the state may specify. If the facility is not removed, the state, in addition to any other remedy, may remove the facility at the expense of the owner. [1989 c 224 § 1; 1961 c 13 § 47.44.060. Prior: 1943 c 265 § 1; 1937 c 53 § 82; Rem. Supp. 1943 § 6400-82.]

47.44.070 Franchises to use toll facility property. See RCW 47.56.256.

47.44.150 Measure of damages. In any action for damages against the state of Washington, its agents, contractors, or employees by reason of damages to a utility or other facility located on a state highway, the damages are limited to the cost of repair of the utility or facility and are recoverable only in those instances where the utility or facility is authorized to be located on the state highway. However, the state is subject to the penalties provided in RCW 19.122.070 (1) and (2) only if the state has failed to give a notice meeting the requirements of RCW 19.122.030 to utilities or facilities that are authorized to be located on the state highway. [1989 c 196 § 1.]

Chapter 47.48
CLOSING HIGHWAYS AND RESTRICTING
TRAFFIC

Sections

47.48.010	Closure or restriction authorized—Restriction for urban public transportation system use.
47.48.020	Notice of closure or restriction—Emergency closure.
47.48.031	Emergency closures by state patrol.
47.48.040	Penalty.
47.48.050	Transportation of radioactive or hazardous cargo— Definition—Violation, penalty.

Closure of Camas slough: RCW 88.28.055.

47.48.010 Closure or restriction authorized—Restriction for urban public transportation system use. Whenever the condition of any state highway, county road, or city street, either newly or previously constructed, altered, repaired, or improved, or any part thereof is such that for any reason its unrestricted use or continued use by vehicles or by any class of vehicles will greatly damage that state highway, county road, or city street, or will be dangerous to traffic, or it is being constructed, altered, repaired, improved, or maintained in such a manner as to require that use of the state highway, county road, or city street, or any portion thereof be closed or restricted as to all vehicles or any class of vehicles for any period of time, the secretary, if it is a state highway, the county legislative authority, if it is a county road, or the governing body of any city or town, if it is a city street, is authorized to close the state highway, county road, or city street, as the case may be, to travel by all vehicles or by any class of vehicles, or may declare a lower maximum speed for any class of vehicles, for such a definite period as it shall determine. Nothing in the law of this state prevents the secretary, county legislative authority, or governing body of any city or town from classifying vehicles according to gross weight, axle weight, height, width, length, braking area, performance, vehicle combinations, or tire equipment for the purposes of this section, or from restricting the use of any portion of any state highway, county road, or city street, as the case may be, to its use by an urban public transportation system. [1984 c 7 § 238; 1977 ex.s. c 216 § 1; 1967 c 108 § 9; 1961 c 13 § 47.48.010. Prior: 1937 c 53 § 65; RRS § 6400-65; prior: 1929 c 214 § 1; 1927 c 232 § 1; 1921 c 21 § 1; RRS § 6839.]

Severability—1984 c 7: See note following RCW 47.01.141.
Restrictions on public highways to prevent damage: RCW 46.44.080.
Urban public transportation system defined: RCW 47.04.082.

47.48.020 Notice of closure or restriction—Emergency closure. Before any state highway, county road, or city street is closed to, or the maximum speed limit thereon reduced for, all vehicles or any class of vehicles, a notice thereof including the effective date shall be published in one issue of a newspaper of general circulation in the county or city or town in which such state highway, county road, or city street or any portion thereof to be closed is located; and a like notice shall be posted on or prior to the date of publication of such notice in a conspicuous place at each end of the state

highway, county road, or city street or portion thereof to be closed or restricted: *Provided*, That no such state highway, county road, or city street or portion thereof may be closed sooner than three days after the publication and the posting of the notice herein provided for: *Provided, however*, That in cases of emergency or conditions in which the maximum time the closure will be in effect is twelve hours or less the proper officers may, without publication or delay, close state highways, county roads, and city streets temporarily by posting notices at each end of the closed portion thereof and at all intersecting state highways if the closing be of a portion of a state highway, at all intersecting state highways and county roads if the closing be a portion of a county road, and at all intersecting city streets if the closing be of a city street. In all emergency cases or conditions in which the maximum time the closure will be in effect is twelve hours or less, as herein provided, the orders of the proper authorities shall be immediately effective. [1982 c 145 § 5; 1977 ex.s. c 216 § 2; 1961 c 13 § 47.48.020. Prior: 1937 c 53 § 66, part; RRS § 6400-66 part; prior: 1921 c 21 § 2, part; RRS § 6840, part. Formerly RCW 47.48-.020 and 47.48.030.]

47.48.031 Emergency closures by state patrol. (1) Whenever the chief or another officer of the state patrol determines on the basis of a traffic investigation that an emergency exists or less than safe road conditions exist due to human-caused or natural disasters or extreme weather conditions upon any state highway, or any part thereof, state patrol officers may determine and declare closures and temporarily reroute traffic from any such affected highway.

(2) Any alteration of vehicular traffic on any state highway due to closure in emergency conditions is effective until such alteration has been approved or altered by the secretary of transportation or other department of transportation authorities in their local respective jurisdictions.

(3) All state highway closures by officers of the state patrol shall be immediately reported to the secretary of transportation and to other authorities in their local jurisdictions. [1981 c 197 § 1.]

47.48.040 Penalty. When any state highway, county road, or city street or portion thereof shall have been closed, or when the maximum speed limit thereon shall have been reduced, for all vehicles or any class of vehicles, as by law provided, any person, firm or corporation disregarding such closing or reduced speed limit shall be guilty of a misdemeanor, and shall in addition to any penalty for violation of the provisions of this section, be liable in any civil action instituted in the name of the state of Washington or the county or city or town having jurisdiction for any damages occasioned to such state highway, county road, or city street, as the case may be, as the result of disregarding such closing or reduced speed limit. [1977 ex.s. c 216 § 3; 1961 c 13 § 47.48-.040. Prior: 1937 c 53 § 67; RRS § 6400-67; prior: 1921 c 21 § 3; RRS § 6841.]

47.48.050 Transportation of radioactive or hazardous cargo—Definition—Violation, penalty. The chief or other officer of the Washington state patrol may prohibit the transportation of placarded radioactive or hazardous cargo over the highways of the state, or a portion thereof, if weather or other conditions create a substantial risk to public safety. For the purposes of this section hazardous cargo shall mean hazardous materials as defined in RCW 70.136.020(1). Violation of an order issued under this section constitutes a misdemeanor. [1983 c 205 § 1.]

Regulations on notice of prohibition on radioactive or hazardous cargo: RCW 47.01.270.

Chapter 47.52

LIMITED ACCESS FACILITIES

Sections

47.52.001	Declaration of policy.
47.52.010	"Limited access facility" defined.
47.52.011	"Existing highway" defined.
47.52.020	Powers of highway authorities—State facility, county road crossings.
47.52.025	Additional powers—Controlling use of limited access facilities—Reservation for public transportation vehicles, etc.
47.52.026	Rules—Control of vehicles entering—Ramp closure, metering, or restrictions—Notice.
47.52.027	Standards and rules for interstate and defense highways—Construction, maintenance, access.
47.52.040	Design—Ingress and egress restricted—Closure of intersecting roads.
47.52.041	Closure of intersecting roads—Rights of abutters.
47.52.042	Closure of intersecting roads—Other provisions not affected.
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47.52.060	Court process expedited.
47.52.070	Establishment of facility—Grade separation—Service roads.
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47.52.090	Cooperative agreements—Urban public transportation systems—Title to highway—Traffic regulations—Underground utilities and overcrossings—Passenger transportation—Storm sewers—City street crossings.
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47.52.145	Modification of adopted plan without further public hearings, when.
47.52.150	State facility through city or town—Board of review, composition and appointment.
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47.52.180	State facility through city or town—Hearing—Findings of board—Modification of proposed plan by stipulation.
47.52.190	State facility through city or town—Hearing—Assistants—Costs—Reporter.
47.52.195	Review and appeal on petition of abutter.
47.52.200	Law enforcement jurisdiction within city or town.
47.52.210	State facility within city or town—Title to city or town streets incorporated therein.

Description, plans of highways, filing: RCW 47.28.025, 47.28.026.

Port districts, toll facilities: Chapter 53.34 RCW.

Speed limits on limited access facilities: RCW 46.61.430.

47.52.001 Declaration of policy. Unrestricted access to and from public highways has resulted in congestion and peril for the traveler. It has caused undue slowing of all traffic in many areas. The investment of the public in highway facilities has been impaired and highway facilities costing vast sums of money will have to be relocated and reconstructed. It is the declared policy of this state to limit access to the highway facilities of this state in the interest of highway safety and for the preservation of the investment of the public in such facilities. [1961 c 13 § 47.52.001. Prior: 1951 c 167 § 1.]

47.52.010 "Limited access facility" defined. For the purposes of this chapter, a "limited access facility" is defined as a highway or street especially designed or designated for through traffic, and over, from, or to which owners or occupants of abutting land, or other persons, have no right or easement, or only a limited right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility, or for any other reason to accomplish the purpose of a limited access facility. Such highways or streets may be parkways, from which vehicles forming part of an urban public transportation system, trucks, buses, or other commercial vehicles may be excluded; or they may be freeways open to use by all customary forms of street and highway traffic, including vehicles forming a part of an urban public transportation system. [1967 c 108 § 10; 1961 c 13 § 47.52.010. Prior: 1951 c 167 § 2; 1947 c 202 § 1; Rem. Supp. 1947 § 6402–60.]

Urban public transportation system defined: RCW 47.04.082.

47.52.011 "Existing highway" defined. For the purposes of this chapter, the term "existing highway" shall include all highways, roads and streets duly established, constructed, and in use. It shall not include new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated. [1961 c 13 § 47.52.011. Prior: 1951 c 167 § 3.]

47.52.020 Powers of highway authorities—State facility, county road crossings. The highway authorities of the state, counties, and incorporated cities and towns, acting alone or in cooperation with each other, or with any federal, state, or local agency, or any other state having authority to participate in the construction and maintenance of highways, may plan, designate, establish, regulate, vacate, alter, improve, construct, maintain, and provide limited access facilities for public use wherever

the authority or authorities are of the opinion that traffic conditions, present or future, will justify the special facilities. However, upon county roads within counties, the state or county authorities are subject to the consent of the county legislative authority, except that where a state limited access facility crosses a county road the department may, without the consent of the county legislative authority, close off the county road so that it will not intersect such limited access facility.

The department may, in constructing or relocating any state highway, cross any county road at grade without obtaining the consent of the county legislative authority, and in so doing may revise the alignment of the county road to the extent that the department finds necessary for reasons of traffic safety or practical engineering considerations. [1984 c 7 § 239; 1961 c 13 § 47.52.020. Prior: 1957 c 235 § 2; prior: 1953 c 30 § 1; 1951 c 167 § 4; 1947 c 202 § 2, part; Rem. Supp. 1947 § 6402-61, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.025 Additional powers—Controlling use of limited access facilities—Reservation for public transportation vehicles, etc. Highway authorities of the state, counties, and incorporated cities and towns, in addition to the specific powers granted in this chapter, shall also have, and may exercise, relative to limited access facilities, any and all additional authority, now or hereafter vested in them relative to highways or streets within their respective jurisdictions, and may regulate, restrict, or prohibit the use of such limited access facilities by various classes of vehicles or traffic. Such highway authorities may reserve any limited access facility or portions thereof, including designated lanes or ramps for the exclusive or preferential use of public transportation vehicles, privately owned buses, or private motor vehicles carrying not less than a specified number of passengers when such limitation will increase the efficient utilization of the highway facility or will aid in the conservation of energy resources. Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all time or at specified times of day or on specified days. [1974 ex.s. c 133 § 1; 1961 c 13 § 47.52.025. Prior: 1957 c 235 § 3; prior: 1951 c 167 § 5; 1947 c 202 § 2, part; Rem. Supp. 1947 § 6402-61, part.]

47.52.026 Rules—Control of vehicles entering—Ramp closure, metering, or restrictions—Notice. (1) The department may adopt rules for the control of vehicles entering any state limited access highway as it deems necessary (a) for the efficient or safe flow of traffic traveling upon any part of the highway or connections with it or (b) to avoid exceeding federal, state, or regional air pollution standards either along the highway corridor or within an urban area served by the highway.

(2) Rules adopted by the department pursuant to subsection (1) of this section may provide for the closure of highway ramps or the metering of vehicles entering

highway ramps or the restriction of certain classes of vehicles entering highway ramps (including vehicles with less than a specified number of passengers), and any such restrictions may vary at different times as necessary to achieve the purposes mentioned in subsection (1) of this section.

(3) Vehicle restrictions authorized by rules adopted pursuant to this section are effective when proper notice is given by any police officer, or by appropriate signals, signs, or other traffic control devices. [1984 c 7 § 240; 1974 ex.s. c 133 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.027 Standards and rules for interstate and defense highways—Construction, maintenance, access. The secretary of transportation may adopt design standards, rules, and regulations relating to construction, maintenance, and control of access of the national system of interstate and defense highways within this state as it deems advisable to properly control access thereto, to preserve the traffic-carrying capacity of such highways, and to provide the maximum degree of safety to users thereof. In adopting such standards, rules, and regulations the secretary shall take into account the policies, rules, and regulations of the United States secretary of commerce and the federal highway administration relating to the construction, maintenance, and operation of the system of interstate and defense highways. The standards, rules, and regulations so adopted by the secretary shall constitute the public policy of this state and shall have the force and effect of law. [1977 ex.s. c 151 § 62; 1961 c 13 § 47.52.027. Prior: 1959 c 319 § 35. Formerly RCW 47.28.160.]

Nonmotorized traffic may be prohibited: RCW 46.61.160.

47.52.040 Design—Ingress and egress restricted—Closure of intersecting roads. The highway authorities of the state, counties and incorporated cities and towns may so design any limited access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended; and the determination of design by such authority shall be conclusive and final. In this connection such highway authorities may divide and separate any limited access facility into separate roadways by the construction of raised curbs, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes and other devices. No person shall have any right of ingress or egress to, from, or across limited access facilities to or from abutting lands, except at designated points at which access may be permitted by the highway authorities upon such terms and conditions as may be specified from time to time: *Provided*, That any intersecting streets, roads or highways, not made a part of such facility, shall be deemed closed at the right of way line by the designation and construction of said facility and without the consent of any other party or the necessity

of any other legal proceeding for such closing, notwithstanding any laws to the contrary. [1961 c 13 § 47.52.040. Prior: 1955 c 75 § 1; 1947 c 202 § 3; Rem. Supp. 1947 § 6402-62.]

47.52.041 Closure of intersecting roads—Rights of abutters. No person, firm or corporation, private or municipal, shall have any claim against the state, city or county by reason of the closing of such streets, roads or highways as long as access still exists or is provided to such property abutting upon the closed streets, roads or highways. Circuity of travel shall not be a compensable item of damage. [1961 c 13 § 47.52.041. Prior: 1955 c 75 § 2.]

47.52.042 Closure of intersecting roads—Other provisions not affected. RCW 47.52.040 and 47.52.041 shall not be construed to affect provisions for establishment, notice, hearing and court review of any decision establishing a limited access facility on an existing highway pursuant to chapter 47.52 RCW. [1961 c 13 § 47.52.042. Prior: 1955 c 75 § 3.]

47.52.050 Acquisition of property. (1) For the purpose of this chapter the highway authorities of the state, counties and incorporated cities and towns, respectively, or in cooperation one with the other, may acquire private or public property and property rights for limited access facilities and service roads, including rights of access, air, view and light, by gift, devise, purchase, or condemnation, in the same manner as such authorities are now or hereafter may be authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions. Except as otherwise provided in subsection (2) of this section all property rights acquired under the provisions of this chapter shall be in fee simple. In the acquisition of property or property rights for any limited access facility or portion thereof, or for any service road in connection therewith, the state, county, incorporated city and town authority may, in its discretion, acquire an entire lot, block or tract of land, if by so doing the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for the limited access facility.

(2) The highway authorities of the state, counties, and incorporated cities and towns may acquire by gift, devise, purchase, or condemnation a three dimensional air space corridor in fee simple over or below the surface of the ground, together with such other property in fee simple and other property rights as are needed for the construction and operation of a limited access highway facility, but only if the acquiring authority finds that the proposal will not:

(a) impair traffic safety on the highway or interfere with the free flow of traffic; or

(b) permit occupancy or use of the air space above or below the highway which is hazardous to the operation of the highway. [1971 ex.s. c 39 § 1; 1961 c 13 § 47.52.050. Prior: 1947 c 202 § 4; Rem. Supp. 1947 § 6402-63.]

Award of costs in air space corridor acquisitions: RCW 8.25.073.

Right of way donations: Chapter 47.14 RCW.

47.52.060 Court process expedited. Court proceedings necessary to acquire property or property rights for purposes of this chapter shall take precedence over all other causes not involving the public interest in all courts to the end that the provision for limited access facilities may be expedited. [1961 c 13 § 47.52.060. Prior: 1947 c 202 § 5; Rem. Supp. 1947 § 6402-64.]

47.52.070 Establishment of facility—Grade separation—Service roads. The designation or establishment of a limited access facility shall, by the authority making the designation or establishment, be entered upon the records or minutes of such authority in the customary manner for the keeping of such records or minutes. The state, counties and incorporated cities and towns may provide for the elimination of intersections at grade of limited access facilities with existing state or county roads, and with city or town streets, by grade separation or service road, or by closing off such roads and streets at the right of way boundary line of such limited access facility; and after the establishment of any such facility, no highway or street which is not part of said facility, shall intersect the same at grade. No city or town street, county road, or state highway, or any other public or private way, shall be opened into or connect with any such limited access facility without the consent and previous approval of the highway authority of the state, county, incorporated city or town having jurisdiction over such limited access facility. Such consent and approval shall be given only if the public interest shall be served thereby. [1961 c 13 § 47.52.070. Prior: 1951 c 167 § 10; 1947 c 202 § 6; Rem. Supp. 1947 § 6402-65.]

47.52.080 Abutter's right of access protected—Compensation. No existing public highway, road, or street shall be constructed as a limited access facility except upon the waiver, purchase, or condemnation of the abutting owner's right of access thereto as herein provided. In cases involving existing highways, if the abutting property is used for business at the time the notice is given as provided in RCW 47.52.133, the owner of such property shall be entitled to compensation for the loss of adequate ingress to or egress from such property as business property in its existing condition at the time of the notice provided in RCW 47.52.133 as for the taking or damaging of property for public use. [1983 c 3 § 127; 1961 c 13 § 47.52.080. Prior: 1955 c 54 § 2; 1951 c 167 § 11; 1947 c 202 § 7; Rem. Supp. 1947 § 6402-66.]

47.52.090 Cooperative agreements—Urban public transportation systems—Title to highway—Traffic regulations—Underground utilities and overcrossings—Passenger transportation—Storm sewers—City street crossings. The highway authorities of the state, counties, incorporated cities and towns, and municipal corporations owning or operating an urban public

transportation system are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, construction, maintenance, use, regulation, or vacation of limited access facilities in their respective jurisdictions to facilitate the purposes of this chapter. Any such agreement may provide for the exclusive or nonexclusive use of a portion of the facility by street cars, trains, or other vehicles forming a part of an urban public transportation system and for the erection, construction, and maintenance of structures and facilities of such a system including facilities for the receipt and discharge of passengers. Within incorporated cities and towns the title to every state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over the highway from the time it is declared to be operational as a limited access facility by the department, subject to the following provisions:

(1) Cities and towns shall regulate all traffic restrictions on such facilities except as provided in RCW 46.61.430, and all regulations adopted are subject to approval of the department before becoming effective. Nothing herein precludes the state patrol or any county, city, or town from enforcing any traffic regulations and restrictions prescribed by state law, county resolution, or municipal ordinance.

(2) The city, town, or franchise holder shall at its own expense maintain its underground facilities beneath the surface across the highway and has the right to construct additional facilities underground or beneath the surface of the facility or necessary overcrossings of power lines and other utilities as may be necessary insofar as the facilities do not interfere with the use of the right of way for limited access highway purposes. The city or town has the right to maintain any municipal utility and the right to open the surface of the highway. The construction, maintenance until permanent repair is made, and permanent repair of these facilities shall be done in a time and manner authorized by permit to be issued by the department or its authorized representative, except to meet emergency conditions for which no permit will be required, but any damage occasioned thereby shall promptly be repaired by the city or town itself, or at its direction. Where a city or town is required to relocate overhead facilities within the corporate limits of a city or town as a result of the construction of a limited access facility, the cost of the relocation shall be paid by the state.

(3) Cities and towns have the right to grant utility franchises crossing the facility underground and beneath its surface insofar as the franchises are not inconsistent with the use of the right of way for limited access facility purposes and the franchises are not in conflict with state laws. The department is authorized to enforce, in an action brought in the name of the state, any condition of any franchise that a city or town has granted. No franchise for transportation of passengers in motor vehicles may be granted on such highways without the approval of the department, except cities and towns are not

required to obtain a franchise for the operation of municipal vehicles or vehicles operating under franchises from the city or town operating within the corporate limits of a city or town and within a radius not exceeding eight miles outside the corporate limits for public transportation on such facilities, but these vehicles may not stop on the limited access portion of the facility to receive or to discharge passengers unless appropriate special lanes or deceleration, stopping, and acceleration space is provided for the vehicles.

Every franchise or permit granted any person by a city or town for use of any portion of a limited access facility shall require the grantee or permittee to restore, permanently repair, and replace to its original condition any portion of the highway damaged or injured by it. Except to meet emergency conditions, the construction and permanent repair of any limited access facility by the grantee of a franchise shall be in a time and manner authorized by a permit to be issued by the department or its authorized representative.

(4) The department has the right to use all storm sewers that are adequate and available for the additional quantity of run-off proposed to be passed through such storm sewers.

(5) The construction and maintenance of city streets over and under crossings and surface intersections of the limited access facility shall be in accordance with the governing policy entered into between the department and the association of Washington cities on June 21, 1956, or as such policy may be amended by agreement between the department and the association of Washington cities. [1984 c 7 § 241; 1977 ex.s. c 78 § 8; 1967 c 108 § 11; 1961 c 13 § 47.52.090. Prior: 1957 c 235 § 4; 1947 c 202 § 8; Rem. Supp. 1947 § 6402-67.]

Severability—1984 c 7: See note following RCW 47.01.141.
Urban public transportation system defined: RCW 47.04.082.

47.52.100 Existing roads and streets as service roads. In connection with the development of any limited access facility the state, county or incorporated city or town highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, construct, maintain and vacate local service roads and streets, or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized for limited access facilities under the terms of this chapter. If, in their opinion such local service roads and streets are necessary or desirable, such local service roads or streets shall be separated from the limited access facility by such means or devices designated as necessary or desirable by the proper authority. [1961 c 13 § 47.52.100. Prior: 1947 c 202 § 9; Rem. Supp. 1947 § 6402-68.]

47.52.105 Acquisition and construction to preserve limited access or reduce required compensation. Whenever, in the opinion of the department, frontage or service roads in connection with limited access facilities are not feasible either from an engineering or economic standpoint, the department may acquire private or public property by purchase or condemnation and construct

any road, street, or highway connecting to or leading into any other road, street, or highway, when by so doing, it will preserve a limited access facility or reduce compensation required to be paid to an owner by reason of reduction in or loss of access. The department shall provide by agreement with a majority of the legislative authority of the county or city concerned as to location, future maintenance, and control of any road, street, or highway to be so constructed. The road, street, or highway need not be made a part of the state highway system or connected thereto, but may upon completion by the state be turned over to the county or city for location, maintenance, and control pursuant to the agreement as part of the system of county roads or city streets. [1984 c 7 § 242; 1967 c 117 § 1; 1961 c 13 § 47.52.105. Prior: 1955 c 63 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.110 Marking of facility with signs. After the opening of any new and additional limited access highway facility, or after the designation and establishment of any existing street or highway, as included the particular highways and streets or those portions thereof designated and established, shall be physically marked and indicated as follows: By the erection and maintenance of such signs as in the opinion of the respective authorities may be deemed proper, indicating to drivers of vehicles that they are entering a limited access area and that they are leaving a limited access area. [1961 c 13 § 47.52.110. Prior: 1947 c 202 § 10; Rem. Supp. 1947 § 6402-69.]

47.52.120 Violations specified—Exceptions—Penalty. After the opening of any limited access highway facility, it shall be unlawful for any person (1) to drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on limited access facilities; (2) to make a left turn or semi-circular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (3) to drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (4) to drive any vehicle into the limited access facility from a local service road except through an opening provided for that purpose in the dividing curb, dividing section, or dividing line which separates such service road from the limited access facility proper; (5) to stop or park any vehicle or equipment within the right of way of such facility, including the shoulders thereof, except at points specially provided therefor, and to make only such use of such specially provided stopping or parking points as is permitted by the designation thereof: *Provided*, That this subsection shall not apply to authorized emergency vehicles, law enforcement vehicles, assistance vans, or to vehicles stopped for emergency causes or equipment failures; (6) to travel to or from such facility at any point other than a point designated by the establishing authority as an approach to the facility or to use an approach to such facility for any use in excess of that specified by the establishing authority.

For the purposes of this section, an assistance van is a vehicle rendering aid free of charge to vehicles with equipment or fuel problems. The state patrol shall establish by rule additional standards and operating procedures, as needed, for assistance vans.

Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon arrest and conviction therefor shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the city or county jail for not less than five days nor more than ninety days, or by both fine and imprisonment. Nothing contained in this section prevents the highway authority from proceeding to enforce the prohibitions or limitations of access to such facilities by injunction or as otherwise provided by law. [1987 c 330 § 748; 1985 c 149 § 1; 1961 c 13 § 47.52.120. Prior: 1959 c 167 § 1; 1947 c 202 § 11; Rem. Supp. 1947 § 6402-70.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

47.52.121 Prior determinations validated. Any determinations of an authority establishing a limited access facility subsequent to March 19, 1947, and prior to March 16, 1951, in connection with new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated, and all acquisitions of property or access rights in connection therewith are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such authority, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings. [1961 c 13 § 47.52.121. Prior: 1951 c 167 § 12.]

47.52.131 Consideration of local conditions—Report to local authorities—Conferences—Proposed plan. When the department is planning a limited access facility through a county or an incorporated city or town, the department or its staff, before any hearing, shall give careful consideration to available data as to the county or city's comprehensive plan, land use pattern, present and potential traffic volume of county roads and city streets crossing the proposed facility, origin and destination traffic surveys, existing utilities, the physical appearance the facility will present, and other pertinent surveys and, except as provided in RCW 47.52.134, shall submit to the county and city officials for study a report showing how these factors have been taken into account and how the proposed plan for a limited access facility will serve public convenience and necessity, together with the locations and access and egress plans, and over and under crossings that are under consideration. This report shall show the proposed approximate right of way limits and profile of the facility with relation to the existing grade, and shall discuss in a general manner plans for landscaping treatment, fencing, and illumination, and shall include sketches of typical roadway sections for the roadway itself and any necessary structures such as viaducts or bridges, subways, or tunnels.

Conferences shall be held on the merits of this state report and plans and any proposed modification or alternate proposal of the county, city, or town in order to attempt to reach an agreement between the department and the county or city officials. As a result of the conference, the proposed plan, together with any modifications, shall be prepared by the department and presented to the county or city for inspection and study. [1987 c 200 § 1; 1984 c 7 § 243; 1965 ex.s. c 75 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.133 Local public hearing—**Notices.** Except as provided in RCW 47.52.134, the transportation commission and the highway authorities of the counties and incorporated cities and towns, with regard to facilities under their respective jurisdictions, prior to the establishment of any limited access facility, shall hold a public hearing within the county, city, or town wherein the limited access facility is to be established to determine the desirability of the plan proposed by such authority. Notice of such hearing shall be given to the owners of property abutting the section of any existing highway, road, or street being established as a limited access facility, as indicated in the tax rolls of the county, and in the case of a state limited access facility, to the county and/or city or town. Such notice shall be by United States mail in writing, setting forth a time for the hearing, which time shall be not less than fifteen days after mailing of such notice. Notice of such hearing also shall be given by publication not less than fifteen days prior to such hearing in one or more newspapers of general circulation within the county, city, or town. Such notice by publication shall be deemed sufficient as to any owner or reputed owner or any unknown owner or owner who cannot be located. Such notice shall indicate a suitable location where plans for such proposal may be inspected. [1987 c 200 § 2; 1981 c 95 § 1; 1965 ex.s. c 75 § 2.]

47.52.134 When access reports and hearings not required. Access reports and hearings on the establishment of limited access facilities are not required if:

(1) The limited access facility would lie wholly within state or federal lands and the agency or agencies with jurisdiction of the land agree to the access plan; or

(2) The access rights to the affected section of roadway have previously been purchased or established by others; or

(3) The limited access facility would not significantly change local road use, and all affected local agencies and abutting property owners agree in writing to waive a formal hearing on the establishment of the facility after publication of a notice of opportunity for a limited access hearing. This notice of opportunity for a limited access hearing shall be given in the same manner as required for published notice of hearings under RCW 47.52.133. If the authority specified in the notice receives a request for a hearing from one or more abutting property owners or affected local agencies on or before the date stated in the notice, an access report shall be submitted as provided in RCW 47.52.131 and a hearing shall be held. Notice of the hearing shall be given by

mail and publication as provided in RCW 47.52.133. [1987 c 200 § 3.]

47.52.135 Hearing procedure. At the hearing any representative of the county, city or town, or any other person may appear and be heard even though such official or person is not an abutting property owner. Such hearing may, at the option of the highway authority, be conducted in accordance with federal laws and regulations governing highway design public hearings. The members of such authority shall preside, or may designate some suitable person to preside as examiner. The authority shall introduce by competent evidence a summary of the proposal for the establishment of a limited access facility and any evidence that supports the adoption of the plan as being in the public interest. At the conclusion of such evidence, any person entitled to notice who has entered a written appearance shall be deemed a party to this hearing for purposes of this chapter and may thereafter introduce, either in person or by counsel, evidence and statements or counterproposals bearing upon the reasonableness of the proposal. Any such evidence and statements or counterproposals shall receive reasonable consideration by the authority before any proposal is adopted. Such evidence must be material to the issue before the authority and shall be presented in an orderly manner. [1982 c 189 § 5; 1981 c 67 § 29; 1977 c 77 § 2; 1965 ex.s. c 75 § 3.]

Effective date—1982 c 189: See note following RCW 34.12.020.

Effective dates—**Severability**—1981 c 67: See notes following RCW 34.12.010.

47.52.137 Adoption of plan—**Service of findings and order**—**Publication of resume**—**Finality**—**Review.** Following the conclusion of such hearing the authority shall adopt a plan with such modifications, if any, it deems proper and necessary. Its findings and order shall be in writing and copies thereof shall be served by United States mail upon all persons having entered a written appearance at such hearing, and in the case of a state limited access facility, the county commissioners of the county affected and the mayor of the city or town affected. The authority shall also cause a resume of such plan to be published once each week for two weeks in one or more newspapers of general circulation within such county, city or town beginning not less than ten days after the mailing of such findings and order. Such determination by the authority shall become final within thirty days after such mailing unless a review is taken as hereinafter provided. In case of an appeal, the order shall be final as to all parties not appealing. [1965 ex.s. c 75 § 4.]

47.52.139 Approval by county, city, or town upon receipt of findings and order—**Disapproval, request for review.** Upon receipt of the findings and order adopting a plan, the county, city, or town may notify the department of transportation of its approval of such plan in writing, in which event such plan shall be final.

In the event that a county, city, or town does not approve the plan, the county, city, or town shall file its

disapproval in writing with the secretary of transportation within thirty days after the mailing thereof to such mayor or county commissioner. Along with the written disapproval shall be filed a written request for a hearing before a board of review, hereinafter referred to as the board. The request for hearing shall set forth the portions of the plan of the department to which the county, city, or town objects, and shall include every issue to be considered by the board. The hearing before a board of review shall be governed by RCW 47.52.150 through 47.52.190, as now or hereafter amended. [1977 ex.s. c 151 § 63; 1965 ex.s. c 75 § 5.]

47.52.145 Modification of adopted plan without further public hearings, when. Whenever after the final adoption of a plan for a limited access highway by the transportation commission, an additional design public hearing with respect to the facility or any portion thereof is conducted pursuant to federal law resulting in a revision of the design of the limited access plan, the commission may modify the previously adopted limited access plan to conform to the revised design without further public hearings providing the following conditions are met:

(1) As compared with the previously adopted limited access plan, the revised plan will not require additional or different right of way with respect to that section of highway for which the design has been revised, in excess of five percent by area; and

(2) If the previously adopted limited access plan was modified by a board of review convened at the request of a county, city, or town, the legislative authority of the county, city, or town shall approve any revisions of the plan which conflict with modifications ordered by the board of review. [1981 c 95 § 2; 1977 c 77 § 1.]

47.52.150 State facility through city or town—Board of review, composition and appointment. Upon request for a hearing before the board by any county, city, or town, a board consisting of five members shall be appointed as follows: The mayor or the county commissioners, as the case may be shall appoint two members of the board, of which one shall be a duly elected official of the city, county, or legislative district, except that of the legislative body of the county, city, or town requesting the hearing, subject to confirmation by the legislative body of the city or town; the secretary of transportation shall appoint two members of the board; and one member shall be selected by the four members thus appointed. Such fifth member shall be a licensed civil engineer or a recognized professional city or town planner, who shall be chairman of the board. In the case both the county and an included city or town request a hearing, the board shall consist of nine members appointed as follows: The mayor and the county commission shall each appoint two members from the elective officials of their respective jurisdictions, and of the four thus selected no more than two thereof may be members of a legislative body of the county, city, or town. The secretary of transportation shall appoint four members of the board. One member shall be selected by the

members thus selected, and such ninth member shall be a licensed civil engineer or a recognized city or town planner, who shall be chairman of the board. Such boards as are provided by this section shall be appointed within thirty days after the receipt of such a request by the secretary. In the event the secretary or a county, city, or town shall not appoint members of the board or members thus appointed fail to appoint a fifth or ninth member of the board, as the case may be, either the secretary or the county, city, or town may apply to the superior court of the county in which the county, city, or town is situated to appoint the member or members of the board in accordance with the provisions of this chapter. [1977 ex.s. c 151 § 64; 1963 c 103 § 3; 1961 c 13 § 47.52.150. Prior: 1959 c 242 § 3; 1957 c 235 § 7.]

47.52.160 State facility through city or town—Hearing—Notice—Evidence—Determination of issues. The board shall fix a reasonable time not more than thirty days after the date of its appointment and shall indicate the time and place for the hearing, and shall give notice to the county, city, or town and to the department. At the time and place fixed for the hearing, the state and the county, city, or town shall present all of their evidence with respect to the objections set forth in the request for the hearing before the board, and if either the state, the county, or the city or town fails to do so, the board may determine the issues upon such evidence as may be presented to it at the hearing. [1984 c 7 § 244; 1963 c 103 § 4; 1961 c 13 § 47.52.160. Prior: 1957 c 235 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.170 State facility through city or town—Hearing—Procedure. No witness's testimony shall be received unless he shall have been duly sworn, and the board may cause all oral testimony to be stenographically reported. Members of the board, its duly authorized representatives, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do; to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of their office. [1961 c 13 § 47.52.170. Prior: 1957 c 235 § 9.]

47.52.180 State facility through city or town—Hearing—Findings of board—Modification of proposed plan by stipulation. At the conclusion of such hearing, the board shall consider the evidence taken and shall make specific findings with respect to the objections and issues within thirty days after the hearing, which findings shall approve, disapprove, or modify the proposed plan of the department of transportation. Such findings shall be final and binding upon both parties.

Any modification of the proposed plan of the department of transportation made by the board of review may thereafter be modified by stipulation of the parties. [1977 ex.s. c 151 § 65; 1977 c 77 § 3; 1961 c 13 § 47.52.180. Prior: 1957 c 235 § 10.]

47.52.190 State facility through city or town—Hearing—Assistants—Costs—Reporter. The board shall employ such assistance and clerical help as is necessary to perform its duties. The costs thereby incurred and incident to the conduct of the hearing, necessary expenses, and fees, if any, of members of the board shall be borne equally by the county, city, or town requesting the hearing and the department. When oral testimony is stenographically reported, the department shall provide a reporter at its expense. [1984 c 7 § 245; 1963 c 103 § 5; 1961 c 13 § 47.52.190. Prior: 1957 c 235 § 11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.195 Review and appeal on petition of abutter. An abutting property owner may petition for review in the superior court of the state of Washington in the county where the limited access facility is to be located. Such review and any appeal therefrom shall be considered and determined by said court upon the record of the authority in the manner, under the conditions and subject to the limitations and with the effect specified in the Administrative Procedure Act, chapter 34.05 RCW, as amended. [1965 ex.s. c 75 § 6.]

47.52.200 Law enforcement jurisdiction within city or town. Whenever any limited access highway facility passes within or through any incorporated city or town the municipal police officers of such city or town, the sheriff of the county wherein such city or town is situated and officers of the Washington state patrol shall have independent and concurrent jurisdiction to enforce any violation of the laws of this state occurring thereon: *Provided*, The Washington state patrol shall bear primary responsibility for the enforcement of laws of this state relating to motor vehicles within such limited access highway facilities. [1961 c 122 § 1.]

47.52.210 State facility within city or town—Title to city or town streets incorporated therein. (1) Whenever the transportation commission adopts a plan for a limited access highway to be constructed within the corporate limits of a city or town which incorporates existing city or town streets, title to such streets shall remain in the city or town, and the provisions of RCW 47.24.020 as now or hereafter amended shall continue to apply to such streets until such time that the highway is operated as either a partially or fully controlled access highway. Title to and full control over that portion of the city or town street incorporated into the limited access highway shall be vested in the state upon a declaration by the secretary of transportation that such highway is operational as a limited access facility, but in no event prior to the acquisition of right of way for such highway

including access rights, and not later than the final completion of construction of such highway.

(2) Upon the completion of construction of a state limited access highway within a city or town, the department of transportation may relinquish to the city or town streets constructed or improved as a functional part of the limited access highway, slope easements, landscaping areas, and other related improvements to be maintained and operated by the city or town in accordance with the limited access plan. Title to such property relinquished to a city or town shall be conveyed by a deed executed by the secretary of transportation and duly acknowledged. Relinquishment of such property to the city or town may be expressly conditioned upon the maintenance of access control acquired by the state and the continued operation of such property as a functional part of the limited access highway. [1981 c 95 § 3; 1977 ex.s. c 78 § 3.]

Chapter 47.56

STATE TOLL BRIDGES, TUNNELS, AND FERRIES

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- 47.56.712 Spokane river toll bridges—Refunding bonds—Amount, determination by state finance committee—Maturity date—Interest rates—Signatures—Registration—Statement describing nature of obligation—Negotiable instruments—Sources of payment—Account created in highway bond retirement fund—Deposit of revenue—Repayment procedure—Pledge of excise taxes—Legislative covenant—Amount and duration of tolls—Priority of payments—Trust fund—Covenants by state finance committee.
- 47.56.713 Spokane river toll bridges—Liquidation of existing bond and revenue funds—Redemption of outstanding bonds—Transfer of moneys.
- 47.56.714 Spokane river toll bridges—Exemption from prohibition against construction of other bridges—Conditions.
- 47.56.715 Spokane river toll bridges—Repayment of motor vehicle fund—Continuation of tolls.
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- 47.56.745 Columbia river bridge at Horn Rapids—General obligation bonds authorized—Additional bonds authorized, restriction.
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- 47.56.749 Columbia river bridge at Horn Rapids—Bonds—Statement describing nature of obligation—Sources of payment.
- 47.56.750 Columbia river bridge at Horn Rapids—Bonds—Account created in highway bond retirement fund—Deposit of revenue—Pledge of excise taxes—Repayment procedure—Legislative covenant.
- 47.56.751 Columbia river bridge at Horn Rapids—Operation by department of transportation—Amount and duration of tolls—Use of motor vehicle fund moneys—Priority of payments—Trust fund—Covenants by state finance committee.
- 47.56.752 Columbia river bridge at Horn Rapids—Toll revenue trust fund—Transfer of surplus moneys.
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- 47.56.754 Columbia river bridge at Horn Rapids—Ferries, urban arterials, Spokane river toll bridges, bonds—Lien against fuel tax revenues.
- 47.56.755 Columbia river bridge at Horn Rapids—When toll free—Conveyance to city or counties.
- 47.56.756 Additional bridge at Columbia point authorized.
- 47.56.760 First Avenue South bridge in Seattle—Study by commission—Bonds, tolls—Additional funding.
- 47.56.761 First Avenue South bridge in Seattle—Study by city—Tolls—Revenues.

Bridges across navigable waters: RCW 79.91.090 through 79.91.120.

Port districts, toll facilities: Chapter 53.34 RCW.

Toll bridge bonds authorized, adjoining counties: RCW 36.76.140.

Traffic violations and unlawful acts on toll facility or ferry: RCW 46.61.690.

Viaducts, bridges, elevated roadways, tunnels, etc., authority of cities to construct: Chapter 35.85 RCW.

47.56.010 Definitions. "Toll bridge" means a bridge constructed or acquired under this chapter, upon which tolls are charged, together with all appurtenances, additions, alterations, improvements, and replacements thereof, and the approaches thereto, and all lands and interests used therefor, and buildings and improvements thereon.

"Toll road" means any express highway, superhighway, or motorway at such locations and between such termini as may be established by law, and constructed or to be constructed as a limited access highway under the provisions of this chapter by the department, and shall include, but not be limited to, all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service facilities, communications facilities, and administration, storage, and other buildings that the department may deem necessary for the operation of the project, together with all property, rights, easements, and interests that may be acquired by the department for the construction or the operation of the project, all of which shall be conducted in the same manner and under the same procedure as provided for the establishing, constructing, operating, and maintaining of toll bridges by the department, insofar as those procedures are reasonably consistent and applicable. [1984 c 7 § 246; 1961 c 13 § 47.56.010. Prior: 1953 c 220 § 1; 1937 c 173 § 1, part; RRS § 6524-1, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.030 Department in charge of toll facilities including ferries for enumerated purposes. The department of transportation shall have full charge of the construction of all toll bridges and other toll facilities including the Washington state ferries, and the operation and maintenance thereof. The transportation commission shall determine and establish the tolls and charges thereon, and shall perform all duties and exercise all powers relating to the financing, refinancing, and fiscal management of all toll bridges and other toll facilities including the Washington state ferries, and bonded indebtedness in the manner provided by law. The department shall have full charge of design of all toll facilities. The department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract in the manner of state highway construction immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department is

authorized to negotiate contracts for any amount without bid in order to make repairs to ferries or ferry terminal facilities or removal of such facilities whenever continued use of ferries or ferry terminal facilities constitutes a real or immediate danger to the traveling public or precludes prudent use of such ferries or facilities. [1977 ex.s. c 151 § 66; 1969 ex.s. c 180 § 3; 1961 c 278 § 8; 1961 c 13 § 47.56.030. Prior: 1937 c 173 § 10; RRS § 6524-10.]

47.56.032 Authority of department and commission relating to state ferries. All powers vested in the toll bridge authority as of September 21, 1977, relating to the acquiring, operating, extending, designing, constructing, repairing, and maintenance of the Washington state ferries or any part thereof and the collecting of tolls and charges for use of its facilities, shall be performed by the department. The commission shall determine all fares, tolls, and other charges for its facilities and shall directly perform all duties and exercise all powers relating to financing, refinancing, and fiscal management of the system's bonded indebtedness in the manner provided by law. [1984 c 7 § 247; 1961 c 278 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.040 Toll bridges authorized—Investigations. The department is empowered, in accordance with the provisions of this chapter, to provide for the establishment and construction of toll bridges upon any public highways of this state together with approaches thereto wherever it is considered necessary or advantageous and practicable for crossing any stream, body of water, gulch, navigable water, swamp, or other topographical formation whether that formation is within this state or constitutes a boundary between this state and an adjoining state or country. The necessity or advantage and practicability of any such toll bridge shall be determined by the department, and the feasibility of financing any toll bridge in the manner provided by this chapter shall be a primary consideration and determined according to the best judgment of the department. For the purpose of obtaining information for the consideration of the department upon the construction of any toll bridge or any other matters pertaining thereto, any cognizant officer or employee of the state shall, upon the request of the department, make reasonable examination, investigation, survey, or reconnaissance for the determination of material facts pertaining thereto and report this to the department. The cost of any such examination, investigation, survey, or reconnaissance shall be borne by the department or office conducting these activities from the funds provided for that department or office for its usual functions. [1984 c 7 § 248; 1961 c 13 § 47.56.040. Prior: 1937 c 173 § 3; RRS § 6524-3; prior: 1913 c 56 § 2; RRS § 6525.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.042 State boundary bridges—Investigations—Agreements with counties or states. The department is authorized to enter into agreements with any

county of this state and/or with an adjoining state or county thereof for the purpose of implementing an investigation of the feasibility of any toll bridge project for the bridging of a river forming a portion of the boundary of this state, and the adjoining state. The department may use funds available to it to carry out the purposes of this section. These agreements may provide that if any such project is determined to be feasible and is adopted, any advancement of funds by any state or county may be reimbursed out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived from the project. [1984 c 7 § 249; 1961 c 13 § 47.56.042. Prior: 1955 c 203 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.050 Purchase of bridges and ferries authorized—Provisions applicable. (1) The department, whenever it is considered necessary or advantageous and practicable, is empowered to provide for the acquisition by purchase of, and to acquire by purchase (a) any bridge or bridges or ferries which connect with or may be connected with the public highways of this state (b) together with approaches thereto.

(2) In connection with the acquisition by purchase of any bridge or bridges or ferries under subsection (1) of this section, the department, the state treasurer, any city, county, or other political subdivision of this state, and all of their officers:

(a) Are empowered and required to do all acts and things provided for in this chapter to establish and construct toll bridges and operate, finance, and maintain such bridges insofar as the powers and requirements are applicable to the purchase of any bridge or bridges or ferries and their operation, financing, and maintenance; and

(b) In purchasing, operating, financing, and maintaining any bridge or bridges or ferries acquired or to be acquired by purchase under this section, shall act in the same manner and under the same procedures as are provided in this chapter to establish, construct, operate, finance, and maintain toll bridges insofar as such manner and procedure are applicable to the purchase of any bridge or bridges or ferries and their operation, financing, and maintenance.

(3) Without limiting the generality of the provisions contained in subsections (1) and (2) of this section, the department is empowered: (a) To cause surveys to be made for the purpose of investigating the propriety of acquiring by purchase any such bridge or bridges or ferries and the right of way necessary or proper for that bridge or bridges or ferries, and other facilities necessary to carry out the provisions of this chapter; (b) to issue, sell, and redeem bonds, and to deposit and pay out the proceeds of the bonds for the financing thereof; (c) to collect, deposit, and expend tolls therefrom; (d) to secure and remit financial and other assistance in the purchase thereof; and (e) to carry insurance thereon.

(4) The provisions of RCW 47.56.220 apply when any bridge or bridges or ferries are acquired by purchase pursuant to this section. [1984 c 7 § 250; 1973 c 106 §

25; 1961 c 13 § 47.56.050. Prior: 1945 c 266 § 1; Rem. Supp. 1945 § 6524-3a.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.060 Toll bridges—General powers of department and officials—Financial statements. The department, the officials thereof, and all other state officials are empowered to act and make agreements consistent with law as may be necessary or desirable in connection with the duties and powers conferred upon them respectively by law regarding the construction, maintenance, operation, and insurance of toll bridges or the safeguarding of the funds and revenues required for such construction and the payment of the indebtedness incurred therefor. The department shall keep full, complete, and separate accounts of each toll bridge, and annually shall prepare balance sheet and income and profit and loss statements showing the financial condition of each such toll bridge, which statement shall be open at all reasonable times to the inspection of holders of bonds issued by the department. [1984 c 7 § 251; 1961 c 13 § 47.56.060. Prior: 1937 c 173 § 17; RRS § 6524-17.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.070 Toll facilities authorized—Provisions applicable—Restrictions. The department of transportation may, with the approval of the transportation commission, provide for the establishment, construction, and operation of toll tunnels, toll roads, and other facilities necessary for their construction and connection with public highways of the state. It may cause surveys to be made to determine the propriety of their establishment, construction, and operation, and may acquire rights of way and other facilities necessary to carry out the provisions hereof; and may issue, sell, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction thereof; carry insurance thereon; and handle any other matters pertaining thereto, all of which shall be conducted in the same manner and under the same procedure as provided for the establishing, constructing, operating, and maintaining of toll bridges by the department, insofar as reasonably consistent and applicable. No toll facility, toll bridge, toll road, or toll tunnel, shall be combined with any other toll facility for the purpose of financing unless such facilities form a continuous project, to the end that each such facility or project be self-liquidating and self-sustaining. [1977 ex.s. c 151 § 67; 1961 c 13 § 47.56.070. Prior: 1953 c 220 § 3; 1937 c 173 § 3 1/2; RRS § 6524-3 1/2.]

47.56.075 Toll roads, facilities—Legislative authorization or local sponsorship required. The department shall approve for construction only such toll roads as the legislature specifically authorizes or such toll facilities as are specifically sponsored by a city, town, or county. [1984 c 7 § 252; 1961 c 13 § 47.56.075. Prior: 1953 c 220 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.077 Concessions to operate private business on toll road right of way prohibited. The department shall not grant concessions for the operation or establishment of any privately owned business upon toll road rights of way. [1984 c 7 § 253; 1961 c 13 § 47.56.077. Prior: 1953 c 220 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.080 Construction of toll bridges and issuance of bonds authorized. Whenever in the judgment of the transportation commission it is considered in the best interest of the public highways of the state that any new toll bridge or bridges be constructed upon any public highway and across any stream, body of water, gulch, navigable water, swamp, or other topographical formation and operated by the state the commission shall adopt a resolution declaring that public interest and necessity require the construction of such toll bridge or bridges and authorizing the issuance of revenue bonds for the purpose of obtaining funds in an amount not in excess of that estimated to be required for such construction. The issuance of bonds as provided in this chapter for the construction of more than one toll bridge may at the discretion of the commission be included in the same authority and issue of bonds. [1977 ex.s. c 151 § 68; 1961 c 13 § 47.56.080. Prior: 1937 c 173 § 6; RRS § 6524-6.]

47.56.090 Authority to acquire right of way in constructing a toll bridge. The department of transportation is empowered to secure right of way for toll bridges and for approaches thereto by gift or purchase, or by condemnation in the manner provided by law for the taking of private property for public highway purposes. [1977 ex.s. c 151 § 69; 1961 c 13 § 47.56.090. Prior: 1937 c 173 § 5; RRS § 6524-5.]

47.56.100 Toll bridges—Right of way across state highways and property of political subdivisions—Compensation. The right of way is hereby given, dedicated, and set apart upon which to locate, construct, and maintain bridges or approaches thereto or other highway crossings, and transportation facilities thereof or thereto, through, over, or across any state highways, and through, over, or across the streets, alleys, lanes, and roads within any city, county, or other political subdivision of the state. If any property belonging to any city, county, or other political subdivision of the state is required to be taken for the construction of any bridge or approach thereto, or if any such property is injured or damaged by such construction, compensation therefor as may be proper or necessary and as agreed upon may be paid by the department to the particular county, city, or other political subdivision of the state owning the property, or condemnation proceedings may be brought for the determination of the compensation. [1984 c 7 § 254; 1977 ex.s. c 103 § 4; 1961 c 13 § 47.56.100. Prior: 1937 c 173 § 16; RRS § 6524-16.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.110 Toll bridges—Resolution of necessity in acquiring right of way—Effect of. Before the department proceeds with any action to secure a right of way or with construction of any toll bridge under the provisions of this chapter, the commission shall first pass a resolution that public interest and necessity require the acquisition of right of way for and the construction of the toll bridge. The resolution is conclusive evidence (1) of the public necessity of such construction; (2) that the property is necessary therefor; and (3) that the proposed construction is planned or located in a manner which will be most compatible with the greatest public good and the least private injury. When it becomes necessary for the department to condemn any real estate to be used in connection with any such bridge, the attorney general of the state shall represent the department. In eminent domain proceedings to acquire property for any of the purposes of this chapter, any toll bridge, real property, personal property, franchises, rights, easements, or other property or privileges appurtenant thereto appropriated or dedicated to a public use or purpose by any person, firm, private, public, or municipal corporation, county, city, town, district, or any political subdivision of the state, may be condemned and taken, and the acquisition and use as provided in this chapter for the same public use or purpose to which the property has been so appropriated or dedicated, or for any other public use or purpose, is a superior and permanent right and necessity, and a more necessary use and purpose than the public use or purpose to which the property has already been appropriated or dedicated. It is not necessary in any eminent domain proceedings under this chapter to plead or prove any acts or proceedings preliminary or prior to the adoption of the resolution hereinbefore referred to describing the property sought to be taken and directing such proceedings. [1984 c 7 § 255; 1961 c 13 § 47.56.110. Prior: 1937 c 173 § 11; RRS § 6524-11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.120 Toll bridges—Construction directed—Costs. In the event that the transportation commission should determine that any toll bridge should be constructed, all cost thereof including right of way, survey, and engineering shall be paid out of any funds available for payment of the cost of such toll bridge under this chapter. [1977 ex.s. c 151 § 70; 1961 c 13 § 47.56.120. Prior: 1937 c 173 § 4; RRS § 6524-4.]

47.56.130 Toll bridges—Bonds—Cooperative funds from state and federal government. The department is hereby empowered to issue bonds for the construction of any toll bridge or toll bridges authorized under the provisions of this chapter. Any and all bonds issued for the construction of any toll bridge or toll bridges under the authority of the department shall be issued in the name of the department, shall constitute obligations only of the department, shall be identified as ----- toll bridge bonds, and shall contain a recital on the face thereof that the payment or redemption of

the bonds and the payment of the interest thereon is secured by a direct and exclusive charge and lien upon the tolls and other revenues of any nature whatever received from the operation of the particular toll bridge or bridges for the construction of which the bonds are issued and that neither the payment of the principal or any part thereof nor of the interest thereon or any part thereof constitutes a debt, liability, or obligation of the state of Washington. The department is empowered to receive and accept funds from the state of Washington or the federal government upon a cooperative or other basis for the construction of any toll bridge authorized under this chapter and is empowered to enter into such agreements with the state of Washington or the federal government as may be required for the securing of such funds. [1984 c 7 § 256; 1961 c 13 § 47.56.130. Prior: 1937 c 173 § 7; RRS § 6524-7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.140 Toll bridges, bonds—Form, contents, manner of sale—Interim bonds. The revenue bonds may be issued and sold by the department of transportation from time to time and in such amounts as it deems necessary to provide sufficient funds for the construction of the bridge, and to pay interest on outstanding bonds issued for its construction during the period of actual construction and for six months after completion thereof.

The department of transportation shall determine the form, conditions, and denominations of the bonds, and the maturity dates which the bonds to be sold shall bear and the interest rate thereon. All bonds of the same issue need not bear the same interest rate. Principal and interest of the bonds may be payable at such place as determined by the department. They may be in any form including bearer bonds or registered bonds as provided in RCW 39.46.030, with interest payable at such times as determined by the department, and shall mature at such times and in such amounts as the department prescribes. The department may provide for the retirement of the bonds at any time prior to maturity, and in such manner and upon payment of such premiums as it may determine in the resolution providing for the issuance of the bonds. All such bonds shall be signed by the state auditor and countersigned by the governor and any interest coupons appertaining thereto shall bear the signature of the state auditor. The countersignature of the governor on such bonds and the signature of the state auditor on any coupons may be their printed or lithographed facsimile signatures. Successive issues of such bonds within the limits of the original authorization shall have equal preference with respect to the redemption thereof and the payment of interest thereon. The department may fix different maturity dates, serially or otherwise, for successive issues under any one original authorization. The bonds shall be negotiable instruments under the law merchant. All bonds issued and sold hereunder shall be sold on sealed bids to the highest and best bidder after such advertising for bids as the department deems proper. The department may reject any and all bids and may thereafter sell the bonds at private sale

under such terms and conditions as it deems most advantageous to its own interests; but not at a price below that of the best bid which was rejected. The department may contract loans and borrow money through the sale of bonds of the same character as those herein authorized, from the United States or any agency thereof, upon such conditions and terms as may be agreed to and the bonds shall be subject to all the provisions of this chapter, except the requirement that they be first offered at public sale.

Temporary or interim bonds, certificates, or receipts, of any denomination, and with or without coupons attached, signed by the state auditor, may be issued and delivered until bonds are executed and available for delivery. [1983 c 167 § 118; 1970 ex.s. c 56 § 62; 1969 ex.s. c 232 § 33; 1963 ex.s. c 3 § 45; 1961 c 13 § 47.56-.140. Prior: 1953 c 79 § 1; 1937 c 173 § 8; RRS § 6524-8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

47.56.150 Toll bridges—Bond proceeds and toll revenues, disposition of—Construction fund—Disbursement—Investment. The proceeds from the sale of all bonds authorized under the provisions of this chapter shall be paid to the state treasurer for the credit of the department and be deposited as demand deposits forthwith in such depository or depositories as may be authorized by law to receive deposits of state funds to the credit of a fund to be designated as the construction fund of the particular toll bridge or toll bridges for which such bonds were issued and sold, which fund shall not be a state fund and shall at all times be kept segregated and set apart from all other funds and in trust for the purposes herein set out. Such proceeds shall be paid out or disbursed solely for the construction of such toll bridge or toll bridges, the acquisition of the necessary lands and easements therefor and the payment of interest on such bonds during the period of actual construction and for a period of six months thereafter, only as the need therefor shall arise. The department may agree with the purchaser of the bonds upon any conditions or limitations restricting the disbursement of such funds that may be deemed advisable, for the purpose of assuring the proper application of such funds. All moneys in such fund and not required to meet current construction costs of the toll bridge or toll bridges for which such bonds were issued and sold, and all funds constituting surplus revenues that are not immediately needed for the particular object or purpose to which they must be applied or are pledged shall be invested in bonds and obligations of the nature eligible for investment of surplus state moneys: *Provided*, That the department may provide in the proceedings authorizing the issuance of these bonds that the investment of such moneys shall be made only in particular bonds and obligations within the classifications eligible for such investment, and such provisions shall thereupon be binding upon the department

and all officials having anything to do with the investment. Any surplus which may exist in the construction fund shall be applied to the retirement of bonds issued for the construction of such toll bridge or toll bridges by purchase or call. If these bonds cannot be purchased at a price satisfactory to the department and are not by their terms callable prior to maturity, the surplus shall be paid into the fund applicable to the payment of principal and interest of the bonds and shall be used for that purpose. The proceedings authorizing the issuance of bonds may provide limitations and conditions upon the time and manner of applying the surplus to the purchase and call of outstanding bonds and the terms upon which they shall be purchased or called. Such limitations and conditions shall be followed and observed in the application and use of the surplus. All bonds so retired by purchase or call shall be immediately canceled. [1984 c 7 § 257; 1961 c 13 § 47.56.150. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.160 Toll bridges—Toll revenue fund. All tolls or other revenues received from the operation of any toll bridge or toll bridges constructed with the proceeds of bonds issued and sold hereunder shall be paid over by the department to the state treasurer. The treasurer shall deposit them forthwith as demand deposits in a depository or depositories authorized by law to receive deposits of state funds. The deposit shall be made to the credit of a special trust fund designated as the toll revenue fund of the particular toll bridge or toll bridges producing the tolls or revenue, which fund shall be a trust fund and shall at all times be kept segregated and set apart from all other funds. [1984 c 7 § 258; 1961 c 13 § 47.56.160. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.170 Toll bridges—Transfer of funds for bond payments—Surplus funds. From the money deposited in each separate construction fund under RCW 47.56.160, the state treasurer shall transfer to the place or places of payment named in the bonds such sums as may be required to pay the interest as it becomes due on all bonds sold and outstanding for the construction of a particular toll bridge or toll bridges during the period of actual construction and during the period of six months immediately thereafter. The state treasurer shall thereafter transfer from each separate toll revenue fund to the place or places of payment named in the bonds such sums as may be required to pay the interest on the bonds and redeem the principal thereof as the interest payments and bond redemption become due for all bonds issued and sold for the construction of the particular toll bridge or toll bridges producing the tolls or revenues so deposited in the toll revenue fund. All funds so transferred for the payment of principal or interest on bonds issued for any particular toll bridge shall be segregated and applied solely for the payment of that principal or interest. The proceedings authorizing the issuance of

bonds may provide for setting up a reserve fund or funds out of the tolls and other revenues not needed for the payment of principal and interest, as the same currently matures and for the preservation and continuance of the fund in a manner to be provided therein. The proceedings may also require the immediate application of all surplus moneys in the toll revenue fund to the retirement of the bonds prior to maturity, by call or purchase, in such manner and upon such terms and the payment of such premiums as may be deemed advisable in the judgment of the department.

The moneys remaining in each separate toll revenue fund after providing the amount required for interest and redemption of bonds as provided in this section shall be held and applied as provided in the proceedings authorizing the issuance of the bonds. If the proceedings authorizing the issuance of the bonds do not require surplus revenues to be held or applied in any particular manner, they shall be allocated and used for such other purposes incidental to the construction, operation, and maintenance of the toll bridge or bridges as the department may determine. [1984 c 7 § 259; 1961 c 13 § 47.56.170. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.180 Toll bridges—Payments made by warrants on vouchers—Interest on deposits. Warrants for payments to be made on account of the bonds shall be duly drawn by the state treasurer on vouchers approved by the department.

Moneys required to meet the costs of construction and all expenses and costs incidental to the construction of any particular toll bridge or toll bridges or to meet the costs of operating, maintaining, and repairing the bridge or bridges shall be paid from the proper fund therefor by the state treasurer upon vouchers approved by the department.

All interest received or earned on money deposited in each and every fund provided for in this chapter shall be credited to and become a part of the particular fund upon which the interest accrues. [1984 c 7 § 260; 1973 c 106 § 26; 1961 c 13 § 47.56.180. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.190 Toll bridges—Agreement on deposit of funds. The department may provide in the proceedings authorizing the issuance of bonds or may otherwise agree with the purchasers of bonds regarding the deposit of all moneys constituting the construction fund and the toll revenue fund and provide for the deposit of the money at such times and with such depositaries or paying agents and upon the furnishing of security as meets with the approval of the purchasers of the bonds so long as the depositaries and security provided for or agreed upon are qualified and eligible in accordance with the requirements of law. [1984 c 7 § 261; 1961 c 13 § 47.56.190. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.200 Toll bridges—Use of bond proceeds and revenue for expenses. Notwithstanding anything contained in this chapter, the proceeds received from the sale of bonds and the tolls or other revenues received from the operation of any toll bridge or toll bridges may be used to defray any expenses incurred by the department in connection with and incidental to the issuance and sale of bonds for the construction of the toll bridge or toll bridges including expenses for the preparation of surveys and estimates and making inspections and examinations required by the purchasers of the bonds. In addition, the proceedings authorizing the issuance of the bonds may contain appropriate provisions governing the use and application of the bond proceeds and toll or other revenues for the purposes herein specified. [1984 c 7 § 262; 1961 c 13 § 47.56.200. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.210 Toll bridges—Remedies of bond holders. While any bonds issued by the department under this chapter remain outstanding, the powers, duties, or existence of the department or of any other official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. The holder of any bond may by mandamus or other appropriate proceeding require and compel the performance of any of the duties imposed upon any state department, official, or employee, or imposed upon the department or its officers, agents, and employees in connection with the construction, maintenance, operation, and insurance of any bridge, and in connection with the collection, deposit, investment, application, and disbursement of all tolls and other revenues derived from the operation and use of any bridge and in connection with the deposit, investment, and disbursement of the proceeds received from the sale of bonds. The enumeration of rights and remedies in this section shall not be deemed to exclude the exercise or prosecution of any other rights or remedies by the holders of the bonds. [1984 c 7 § 263; 1961 c 13 § 47.56.210. Prior: 1937 c 173 § 18; RRS § 6524-18.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.220 Toll bridges—Limitations on other service—Protection of outstanding bonds. Except as otherwise provided in RCW 47.56.291, 47.56.714, and 47.56.756, as long as any of the bonds issued hereunder for the construction of any toll bridge are outstanding and unpaid, there shall not be erected, constructed, or maintained any other bridge or other crossing over, under, through, or across the waters over which such toll bridge is located or constructed, connecting or joining directly or indirectly the lands or extensions thereof or abutments thereon on both sides of the waters spanned or crossed by such toll bridge within a distance of ten miles from either side of such toll bridge excepting bridges or other highway crossings actually in existence

and being maintained, or for which there was outstanding an existing and lawfully issued franchise, at the time of the location of such toll bridge and prior to the time of the authorization of such bonds, and no ferry or other similar means of crossing the said waters within the said distance and connecting or plying directly or indirectly between the lands or extensions thereof or abutments thereon on both sides of the waters spanned or crossed by such bridge shall be maintained or operated or permitted or allowed: *Provided*, That ferries and other similar means of crossing actually in existence and being maintained and operated, or for which there was outstanding an existing and lawfully issued franchise, at the time of the location of such bridge and prior to the time of the authorization of such bonds, may continue and be permitted to be operated and maintained under such existing rights and franchises, or any lawful renewal or extension thereof. The provisions of this section shall be binding upon the state department of transportation, the state of Washington, and all of its departments, agencies, or instrumentalities as well as any and all private, political, municipal, and public corporations and subdivisions, including cities, counties, and other political subdivisions, and the prohibitions of this section shall restrict and limit the powers of the legislature of the state of Washington in respect to the matters herein mentioned as long as any of such bonds are outstanding and unpaid and shall be deemed to constitute a contract to that effect for the benefit of the holders of all such bonds. [1983 c 3 § 128; 1979 ex.s. c 212 § 19; 1979 c 131 § 8; 1961 c 13 § 47.56.220. Prior: 1937 c 173 § 13; RRS § 6524-13.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.230 Toll bridges—Insurance or indemnity bonds authorized. When any toll bridge or bridges authorized under this chapter is being built by the department, the department may carry or cause to be carried an amount of insurance or indemnity bond or bonds as protection against loss or damage as the department may deem proper. The department is hereby further empowered to carry such an amount of insurance to cover any accident or destruction in part or in whole to any toll bridge or toll bridges until all bonds sold for the construction of the toll bridge or toll bridges and interest accrued thereon have been fully redeemed and paid. All moneys collected on any indemnity bond or insurance policy as the result of any damage or injury to the toll bridge or toll bridges shall be used for the purpose of repairing or rebuilding the toll bridge or toll bridges as long as there are revenue bonds against any such structure outstanding and unredeemed. The department is also empowered to carry insurance or indemnity bonds insuring against the loss of tolls or other revenues to be derived from any such toll bridge or bridges by reason of any interruption in the use of the toll bridge or toll bridges from any cause whatever, and the proceeds of the insurance or indemnity bonds shall be paid into the fund into which the tolls and other revenues of the bridge thus insured are required to be paid and shall be

applied to the same purposes and in the same manner as other moneys in the fund. The insurance or indemnity bonds may be in an amount equal to the probable tolls and other revenues to be received from the operation of the toll bridge or toll bridges during any period of time that may be determined by the department and fixed in its discretion, and be paid for out of the toll revenue fund as may be specified in the proceedings. The department may provide in the proceedings authorizing the issuance of bonds for the carrying of insurance as authorized by this chapter, and the purchase and carrying of insurance as authorized by this chapter, and the purchase and carrying of such insurance shall thereupon be obligatory upon the department and be paid for out of the toll revenue fund as may be specified in the proceedings. [1984 c 7 § 264; 1961 c 13 § 47.56.230. Prior: 1937 c 173 § 15; RRS § 6524-15.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.240 Toll bridges—Fixing of toll rates authorized—Lien of bonds on revenue. The commission is hereby empowered to fix the rates of toll and other charges for all toll bridges built under the terms of this chapter. Toll charges so fixed may be changed from time to time as conditions warrant. The commission, in establishing toll charges, shall give due consideration to the cost of operating and maintaining such toll bridge or toll bridges including the cost of insurance, and to the amount required annually to meet the redemption of bonds and interest payments on them. The tolls and charges shall be at all times fixed at rates to yield annual revenue equal to annual operating and maintenance expenses including insurance costs and all redemption payments and interest charges of the bonds issued for any particular toll bridge or toll bridges as the bonds become due. The bond redemption and interest payments constitute a first direct and exclusive charge and lien on all such tolls and other revenues and interest thereon. Sinking funds created therefrom received from the use and operation of the toll bridge or toll bridges, and such tolls and revenues together with the interest earned thereon shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose as long as any of these bonds are outstanding and unpaid. [1984 c 7 § 265; 1961 c 13 § 47.56.240. Prior: 1937 c 173 § 9; RRS § 6524-9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.242 Liquidation and closure of facility accounts upon removal of tolls—Transfer to motor vehicle fund. The department is authorized to liquidate and close toll facility trust and other facility accounts established outside the state treasury under chapter 47.56 RCW after the removal of tolls from the facility for which the accounts were established. Any balance remaining in the accounts shall thereupon be transferred to the motor vehicle fund. In addition, the department may, after the removal of tolls from a particular facility or facilities, require that all moneys transferred to the

place of payment named in the revenue bonds, for the purpose of paying principal or interest or for redemption of the bonds not then expended for such purpose, be returned to the state treasurer for deposit in the motor vehicle fund. [1984 c 7 § 266; 1967 ex.s. c 145 § 48.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.243 Liquidation and closure of facility accounts upon removal of tolls—Satisfaction of valid claims. After transfer of such moneys pursuant to RCW 47.56.242, all valid claims against such accounts, including proper claims for refunds for unused commute media and other prepaid toll fees, may be satisfied, and any outstanding bonds or any coupons may be redeemed by payment from the motor vehicle fund upon proper application to and approval by the department of transportation.

Neither the provisions of this section nor of RCW 47.56.242 shall be construed to preclude any remedy otherwise available to bond owners or coupon holders. [1983 c 167 § 119; 1967 ex.s. c 145 § 49.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

47.56.245 Toll charges retained until costs paid. The department shall retain toll charges on all existing and future facilities until all costs of investigation, financing, acquisition of property, and construction advanced from the motor vehicle fund, and obligations incurred under RCW 47.56.250 and chapter 16, Laws of 1945 have been fully paid. With respect to every facility completed after March 19, 1953, costs of maintenance, management, and operation shall be paid periodically out of the revenues of the facility in which such costs were incurred. [1984 c 7 § 267; 1965 ex.s. c 170 § 53; 1961 c 13 § 47.56.245. Prior: 1953 c 220 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.247 Credit permits for vehicular passage. The department may issue permits for the passage of vehicles on any or all of its toll bridges, toll tunnels, toll roads, or for the Washington state ferry system on a credit basis upon such terms and conditions as the department deems proper. [1984 c 7 § 268; 1961 c 258 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 258: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 258 § 3.]

47.56.248 Credit permits for vehicular passage—Cash deposit or bond may be required—Revocation of permit. The department may require the holder of the permit to furnish to and maintain in force with the department a cash deposit or a corporate surety bond. The department may require the holder of the permit to increase the amount of cash bond, or to furnish an additional surety bond, or may reduce the amount of the cash bond or surety bond required, as the amount of charges incurred and regularity of payment warrant, or may revoke any permit granted for failure of the holder

to comply with any of its terms. [1984 c 7 § 269; 1961 c 258 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 258: See note following RCW 47.56.247.

47.56.250 Contributions by the state or political subdivision—Bonds—Repayment. Whenever a proposed toll bridge, toll road, toll tunnel, or any other toll facility of any sort is to be constructed, any city, county, or other political subdivision located in relation to such facility so as to benefit directly or indirectly thereby, may, either jointly or separately, at the request of the transportation commission advance or contribute money, or bonds, rights of way, labor, materials, and other property toward the expense of building the toll facility, and for preliminary surveys and the preparation of plans and estimates of cost therefor and other preliminary expenses. Any such city, county, or other political subdivision may, either jointly or separately, at the request of the transportation commission advance or contribute money or bonds for the purpose of guaranteeing the payment of interest or principal on the bonds issued by the commission to finance the toll facility. Appropriations for such purposes may be made from any funds available, including county road funds received from or credited by the state, or funds obtained by excess tax levies made pursuant to law or the issuance of general obligation bonds for this purpose. General obligation bonds issued by a city, county, or political subdivision may with the consent of the commission be placed with the department of transportation to be sold by the department to provide funds for such purpose. Money, or bonds, or property so advanced or contributed may be immediately transferred or delivered to the department to be used for the purpose for which contribution was made. The commission may enter into an agreement with a city, county, or other political subdivision to repay any money, or bonds or the value of a right of way, labor, materials, or other property so advanced or contributed. The commission may make such repayment to a city, county, or other political subdivision and reimburse the state for any expenditures made by it in connection with the toll facility out of tolls and other revenues for the use of the toll facility. [1977 ex.s. c 151 § 71; 1961 c 13 § 47.56.250. Prior: 1959 c 162 § 1; 1955 c 166 § 1; 1937 c 173 § 12; RRS § 6524-12.]

47.56.253 Permits, leases, licenses to governmental entities to use property of toll facility or ferry system. If the department deems it in the public interest and not inconsistent with the use and operation of the toll facility involved, the department may on application therefor issue a permit, lease, or license to the state, or to any city, county, port district, or other political subdivision or municipal corporation of the state to use any portion of the property of any toll bridge, toll road, toll tunnel, or Washington state ferry system upon such terms and conditions as the department may prescribe. [1984 c 7 § 270; 1961 c 257 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 257: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 257 § 7.]

47.56.254 Sale of unneeded property—Authorized—Rules. If the secretary of transportation determines that any real property (including lands, improvements thereon, and any interests or estates) originally acquired for toll facility purposes is no longer required for purposes of the department, the department shall offer it for sale as authorized by RCW 47.12.063 or 47.12.283. The department may adopt rules further implementing this section. [1979 ex.s. c 189 § 4; 1977 ex.s. c 151 § 72; 1973 1st ex.s. c 177 § 3; 1961 c 257 § 3.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

Severability—1961 c 257: See note following RCW 47.56.253.

47.56.255 Sale of unneeded property—Certification to governor—Execution, delivery of deed. When full payment for real property agreed to be sold as authorized by RCW 47.56.254 has been received, the department may certify this fact to the governor, with a description of the land and terms of the sale, and the governor may execute and the secretary of state shall attest the deed and deliver it to the grantee. [1984 c 7 § 271; 1973 1st ex.s. c 177 § 4; 1961 c 257 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 257: See note following RCW 47.56.253.

47.56.256 Franchises for utility, railway, urban public transportation purposes. If the department deems it not inconsistent with the use and operation of any department facility, the department may grant franchises to persons, associations, private or municipal corporations, the United States government, or any agency thereof, to use any portion of the property of any toll bridge, toll road, toll tunnel, or the Washington state ferry system, including approaches thereto, for the construction and maintenance of water pipes, flumes, gas pipes, telephone, telegraph, and electric light and power lines and conduits, trams or railways, any structures or facilities that are part of an urban public transportation system owned or operated by a municipal corporation, agency, or department of the state of Washington other than the department of transportation, and any other such facilities in the manner of granting franchises on state highways. [1984 c 7 § 272; 1967 c 108 § 12; 1961 c 257 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 257: See note following RCW 47.56.253.

Urban public transportation system defined: RCW 47.04.082.

47.56.257 Deposit of moneys received under RCW 47.56.253 through 47.56.256. Any moneys received pursuant to the provisions of RCW 47.56.253 through 47.56.256 shall be deposited into the separate and proper trust fund with the state treasurer established for the respective toll facility. [1979 ex.s. c 189 § 5; 1961 c 257 § 6.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

Severability—1961 c 257: See note following RCW 47.56.253.

47.56.270 Lake Washington and Tacoma Narrows bridges part of primary highways. The Lake Washington bridge and the Tacoma Narrows bridge in chapter 47.17 RCW made a part of the primary state highways of the state of Washington, shall, upon completion, be operated, maintained, kept up, and repaired by the department in the manner provided in this chapter, and the cost of such operation, maintenance, upkeep, and repair shall be paid from funds appropriated for the use of the department for the construction and maintenance of the primary state highways of the state of Washington. [1983 c 3 § 129; 1961 c 13 § 47.56.270. Prior: 1939 c 5 § 4; RRS § 6524–3a.]

47.56.271 Tacoma Narrows bridge—Toll free facility. The Tacoma Narrows bridge hereinbefore by the provisions of RCW 47.17.065 and 47.56.270 made a part of the primary state highways of the state shall be operated and maintained by the department as a toll-free facility at such time as the present bonded indebtedness relating thereto is wholly retired and tolls equaling the present indebtedness of the toll bridge authority to the county of Pierce have been collected. It is the express intent of the legislature that the provisions of RCW 47.56.245 (section 47.56.245, chapter 13, Laws of 1961) shall not be applicable to the Tacoma Narrows bridge. [1983 c 3 § 130; 1965 c 50 § 1.]

47.56.273 Fox Island toll bridge—Need for removal of tolls. Present tolls on the Fox Island toll bridge have retarded the development of Fox Island for residential purposes because of the financial burden upon residents and potential residents resulting from paying these tolls in addition to those imposed upon the Narrows bridge. The removal or readjustment of tolls from the Fox Island toll bridge is required in the interest of the orderly development of Fox Island. The development of Fox Island will provide additional users of the Narrows bridge with a resultant increase of revenue to the state from tolls due to such additional use. [1961 c 13 § 47.56.273. Prior: 1957 c 270 § 1.]

47.56.282 Additional Lake Washington bridge (1957 Act)—Revenue bonds—Toll charges and other support. The authority is hereby authorized by resolution to issue and sell its revenue bonds in an amount sufficient to provide funds to pay all costs of construction of an additional Lake Washington bridge and approaches and all costs of construction or any alterations to the existing Lake Washington bridge or its approaches as a result of the construction of the additional bridge, including but not limited to all costs of survey, acquisition of rights of way, design, engineering, all expenses of issuance and sale of such bonds, and to pay interest on said bonds during construction and for six months after tolls are first imposed.

Said revenue bonds shall constitute obligations only of the Washington toll bridge authority and shall be payable both principal and interest from the tolls and revenues derived from the operation of said toll facility as hereinbefore constituted and from any other moneys or funds available therefor. Said bonds shall not constitute an indebtedness of the state of Washington and shall contain a recital on the face thereof to that effect, and shall be negotiable instruments under the law merchant. Such bonds shall include a covenant that the payment or redemption thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other revenues received from the operation of said toll facility and from any interest which may be earned from the deposit or investment of any such revenues, except for payment of costs of operation, maintenance and necessary repairs of said facility. The tolls and charges to be imposed shall be fixed in such amounts so that when collected they will produce revenues that shall be at least equal to expenses of operating, maintaining and repairing said toll facility, including all insurance costs, amounts for adequate reserves and coverage of annual debt service on said bonds, and all payments necessary to pay the principal thereof and interest thereon. [1965 ex.s. c 170 § 56; 1961 c 13 § 47.56.282. Prior: 1957 c 266 § 2.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "authority" means department of transportation; see RCW 47.04.015.

47.56.284 Additional Lake Washington bridge (1957 Act)—Continuous project—Authorization of other additional bridges. The existing Lake Washington bridge, the toll bridge authorized in chapter 266, Laws of 1957, and any other bridge hereafter constructed across Lake Washington, are hereby construed and designated as a continuous project within the terms and provisions of RCW 47.56.070; and notwithstanding the provisions of RCW 47.56.220, the department may authorize additional toll bridges across Lake Washington at such times as traffic may warrant and at such sites as deemed feasible. [1984 c 7 § 273; 1961 c 13 § 47.56.284. Prior: 1957 c 266 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.286 Additional Lake Washington bridge (1957 Act)—Interpretation. The provisions of chapter 47.56 RCW, except where inconsistent with RCW 47.56.282 through 47.56.286, shall govern and be controlling in all matters and things necessary to carry out the purposes of RCW 47.56.282 through 47.56.286. Nothing in RCW 47.56.282 through 47.56.286 is intended to amend, alter, modify, or repeal any of the provisions of any statute relating to the powers and duties of the department except as such powers and duties are amplified or modified by the specific provisions of RCW 47.56.282 through 47.56.286 for the uses and purposes herein set forth. RCW 47.56.282 through 47.56.286 are additional to such existing statutes and concurrent therewith. [1985 c

7 § 114; 1984 c 7 § 274; 1961 c 13 § 47.56.286. Prior: 1957 c 266 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.287 Second Lake Washington bridge—Use of motor vehicle fund to pay deficits. To the extent that revenues from the imposition of tolls and franchise fees for use of the second Lake Washington bridge authorized and constructed under the provisions of *RCW 47.56.281 are insufficient to meet costs of maintenance and operation and required payments of principal, interest, and other charges incidental to the issuance, sale, and retirement of the bonds issued pursuant to the provisions of RCW 47.56.282 or on any subsequent refunding bond issues, the department shall use moneys in the motor vehicle fund to pay such deficits. [1984 c 7 § 275; 1965 ex.s. c 170 § 54.]

***Reviser's note:** RCW 47.56.281 was decodified by 1984 c 7 § 387.

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.288 Second Lake Washington bridge—Designation of funds to pay deficits—Pledge of excise tax proceeds. Any funds required to pay such deficits shall be from the proceeds of state excise taxes on motor vehicle fuels and shall be taken from that portion of the motor vehicle fund which is or may be appropriated for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet such deficits.

The proceeds of such excise taxes are hereby pledged to the payment of any such deficits in the costs of maintenance and operation of the bridge and in the payment of principal and interest which may arise on account of the bonds issued under the provisions of RCW 47.56.282, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, such deficits. [1965 ex.s. c 170 § 55.]

47.56.290 Additional Lake Washington bridge (1953 Act)—Appropriation—Repayment from bond issue. There is hereby appropriated from the motor vehicle fund to the Washington toll bridge authority for the biennium ending March 31, 1955, the sum of two hundred thousand dollars or so much thereof as may be necessary to carry out the provisions of chapter 192, Laws of 1953, which sum shall be considered as a loan from the motor vehicle fund to be repaid to said fund on the sale of bonds issued in connection therewith. [1961 c 13 § 47.56.290. Prior: 1953 c 192 § 2.]

47.56.291 Additional Lake Washington bridge in vicinity of first bridge—Design and construction authorized. Notwithstanding the provisions of RCW 47.56.220, the Washington state highway commission is authorized to design and construct an additional bridge across Lake Washington at a site in the vicinity of the first Lake Washington bridge. [1965 ex.s. c 170 § 57.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.310 Additional Columbia river bridge—Vancouver to Portland bridges—Cooperation with Oregon. The Washington toll bridge authority is hereby authorized in conjunction with the Oregon state highway commission, to erect an additional bridge or so much thereof as may be agreed upon with the Oregon state highway commission, including approaches thereto, across the Columbia river adjacent to the existing interstate bridge between Vancouver, Washington, and Portland, Oregon, and to reconstruct and improve the said existing interstate bridge and its approaches or so much thereof as may be agreed upon with the Oregon state highway commission. Such additional bridge, together with the existing interstate bridge, shall be an integral part of U.S. highway No. 99, and to the Oregon boundary shall be a part of primary state highway No. 1. All acts necessary to the design and construction of said new bridge and approaches thereto and the reconstruction and alteration of the existing bridge and approaches may be done and performed by either the Oregon state highway commission or the Washington toll bridge authority with the approval of the other or by both of them jointly. [1961 c 13 § 47.56.310. Prior: 1955 c 152 § 1; 1953 c 132 § 1.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.320 Additional Columbia river bridge—Tolls. The Washington toll bridge authority is authorized to enter into an agreement with the Oregon state highway commission that the new bridge, including approaches, provided for herein shall be merged and consolidated with the existing interstate bridge, including its approaches, located between Vancouver, Washington and Portland, Oregon so that both bridges shall be and become a single toll facility.

The Washington toll bridge authority is hereby authorized to operate and to assume the full control of said toll facility and each portion thereof, whether within or without the borders of the state of Washington, with full power to impose and collect tolls from the users of both bridges constituting said toll facility for the purpose of providing revenue at least sufficient to pay the cost and incidental expenses of construction of the new bridge including approaches thereto in both states, the reconstruction and improvement of the existing interstate bridge including approaches thereto in both states, the cost of maintaining, operating and repairing both of said bridges while the same are operated as said toll facility, and for the payment of the principal of and interest on its revenue bonds authorized by, and for the purposes set forth in, RCW 47.56.310 through 47.56.345. [1961 c 13 § 47.56.320. Prior: 1955 c 152 § 2; 1953 c 132 § 2.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.330 Additional Columbia river bridge—Agreements with Oregon authorized. The Washington toll bridge authority and the Washington state highway commission are hereby authorized to enter into such agreements with the Oregon state highway commission as they shall find necessary or convenient to carry out the purposes of RCW 47.56.310 through 47.56.345.

Any such agreements may include, but shall not be limited to, the following:

(1) A provision that all acts pertaining to the design and construction of said new bridge and the reconstruction and improvement of the existing interstate bridge may be done and performed by the Oregon state highway commission or the Washington toll bridge authority, with the approval of the other, or by both, and that any and all contracts for the construction of the new bridge and the reconstruction and improvement of the existing bridge shall be awarded in the name of the state of Oregon by and through its state highway commission or the state of Washington under direction of the Washington toll bridge authority, or both: *Provided*, That there shall be a further provision that each state shall have full power to design and construct approaches to each bridge within the respective boundaries of said state with reimbursement from the proceeds of the sale of revenue bonds to be issued.

(2) A provision that the state of Oregon, the Oregon state highway commission, and any other duly constituted agency of the state of Oregon, the state of Washington, the Washington toll bridge authority, the Washington state highway commission, and any other duly constituted agency of the state of Washington shall be reimbursed out of the proceeds of the sale of such bonds for any advances they may have made or expenses they may have incurred for any of the purposes for which said revenue bonds may be issued, after duly verified, itemized statements of such advances and expenses have been submitted to and jointly approved by the Oregon state highway commission and Washington toll bridge authority.

(3) A provision that during the period of operation of said bridges and the approaches thereto as a toll facility all maintenance and repair work may be performed by either the Oregon state highway commission or by the Washington toll bridge authority with a provision for reimbursement of the costs of such maintenance and repair from revenue derived from the collection of tolls on said toll facility.

Any such agreements shall include the following provisions:

(1) A provision that the new bridge and approaches provided for herein shall be consolidated and merged with the existing interstate bridge and its approaches located between Vancouver, Washington and Portland, Oregon so that both bridges shall be and become a single toll facility.

(2) A provision that the Washington toll bridge authority shall assume and have complete responsibility for the operation of both bridges and approaches thereto as a single toll facility except as to repair and maintenance, and with full power in the Washington toll bridge authority to impose and collect all toll charges from the users of said bridges and to disburse the revenue derived therefrom for the payment of expenses of maintenance and operation and repair thereof, all costs of constructing said new bridge and reconstructing and improving said existing bridge and all expenses incidental thereto, and the payment of the principal of and the interest on the revenue bonds herein provided for.

(3) A provision that the Washington toll bridge authority shall provide for the issuance, sale and payment of revenue bonds payable solely from the revenue derived from the imposition and collection of tolls upon both bridges as a single toll facility, and that such bonds shall be in such amounts as to provide funds with which to pay the costs of the design and construction of the proposed new bridge, including the approaches thereto in both states and the costs of acquisition of rights of way therefor, the reconstruction and alteration of the existing bridge and approaches thereto, expenses incident to the issuance of such bonds including the payment of interest for the period beginning with the date of issuance thereof and ending at the expiration of six months after tolls are first imposed, and a reasonable amount for working capital and prepaid insurance, with the further provision that any sale of the bonds to be issued shall be approved by the Oregon state highway commission.

(4) A provision that the Washington toll bridge authority, after consultation with the Oregon state highway commission, shall fix the classifications and amounts of tolls to be charged and collected from users of said toll facility with power after consultation with the Oregon state highway commission to revise the same if deemed necessary, and the time or times when such tolls shall first be imposed, with the further provision that such toll charges shall be removed after all costs of construction of the new bridge and approaches thereto and the reconstruction and improvement of the existing bridge and approaches thereto, including all incidental costs, shall have been paid, and all of said revenue bonds, and interest thereon, issued and sold pursuant to the authority of RCW 47.56.310 through 47.56.345 shall have been fully paid and redeemed. [1961 c 13 § 47.56.330. Prior: 1955 c 152 § 4; 1953 c 132 § 3.]

Reviser's note: Powers, duties, and functions of toll bridge authority and highway commission transferred to department of transportation; see RCW 47.01.031. Terms "Washington toll bridge authority" and "Washington state highway commission" mean department of transportation; see RCW 47.04.015.

47.56.340 Additional Columbia river bridge—
When toll free. Both the bridges herein provided for shall be operated as toll-free bridges whenever the costs of construction of the new bridge and approaches thereto and the reconstruction and improvement of the existing bridge and approaches thereto, including all incidental costs shall have been paid, and when all of said revenue

bonds and interest thereon issued and sold pursuant to the authority of RCW 47.56.310 through 47.56.345 shall have been fully paid and redeemed. [1961 c 13 § 47.56.340. Prior: 1955 c 152 § 3; 1953 c 132 § 4.]

47.56.343 Additional Columbia river bridge—
Revenue bonds. The Washington toll bridge authority shall have the power and is hereby authorized by resolution to issue and sell its revenue bonds in an amount sufficient to provide funds to pay all the costs of construction of the new bridge and approaches thereto and the reconstruction and improvement of the existing bridge and approaches thereto, including all costs of survey, acquisition of rights of way, engineering, legal and incidental expenses, to pay the interest due thereon during the period beginning with the date of issue of the bonds and ending at the expiration of six months after the first imposition and collection of tolls from the users of said toll facility, and to pay amounts that will provide a reasonable sum for working capital and prepaid insurance and all costs incidental to the issuance and sale of the bonds.

Except as may be otherwise specifically provided in RCW 47.56.310 through 47.56.345, the provisions of chapter 47.56 RCW shall govern the issuance and sale of said revenue bonds, the execution thereof, the disbursement of the proceeds of sale thereof, the interest rate or rates thereon, their form, terms, conditions, covenants, negotiability, denominations, maturity date or dates, the creation of special funds or accounts safeguarding and providing for the payment of the principal thereof and interest thereon, and their manner of redemption and retirement.

Said revenue bonds shall constitute obligations only of the Washington toll bridge authority and shall be payable both principal and interest solely from the tolls and revenues derived from the operation of said toll facility as hereinbefore constituted. Said bonds shall not constitute an indebtedness of the state of Washington and shall contain a recital on the face thereof to that effect, and shall be negotiable instruments under the law merchant. Such bonds shall include a covenant that the payment or redemption thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other revenues received from the operation of said toll facility and from any interest which may be earned from the deposit or investment of any such revenues, except for payment of costs of operation, maintenance and necessary repairs of said facility. The tolls and charges to be imposed shall be fixed in such amounts so that when collected they will produce revenues that shall be at least equal to expenses of operating, maintaining and repairing said toll facility, including all insurance costs, amounts for adequate reserves and coverage of annual debt service on said bonds, and all payments necessary to pay the principal thereof and interest thereon. [1961 c 13 § 47.56.343. Prior: 1955 c 152 § 5.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.345 Additional Columbia river bridge—Construction—Severability. Except as may be otherwise specifically provided in RCW 47.56.310 through 47.56.345, the provisions of chapter 47.56 RCW shall govern and be controlling in all matters and things necessary to carry out the purposes of RCW 47.56.310 through 47.56.345. Nothing in RCW 47.56.310 through 47.56.345 is intended to amend, alter, modify, or repeal any of the provisions of any statute relating to the powers and duties of the department except as such powers and duties are amplified or modified by the specific provisions of RCW 47.56.310 through 47.56.345 for the uses and purposes herein set forth, and RCW 47.56.310 through 47.56.345 shall be additional to such existing statutes and concurrent therewith.

If any sentence, clause, or phrase of RCW 47.56.310 through 47.56.345 is held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other sentence, clause, or phrase of RCW 47.56.310 through 47.56.345.

The provisions of RCW 47.56.310 through 47.56.345 shall be liberally construed so that the uses and purposes hereof may be achieved and accomplished. [1984 c 7 § 276; 1961 c 13 § 47.56.345. Prior: 1955 c 152 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.360 Bridging Puget Sound, Hood Canal—Operation, maintenance, prior charge upon revenue—Appropriations to be repaid. All operation and maintenance on any project while tolls are collected thereon shall be paid as they are incurred as a prior charge upon the revenue and tolls collected upon such project. Any funds herein appropriated from the motor vehicle fund to the Washington toll bridge authority, together with the sum of two hundred twenty-five thousand dollars heretofore appropriated by section 19, chapter 259, Laws of 1951, shall be considered as a loan and repaid by the authority to the motor vehicle fund upon the sale of bonds of any project. [1961 c 13 § 47.56.360. Prior: 1953 c 78 § 2.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.365 Repayment of 1961 appropriation for Hood Canal bridge—Continuation of tolls. Any part of the appropriation or reappropriation provided for by *this act which is expended shall be repaid to the motor vehicle fund to be used for state highway purposes, from revenues of the Hood Canal bridge. Toll may be continued on said bridge any required additional length of time necessary for this purpose: *Provided*, That the obligations imposed by this section shall be subordinate to any obligations to pay principal, interest, reserves and sinking funds required for any refunding or parity bonds hereafter issued by the Washington toll bridge authority in connection with the Washington state ferry system and Hood Canal bridge. [1961 ex.s. c 9 § 7; 1961 c 10 § 3.]

Reviser's note: *(1) For codification of "this act" [1961 c 10], see Codification Tables, Volume 0.

(2) Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.366 Hood Canal bridge—Public sport fishing—Disclaimer of liability. The department may permit public sport fishing from the Hood Canal bridge. The department may adopt rules governing public use of the bridge for sport fishing to the end that such activity shall not interfere with the primary use and operation of the bridge as a highway facility. Notwithstanding the provisions of RCW 4.92.090 or any other statute imposing liability upon the state of Washington, the state hereby disclaims any liability arising out of loss or injury in connection with the public use of the Hood Canal bridge for sport fishing purposes. [1984 c 7 § 277; 1963 c 240 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.380 Express highway—Tacoma—Seattle—Everett—Limited access. The department is authorized to study and if feasible, after approval by the transportation commission to locate, construct, finance and operate as a toll road, until paid for, an express highway from the vicinity of Tacoma through Seattle to the vicinity of Everett. Right of way shall be acquired as a limited access facility. [1984 c 7 § 278; 1961 c 13 § 47.56.380. Prior: 1953 c 183 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.390 Express highway—Operation as toll highway—Part of state system. The toll road, when completed, shall become a part of the state highway system but may be operated as a toll highway by the department until such time as all costs of investigation, financing, acquisition of property, construction, maintenance, management, operation, repayment of advances from the motor vehicle fund, and obligations incurred under RCW 47.56.250 and chapter 16, Laws of 1945, have been fully paid. [1984 c 7 § 279; 1961 c 13 § 47.56.390. Prior: 1953 c 183 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.400 Express highway—Powers and duties of department. The department has the same powers, duties, and functions with respect to toll roads as the Washington toll bridge authority had with respect to toll bridges, and all the provisions of chapter 47.56 RCW apply to and govern toll roads insofar as is reasonably consistent and applicable, except as otherwise provided in RCW 47.56.380 through 47.56.400. [1984 c 7 § 280; 1961 c 13 § 47.56.400. Prior: 1953 c 183 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.410 Lopez Island—San Juan toll bridge—Appropriation—Study—Location, exploration, foundation, design. There is appropriated to the Washington toll bridge authority from the motor vehicle

fund for the biennium ending June 30, 1959, the sum of one hundred seventy-five thousand dollars or so much thereof as thereafter may be necessary for the following purposes:

(1) Twenty-five thousand dollars of the appropriation shall be available to study and make surveys, including traffic studies acceptable to prospective bond purchasers or investment firms, of the feasibility of the construction of a toll bridge between Lopez Island and San Juan Island in San Juan county so as to permit ferry runs from the mainland to Upright Head, overland travel from Upright Head to Roche Harbor, and ferry runs from Roche Harbor to Sidney, British Columbia. It shall be understood in such feasibility studies that San Juan county shall construct and maintain all road connections between the proposed bridge and the ferry landings at Upright Head and Roche Harbor.

(2) If as a result of the studies referred to above the toll bridge authority determines the project is feasible, and if San Juan county shall agree to sponsor such project and to conduct and maintain the road connections referred to above, one hundred fifty thousand dollars shall be available for the location, foundation exploration, and design of such bridge. [1961 c 13 § 47.56.410. Prior: 1957 c 141 § 1.]

47.56.420 Lopez Island-San Juan toll bridge—Final designs, construction, revenue bonds authorized. If the project is deemed feasible by the authority, the authority shall enter into final design plans, and construction thereof, issue revenue bonds to pay all costs of the project and let contracts in connection with the proposed project. Such revenue bonds shall be issued in accordance with the applicable provisions of RCW 47.56.080 through 47.56.250, and in addition to the purposes above stated may be issued to provide funds for paying all costs of issuance and sale of such bonds, and to pay interest on said bonds during construction and for six months thereafter. [1961 c 13 § 47.56.420. Prior: 1957 c 141 § 2.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "authority" means department of transportation; see RCW 47.04.015.

47.56.430 Lopez Island-San Juan toll bridge—Operation, maintenance, prior charge upon revenue—Appropriations to be repaid. All operation and maintenance on any project while tolls are collected thereon shall be paid as they are incurred as a prior charge upon the revenue and tolls collected upon such project. Any funds herein appropriated from the motor vehicle fund to the Washington toll bridge authority shall be considered as a loan and repaid by the authority to the motor vehicle fund upon the sale of bonds for this project. [1961 c 13 § 47.56.430. Prior: 1957 c 141 § 3.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.440 Lopez Island-San Juan toll bridge—Effect of toll bridge authority resolution No. 295—Ferry system refunding revenue bonds. Nothing authorized by RCW 47.56.410 through 47.56.440 shall be undertaken or done in any manner not in accord with any of the covenants and conditions contained in resolution No. 295 passed by the toll bridge authority on February 9, 1955, providing for the sale of Washington state ferry system refunding revenue bonds; and all things authorized by RCW 47.56.410 through 47.56.440, including but not limited to feasibility, studies, location, design, construction and financing, shall be performed in accordance with the covenants and conditions of said resolution. If the terms of such resolution shall require that tolls on the bridge authorized by RCW 47.56.410 through 47.56.440 be used to redeem outstanding bonds issued pursuant to said resolution, such tolls shall be so used. [1961 c 13 § 47.56.440. Prior: 1957 c 141 § 4.]

47.56.450 Columbia river bridge at Biggs Rapids—Authorized—Cooperation with Klickitat county, highway commission, Oregon highway commission and Sherman county. If the Washington toll bridge authority should conclude that the construction of a toll bridge across the Columbia river in the vicinity of Biggs Rapids is feasible as a result of studies presently being conducted, the authority is hereby authorized, in conjunction with Klickitat county, the Washington state highway commission, the Oregon state highway commission, and Sherman county, Oregon, to design and construct a toll bridge at such location. All acts necessary to the design and construction of such bridge and approaches thereto may be done by the Washington toll bridge authority, Klickitat county, the Washington state highway commission, the Oregon state highway commission, Sherman county, Oregon, or any of such governmental agencies pursuant to agreement with the Washington toll bridge authority. [1961 c 13 § 47.56.450. Prior: 1957 c 142 § 1.]

Reviser's note: Powers, duties, and functions of toll bridge authority and highway commission transferred to department of transportation; see RCW 47.01.031. Terms "Washington toll bridge authority" and "Washington state highway commission" mean department of transportation; see RCW 47.04.015.

47.56.460 Columbia river bridge at Biggs Rapids—Appropriation—Repayment from bond issue. There is appropriated from the motor vehicle fund for the biennium ending June 30, 1959, the sum of one hundred fifty thousand dollars, or as much thereof as may be necessary for the purpose of location, design, preparation of cost estimates, and all other things preliminary to the construction of such bridge. Any funds herein appropriated from the motor vehicle fund to the Washington toll bridge authority shall be considered as a loan and repaid by the authority to the motor vehicle fund upon the sale of bonds for this project as provided in RCW 47.56.470. [1961 c 13 § 47.56.460. Prior: 1957 c 142 § 2.]

47.56.470 Columbia river bridge at Biggs Rapids—Revenue bonds. The Washington toll bridge authority is

hereby authorized by resolution to issue and sell its revenue bonds in an amount sufficient to provide funds to pay all the costs of construction of such bridge and approaches thereto, including but not limited to all costs of survey, acquisition of rights of way, design, engineering, all expenses of issuance and sale of such bonds, and to pay interest on said bonds during construction and for six months after tolls are first imposed.

Except as may be otherwise specifically provided in RCW 47.56.450 through 47.56.500, the provisions of chapter 47.56 RCW shall govern the issuance and sale of said revenue bonds, the execution thereof, the disbursement of the proceeds of sale thereof, the interest rate or rates thereon, their form, terms, conditions, covenants, negotiability, denomination, maturity date or dates, the creation of special funds or accounts safeguarding and providing for the payment of the principal therefor and interest thereon, and their manner of redemption and retirement.

Said revenue bonds shall constitute obligations only of the Washington toll bridge authority and shall be payable both principal and interest solely from the tolls and revenues derived from the operation of said toll facility as hereinbefore constituted. Said bonds shall not constitute an indebtedness of the state of Washington and shall contain a recital on the face thereof to that effect, and shall be negotiable instruments under the law merchant. Such bonds shall include a covenant that the payment or redemption thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other revenues received from the operation of said toll facility and from any interest which may be earned from the deposit or investment of any such revenues, except for payment of costs of operation, maintenance and necessary repairs of said facility. The tolls and charges to be imposed shall be fixed in such amounts so that when collected they will produce revenues that shall be at least equal to expenses of operating, maintaining and repairing said toll facility, including all insurance costs, amounts for adequate reserves and coverage of annual debt service on said bonds, and all payments necessary to pay the principal thereof and interest thereon. [1961 c 13 § 47.56.470. Prior: 1957 c 142 § 3.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.480 Columbia river bridge at Biggs Rapids—Construction of act. The provisions of chapter 47.56 RCW shall govern and be controlling in all matters and things necessary to carry out the purposes of RCW 47.56.450 through 47.56.500. Nothing in RCW 47.56.450 through 47.56.500 is intended to amend, alter, modify or repeal any of the provisions of any statute relating to the powers and duties of the Washington toll bridge authority except as such powers and duties are amplified or modified by the specific provisions of RCW 47.56.450 through 47.56.500 for the uses and purposes herein set forth, and RCW 47.56.450 through 47.56.500 shall be additional to such existing statutes and concurrent

therewith. [1961 c 13 § 47.56.480. Prior: 1957 c 142 § 4.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.490 Columbia river bridge at Biggs Rapids—Powers of department—Tolls. The department is authorized to operate and to assume the full control of the toll facility and each portion thereof, whether within or without the borders of the state of Washington, with full power to impose and collect tolls from the users of the bridge for the purpose of providing revenue at least sufficient to pay the cost and incidental expenses of construction, maintenance, repair, and operation of the bridge and approaches in both states, and for the payment of the principal of and interest on its revenue bonds as authorized by RCW 47.56.470. [1984 c 7 § 281; 1961 c 13 § 47.56.490. Prior: 1957 c 142 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.500 Columbia river bridge at Biggs Rapids—Agreements authorized. The Washington toll bridge authority, the Washington state highway commission and Klickitat county are each authorized to enter into such agreement with each other, the Oregon state highway commission and Sherman county, Oregon, as they shall find necessary and convenient to carry out the purposes of RCW 47.56.450 through 47.56.500; and the Washington toll bridge authority, the Washington state highway commission and Klickitat county are each authorized to do any and all acts contained in such agreement and necessary and convenient to carry out the purposes of RCW 47.56.450 through 47.56.500.

Such agreement shall include, but shall not be restricted to the following provisions:

(1) A provision that the Washington toll bridge authority shall assume and have complete responsibility for the operation of such bridge and approaches thereto, and with full power in the Washington toll bridge authority to impose and collect all toll charges from the users of such bridge and to disburse the revenue derived therefrom for the expenses of maintenance and operation and repair thereof, all costs of construction, and the payment of principal and interest on any revenue bonds herein provided for.

(2) A provision that the Washington toll bridge authority shall provide for the issuance, sale and payment of revenue bonds payable solely from the revenue derived from the imposition and collection of tolls upon such toll bridge.

(3) A provision that the Washington toll bridge authority, after consultation with the other governmental agencies who are parties to such agreement, shall fix and revise the classifications and amounts of tolls to be charged and collected from the users of the toll bridge, with the further provision that such toll charges shall be removed after all costs of planning, designing, and construction of such toll bridge and approaches thereto and all incidental costs shall have been paid, and all of said

revenue bonds, and interest thereon, issued and sold pursuant to RCW 47.56.450 through 47.56.500 shall have been fully paid and redeemed.

(4) A provision that all acts pertaining to the design and construction of such toll bridge may be done and performed by the Oregon state highway commission, the Washington state highway commission or the Washington toll bridge authority, or any of them, and that any and all contracts for the construction of such toll bridge shall be awarded in the name of the state of Oregon by and through its state highway commission or the state of Washington by and through its state highway commission or its toll bridge authority, or all of them.

(5) A provision that the state of Washington, the state of Oregon, and all governmental agencies party to such agreement shall be reimbursed out of the proceeds of the sale of such bonds for any advances they may have made or expenses they may have incurred for any of the purposes for which said revenue bonds may be issued, after duly verified itemized statements of such advances and expenses have been submitted to and been approved by all parties to such agreement.

(6) A provision that during the period of operation of such bridge and approaches thereto as a toll facility all maintenance and repair may be performed by either the Oregon state highway commission or the Washington state highway commission with a provision for reimbursement of the costs of such maintenance and repair from revenue derived from the collection of tolls on such bridge. [1961 c 13 § 47.56.500. Prior: 1957 c 142 § 6.]

Reviser's note: Powers, duties, and functions of toll bridge authority and highway commission transferred to department of transportation; see RCW 47.01.031. Terms "Washington toll bridge authority" and "Washington state highway commission" mean department of transportation; see RCW 47.04.015.

47.56.580 Naches Pass tunnel—What studies and surveys shall include. Such studies and surveys shall include but shall not be confined to the following:

(1) The most desirable design, tunnel approaches, and connecting roads;

(2) The most desirable location;

(3) The cost of construction and the length of construction time required;

(4) The financial feasibility of the tunnel and the amount, if any, of supplementary aid required to finance it;

(5) The relative economic benefit to counties, cities, or other political subdivisions to be principally served by construction of the tunnel;

(6) The benefit to the state highway system, taking into account the statewide interest in the tunnel and the estimated additional motor vehicle fuel tax revenue which would accrue to the motor vehicle fund as a result of the construction of the tunnel. [1961 c 13 § 47.56.580. Prior: 1959 c 292 § 2.]

47.56.590 Naches Pass tunnel—Plan for financing. Upon the completion of such studies and surveys, the highway commission and the toll bridge authority, in cooperation with the joint fact-finding committee on

highways, streets and bridges, shall prepare a plan for financing the project. The plan shall include the cost of the entire project; the portion of such total cost which can be financed by the issuance of toll bridge authority revenue bonds; the portion of such total cost and the amount of guarantee funds which should be contributed or advanced by any political subdivisions to be economically benefited by construction of the project; and the portion of such total cost and the amount of guarantee funds which should be contributed from that portion of the motor vehicle fund available to the department of highways for state highway purposes. When completed, the financing plan shall be adopted by resolution of the commission and the authority. [1961 c 13 § 47.56.590. Prior: 1959 c 292 § 3.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "highway commission" and "toll bridge authority" mean department of transportation; see RCW 47.04.015.

47.56.600 Naches Pass tunnel—Design. Upon adoption of the financing plan the commission and the authority, acting jointly, shall forthwith proceed to make the design for the entire project. [1961 c 13 § 47.56.600. Prior: 1959 c 292 § 4.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "commission" and "authority" mean department of transportation; see RCW 47.04.015.

47.56.610 Naches Pass tunnel—Contribution by political subdivisions. After adoption of the financing plan, the authority and the highway commission, acting jointly, shall request any political subdivision which will be benefited by the construction of the project, to advance or contribute money or bonds toward the expenses of construction or to guarantee toll bridge authority revenue bonds to be issued to finance the project. [1961 c 13 § 47.56.610. Prior: 1959 c 292 § 5.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "authority," "toll bridge authority," and "highway commission" mean department of transportation; see RCW 47.04.015.

47.56.630 Naches Pass tunnel—Repayment to motor vehicle fund of funds appropriated. All funds herein appropriated from the motor vehicle fund to the Washington state highway commission and the Washington toll bridge authority shall be considered as a loan and shall be repaid by the commission and the authority to the motor vehicle fund upon the sale of bonds for this project. [1961 c 13 § 47.56.630. Prior: 1959 c 292 § 7.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "Washington state highway commission" and "Washington toll bridge authority" mean department of transportation; see RCW 47.04.015.

47.56.631 Naches Pass tunnel—Additional studies—Route of highway and tunnel—Appropriation. The Washington toll bridge authority is authorized and

directed to make all necessary traffic studies, acceptable to prospective bond purchasers or investment firms to determine the amount of subsidy or other financial assistance necessary to make feasible the construction of a toll highway and tunnel on primary state highway 5 through the Cascade mountains, together with the necessary approaches connecting to existing highways. Said highway and tunnel project shall start on state highway 5 near the junction of the White and Greenwater rivers; thence in an easterly direction through Greenwater river drainage area to the west portal of the tunnel under Pyramid Park; thence to the east portal; thence following the north fork of the Little Naches river to the Little Naches river; thence down to its junction with the Bumping river at state highway 5.

There is hereby appropriated from the motor vehicle fund to the Washington toll bridge authority for the biennium ending June 30, 1963 the sum of fifty thousand dollars to carry out the provisions of this section. [1961 ex.s. c 21 § 18.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.640 Bridging lower Columbia river in vicinity of Astoria-Megler. The Washington state highway commission is hereby authorized in conjunction with the Oregon state highway commission to erect a bridge or so much thereof as may be agreed upon with the Oregon state highway commission, including approaches thereto, across the Columbia river in the vicinity of Astoria, Oregon and Megler, Washington. Such bridge shall be an integral part of U. S. highway No. 101 and to the Oregon boundary shall be a part of primary state highway No. 12. All acts necessary to the design and construction of said new bridge and approaches thereto may be done and performed by either the Oregon state highway commission or the Washington state highway commission with the approval of the other or, by both of them jointly. [1961 c 209 § 1.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.643 Bridging lower Columbia river in vicinity of Astoria-Megler—Agreements with United States—Acceptance of public or private funds. In order to carry out the provisions of RCW 47.56.640 through 47.56.667 the Washington state highway commission may consult, cooperate and enter into agreements with the government of the United States or any of its agencies and accept and expend moneys from any public or private source, including the government of the United States or any political subdivision, which is now or may be made available for carrying out the purposes contained in RCW 47.56.640 through 47.56.667. [1961 c 209 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031.

Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.646 Bridging lower Columbia river in vicinity of Astoria-Megler—Agreements with Oregon—Provisions for Oregon bond issue, powers and duties of both states, tolls, apportionment of costs, etc. Subject to the conditions stated in RCW 47.56.658, the Washington state highway commission is hereby authorized to enter into such agreements with the Oregon state highway commission as it shall find necessary or convenient to carry out the purposes of RCW 47.56.640 through 47.56.667.

Any such agreements shall include, but shall not be limited to, the following:

(1) A provision that the state of Oregon or the Oregon state highway commission shall issue general obligation bonds in the aggregate principal sum of not to exceed twenty-four million dollars par value or so much thereof as shall be required to pay all costs of location and construction of said bridge, but excluding costs of location, relocation, improvement, construction or reconstruction of approaches as the same are shown and described in "A Report On a Proposed Bridge Across the Columbia River," prepared by the Oregon and Washington state highway commissions, dated January, 1959. In determining the amount of money required for construction, there shall be taken into account all available financial contributions for such construction costs, of whatever description and from whatever source.

(2) A provision that to the extent that revenues derived from the imposition and collection of tolls and franchise fees for the use of the bridge in any year are insufficient to provide for the payment of principal, interest and other charges incidental to the issuance, sale and retirement of the bonds issued by Oregon or any subsequent refunding bond issues, the state of Oregon will pay the first one hundred thousand dollars of such deficit and the state of Washington is bound to pay, when due, forty percent of the balance of such deficit for such year from any moneys in the motor vehicle fund not otherwise pledged or from any other source available to the Washington state highway commission for said purpose: *Provided*, That in no case shall the portion of such deficit paid by the state of Washington exceed two hundred thousand dollars in any such year.

(3) A provision that the Oregon state highway commission shall assume and have complete responsibility for the operation of the bridge as a toll facility and each portion thereof, whether within or without the borders of Washington and with full power in the Oregon state highway commission to impose and collect all toll charges and franchise fees from the users of said bridge and to disburse the revenue derived therefrom for the following purposes in the following order:

(a) Payment of all costs of toll collection and insurance in the event the bridge is insured.

(b) Payment of the principal, interest and other charges incidental to the issuance, sale and retirement of the bonds herein provided for including any subsequent refunding bonds.

(4) A provision that the Oregon state highway commission, after consultation with the Washington state highway commission shall fix the classifications and amounts of tolls to be charged and collected from users of said toll facility with power after consultation with the Washington state highway commission to revise the same if deemed necessary, and the time or times when such tolls shall first be imposed.

(5) A provision that all acts pertaining to the design and construction of said bridge may be done and performed by the Oregon state highway commission or the Washington state highway commission with the approval of the other, or by both, and that any and all contracts for the construction of the bridge shall be awarded in the name of the state of Oregon by and through its state highway commission or the state of Washington by and through its state highway commission, or both: *Provided, however,* That there shall be a further provision that each state shall have full power to design and construct approaches to the bridge within the respective boundaries of each state. Such approaches shall constitute a part of the state highways system of each state and the cost of design, right of way and construction thereof shall be borne by the respective states from any funds available for such purposes. In the event design or construction of approaches is included in any contract for the construction of the bridge, the cost of such approaches within the respective boundaries of each state shall be segregated and paid for by the respective states.

Any such agreements may include, but shall not be limited to the following:

(1) A provision that the state of Oregon, the Oregon state highway commission, and any other duly constituted agency of the state of Oregon, the state of Washington, the Washington toll bridge authority, the Washington state highway commission, and any other duly constituted agency of the state of Washington shall be reimbursed out of the proceeds of the sale of such bonds for any advances they may have made or expenses they may have incurred subsequent to March 1, 1961 for any of the purposes for which said bonds may be issued by the state of Oregon, after duly verified, itemized statements of such advances and expenses have been submitted to and jointly approved by the Oregon state highway commission and Washington state highway commission.

(2) A provision that during the period of operation of said bridge as a toll facility all or any part of the maintenance and repair work may be performed by either the Oregon state highway commission or by the Washington state highway commission with a provision for payment of the costs of such maintenance and repair one-half from the Oregon state highway commission and one-half from the Washington state highway commission. [1961 c 209 § 3.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "Washington state highway commission" and "Washington toll bridge authority" mean department of transportation; see RCW 47.04.015.

47.56.649 Bridging lower Columbia river in vicinity of Astoria-Megler—Use of Washington motor vehicle fuel taxes, motor vehicle fund to pay Oregon bonds if tolls and fees insufficient. To the extent that all revenues from the imposition and collection of tolls and franchise fees for use of the bridge are insufficient to provide for the payment of principal, interest and other charges incidental to the issuance, sale and retirement of the bonds issued by the state of Oregon in connection with this project, or on any subsequent refunding bond issues, there is hereby imposed, to the extent provided in first subsection (2) of RCW 47.56.646, a first and prior charge against all revenues hereafter derived from the proceeds of state excise taxes on motor vehicle fuels now directed by law to be deposited in the motor vehicle fund available for state highway commission purposes.

To the extent that revenues of the project are insufficient to meet required payments of principal, interest and other charges incidental to the issuance, sale and retirement of bonds, the Washington state highway commission shall use moneys in the motor vehicle fund to pay its share of such deficits. [1961 c 209 § 4.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.652 Bridging lower Columbia river in vicinity of Astoria-Megler—Procedure for this state paying deficiency in tolls and fees for Oregon bond issue. The payments provided for in RCW 47.56.649, as they come due, shall be authorized by the Washington state highway commission and paid by warrants signed by the state treasurer, upon the duly verified itemized statements of the Oregon state highway commission showing the amount due from the state of Washington required to meet its share of any deficit computed as provided in [first] subsection (2) of RCW 47.56.646. [1961 c 209 § 5.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.655 Bridging lower Columbia river in vicinity of Astoria-Megler—Washington liability for costs—Maintenance and repair—Approaches. The Washington state highway commission shall pay one-half of all costs of maintenance and repair of said bridge from funds appropriated for the use of the Washington state highway commission for construction and maintenance of the primary state highways. The Washington state highway commission shall pay for the costs of design, right of way and construction of approaches to said bridge within the boundaries of the state of Washington from funds appropriated for the use of the Washington state highway commission for construction and maintenance of the primary state highways or from any other funds available for said purpose. [1961 c 209 § 6.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031.

Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.658 Bridging lower Columbia river in vicinity of Astoria—Megler—Financial responsibility of Pacific county—Prior commitment required. The Washington state highway commission shall not enter into agreements with the Oregon state highway commission for the construction of the toll bridge over the lower Columbia river as authorized by RCW 47.56.646 unless and until:

Pacific county has, at the request of the state highway commission, contributed or properly authorized the contribution of money or bonds in the sum of one hundred eighty-five thousand dollars or so much thereof as may be necessary to reimburse the Washington state highway commission for costs of design and construction of the approaches to said bridge within the boundaries of the state of Washington, such contribution to be made by any of the methods authorized in RCW 47.56.250. [1969 ex.s. c 281 § 52; 1961 c 209 § 7.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.659 Bridging lower Columbia river in vicinity of Astoria—Megler—Contractual obligations of Pacific county terminated. All accrued and unaccrued obligations of Pacific county created by that certain contract between the Washington state highway commission and Pacific county dated June 20, 1961, entered into pursuant to *subsection (2) of RCW 47.56.658 are hereby terminated. [1969 ex.s. c 281 § 53.]

***Reviser's note:** Subsection (2) of RCW 47.56.658 was deleted by 1969 ex.s. c 281 § 52.

47.56.661 Bridging lower Columbia river in vicinity of Astoria—Megler—Deposit of contribution of Pacific county in motor vehicle fund—Use. In the event Pacific county makes the contribution authorized in *subsection (1) of RCW 47.56.658, such contribution shall be placed in the motor vehicle fund and shall be available for state highway purposes. [1961 c 209 § 8.]

***Reviser's note:** Subsection (1) of RCW 47.56.658 became the second paragraph of RCW 47.56.658 when subsection (2) of RCW 47.56.658 was deleted by 1969 ex.s. c 281 § 52.

47.56.667 Bridging lower Columbia river in vicinity of Astoria—Megler—When toll free. The bridge herein provided for shall be operated as a toll-free bridge whenever the bonds to be issued by the state of Oregon together with interest thereon have been fully paid, unless the state of Washington and the state of Oregon hereafter agree through their highway commissions that tolls shall be retained on the bridge to repay in whole or in part the respective states for moneys advanced to pay principal or interest on the bonds issued by the state of Oregon. [1961 c 209 § 10.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "highway commission" means department of transportation; see RCW 47.04.015.

47.56.700 Columbia river, Vernita bridge and highway approach from Richland—Authorized. If the Washington toll bridge authority shall conclude that the construction of a toll bridge across the Columbia river in the vicinity of Vernita, including approaches, and a highway approach from the vicinity of Richland to said toll bridge, are feasible, the authority is hereby authorized to make all surveys, design and construct said toll bridge and approaches. [1963 c 197 § 1.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.701 Columbia river, Vernita bridge and highway approach from Richland—Revenue bonds—Tolls and charges. The Washington toll bridge authority is hereby authorized by resolution to issue and sell its revenue bonds in an amount sufficient to provide funds to pay all the costs of construction of such bridge and approaches thereto, and the highway approach from the vicinity of Richland to said bridge, including but not limited to all costs of survey, acquisition of rights of way, design, engineering, all expenses of issuance and sale of such bonds, and to pay interest on said bonds during construction and for six months after tolls are first imposed.

Except as may be otherwise specifically provided in RCW *47.20.410, 47.20.415, and 47.56.700 through 47.56.706, the provisions of RCW 47.56.130 through 47.56.245 shall govern the issuance and sale of said revenue bonds, the execution thereof, the disbursement of the proceeds of sale thereof, the interest rate or rates thereon, their form, terms, conditions, covenants, negotiability, denomination, maturity date or dates, the creation of special funds or accounts safeguarding and providing for the payment of the principal therefor and interest thereon, and their manner of redemption and retirement.

Said revenue bonds shall constitute obligations only of the Washington toll bridge authority and shall be payable both principal and interest from the tolls and revenues derived from the operation of said toll bridge and from that portion of the motor vehicle fund as provided in RCW 47.56.702. Said bonds shall not constitute an indebtedness of the state of Washington and shall contain a recital on the face thereof to that effect, and shall be negotiable instruments under the law merchant. Such bonds shall include a covenant that the payment or redemption thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other revenues received from the operation of said toll bridge and from any interest which may be earned from the deposit or investment of any such revenues and such sums as are pledged from the motor vehicle fund as provided in RCW 47.56.702, except for payment of costs of operation, maintenance and necessary repairs of said facility. The tolls and charges to be imposed shall be fixed in such amounts so that when collected they, together with said pledge from the motor vehicle fund, will produce revenues that shall be at least equal to expenses

of operating, maintaining and repairing said toll facility, including all insurance costs, amounts for adequate reserves and coverage of annual debt service on said bonds, and all payments necessary to pay the principal thereof and interest thereon.

Until all of said bonds are fully paid and until the motor vehicle fund is fully reimbursed for all sums advanced therefrom to pay principal and interest on said bonds or any subsequent refunding bond issue, the tolls charged for the use of said facility shall never be reduced below the sums specified in the following schedule:

For every combination of vehicles and for buses having a seating capacity for over fifteen persons	\$0.75
For all trucks licensed for a maximum gross load of over 8,000 lbs. other than a combination of vehicles and all buses having a seating capacity for less than sixteen persons	\$0.50
For all other motor vehicles not specified above and for motorcycles	\$0.25

[1963 c 197 § 2.]

Reviser's note: *(1) RCW 47.20.410 was repealed by 1970 ex.s. c 51 § 178; RCW 47.20.415 was repealed by 1967 ex.s. c 145 § 8.

(2) Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.702 Columbia river, Vernita bridge and highway approach from Richland—Pledge of excise taxes imposed on motor vehicle fuels. The department may pledge the proceeds of all excise taxes imposed on motor vehicle fuels now directed by law to be deposited in the motor vehicle fund and which are available for appropriation to the department for state highway purposes in the sum of one hundred thousand dollars per year for the purpose of guaranteeing the payment of principal and interest on bonds issued by the authority as authorized in RCW 47.56.701 or for sinking fund requirements or reserves established by the authority with respect thereto or for guaranteeing the payment of principal and interest on any subsequent refunding bond issues. To the extent of any such pledge the department shall use such moneys to meet such obligations as they arise but only to the extent that net revenues of the project are insufficient therefor. [1984 c 7 § 282; 1963 c 197 § 3.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "toll bridge authority" means department of transportation; see RCW 47.04.015.

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.703 Columbia river, Vernita bridge and highway approach from Richland—Continued imposition of such taxes. Whenever the department has made a pledge of motor vehicle funds as authorized in RCW 47.56.702 the legislature agrees to continue to impose excise taxes on motor vehicle fuels, and there is imposed a first and prior charge thereon, in amounts sufficient to provide

the department with funds necessary to enable it to comply with the pledge. [1984 c 7 § 283; 1963 c 197 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.704 Columbia river, Vernita bridge and highway approach from Richland—Repayment of motor vehicle fund money—Continuation of tolls. Any money from the motor vehicle fund used by the department for payment of expenses of location, maintenance, repair, and operation of the bridge and approaches and highway approach, and principal or interest on any bonds issued pursuant to RCW 47.56.701 or any subsequent refunding bond issue shall be repaid to the motor vehicle fund to be used for state highway purposes from revenues of the project, and tolls shall be continued for any additional length of time necessary for this purpose. [1984 c 7 § 284; 1963 c 197 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.705 Columbia river, Vernita bridge and highway approach from Richland—Facility to be part of highway system—Operation, collection of tolls. The toll facility, when completed, shall become a part of the state highway system and the department is hereby authorized to operate and to assume the full control of said toll bridge with full power to collect tolls from the users of such bridge as established by the department for the purpose of providing revenue which, with the pledge from the motor vehicle fund provided for in RCW 47.56.702, shall be sufficient to pay all costs and incidental expenses of location, construction, maintenance, repair, and operation of said bridge and approaches and highway approach from the vicinity of Vernita to said bridge, for the repayment of the principal and interest on its revenue bonds, and reimbursement to the motor vehicle fund of all sums expended therefrom under *RCW 47.20.415 and 47.56.700 through 47.56.706. [1983 c 3 § 131; 1963 c 197 § 6.]

***Reviser's note:** RCW 47.20.415 was repealed by 1967 ex.s. c 145 § 8.

47.56.706 Columbia river, Vernita bridge and highway approach from Richland—Laws applicable—Construction of 1963 statute. Except as specifically provided in *RCW 47.20.415 and 47.56.700 through 47.56.706, the provisions of RCW 47.56.010 through 47.56.257 shall govern and be controlling in all matters and things necessary to carry out the purposes of *RCW 47.20.415 and 47.56.700 through 47.56.706. Nothing in *RCW 47.20.415 and 47.56.700 through 47.56.706 is intended to amend, alter, modify, or repeal any of the provisions of any statute relating to the powers and duties of the department except as such powers and duties are amplified or modified by the special provisions of *RCW 47.20.415 and 47.56.700 through 47.56.706 for the uses and purposes herein set forth, and the provisions of *RCW 47.20.415 and 47.56.700 through 47.56.706 shall be additional to such existing statutes and concurrent therewith. [1983 c 3 § 132; 1963 c 197 § 7.]

*Reviser's note: RCW 47.20.415 was repealed by 1967 ex.s. c 145 § 8.

47.56.711 Spokane river toll bridges—Refunding bonds authorized—Contract with retirement systems. In order to permit the construction of a new state highway bridge across the Spokane river in the vicinity of Trent Avenue in Spokane, the department of transportation acting through the transportation commission is authorized to enter into a contract or contracts with the Washington public employees' retirement system and the Washington state teachers' retirement system, each retirement system acting through the department of retirement systems, pursuant to which the state may issue refunding bonds to be exchanged for all outstanding Spokane river toll bridge revenue bonds held by the retirement systems in return for the agreement by the retirement systems to permit the construction of a new state highway bridge, to be known and designated as the James E. Keefe bridge, across the Spokane river in the vicinity of Trent Avenue in Spokane. If the department of transportation and those retirement systems enter into such contract or contracts, the state finance committee is authorized to issue refunding bonds in accordance with RCW 47.56.711 through 47.56.716 to carry out the terms of such contract or contracts. [1979 c 131 § 1.]

Severability—1979 c 131: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 131 § 11.]

47.56.712 Spokane river toll bridges—Refunding bonds—Amount, determination by state finance committee—Maturity date—Interest rates—Signatures—Registration—Statement describing nature of obligation—Negotiable instruments—Sources of payment—Account created in highway bond retirement fund—Deposit of revenue—Repayment procedure—Pledge of excise taxes—Legislative covenant—Amount and duration of tolls—Priority of payments—Trust fund—Covenants by state finance committee. (1) The refunding bonds authorized by RCW 47.56.711 shall be general obligation bonds of the state of Washington and shall be issued in a total principal amount of not to exceed five million six hundred thousand dollars. The exact amount of the refunding bonds to be issued shall be determined by the state finance committee after calculating the amount of money deposited in the Spokane river bridge revenue bond fund which can be used to redeem outstanding series A Spokane river toll bridge revenue bonds after the setting aside of sufficient money from that fund to pay the first interest installment on the refunding bonds. The refunding bonds shall be serial in form maturing at such time, in such amounts, having such denomination or denominations, redemption privileges, and having such terms and conditions as determined by the state finance committee. The last maturity date of the refunding bonds shall not be later than 1996. Refunding bonds to be exchanged for the remaining outstanding series A Spokane river toll bridge revenue bonds shall bear interest at the rate of four and one-half percent per annum. Refunding

bonds to be exchanged for the outstanding series B Spokane river toll bridge revenue bonds shall bear interest at the rate of five percent per annum.

(2) The refunding bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to the bonds shall be signed by the same officers, whose signatures thereon may be in printed facsimile. Any of these bonds may be registered in the name of the holder on presentation to the state treasurer of at the fiscal agency of the state of Washington in Seattle or New York City, as to principal alone, or as to both principal and interest, under regulations as the state treasurer may prescribe. The refunding bonds shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state, and shall contain an unconditional promise to pay the principal thereof and the interest thereon when due. The refunding bonds shall be fully negotiable instruments.

(3) The principal and interest on the refunding bonds shall be first payable in the manner provided in RCW 47.56.711 through 47.56.716 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW and from the tolls and revenues derived from the operation of the Spokane river toll bridge.

(4) There is established in the highway bond retirement fund in the state treasury a special account to be known as the Spokane river toll bridge account into which shall be deposited at least monthly all of the tolls and other revenues received from the operation of the toll bridge and from any interest which may be earned from the deposit or investment of these revenues after the payment of costs of operation, maintenance, management, and necessary repairs of the facility. The principal of and interest on the refunding bonds shall be paid first from money deposited in the Spokane river toll bridge account in the highway bond retirement fund, and then, to the extent that money deposited in that account is insufficient to make any such payment when due, from the state excise taxes on motor vehicle and special fuels deposited in the highway bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapters 82.36, 82.37, and 82.38 RCW to pay the refunding bonds and interest thereon, and the legislature hereby agrees to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the refunding bonds to the money deposited in the Spokane river toll bridge account is insufficient to make such payments. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee shall certify to the state treasurer such amount of additional moneys as may be required for debt service, and the treasurer shall thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the highway bond retirement fund. Any proceeds of such excise taxes

required for these purposes shall first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the state. If the proceeds from the excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the refunding bonds when due, the amount required to make the payments on the principal or interest shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.100 as now existing or hereafter amended. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns shall be repaid from the first moneys distributed to the state not required for redemption of the refunding bonds or interest thereon. The legislature covenants that it shall at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the refunding bonds.

(5) The department of transportation shall fix and maintain the tolls and charges in the manner provided by RCW 47.56.240 so that when collected they will produce revenues sufficient to pay all expenses of operating, maintaining, managing, and repairing the toll bridge including all insurance costs and the amounts required to pay the principal and interest on the refunding bonds when due and to satisfy the other obligations set forth in RCW 47.56.711 through 47.56.716 and 47.56.220 as now or hereafter amended. The principal of and interest on the refunding bonds shall constitute a first direct and exclusive charge and lien on all such tolls and other revenues and interest thereon received from the use and operation of the Spokane river toll bridge, after the payment of all expenses of operating, maintaining, managing, and repairing the toll bridge, and such tolls and revenues together with interest earned thereon, and all other money deposited in the Spokane river toll bridge account in the highway bond redemption fund, shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose as long as such bonds or any of them are outstanding and unpaid.

(6) The state finance committee may on behalf of the state make such covenants in connection with the refunding bond proceedings or otherwise to assure the maintenance of the tolls and charges on the Spokane river toll bridge, the proper application thereof, the proper operation, maintenance, management, and repair of the bridge to provide for and secure the timely payment of the refunding bonds. Such covenants shall be binding on the department of transportation and transportation commission. [1979 c 131 § 2.]

Severability—1979 c 131: See note following RCW 47.56.711.

47.56.713 Spokane river toll bridges—Liquidation of existing bond and revenue funds—Redemption of

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outstanding bonds—Transfer of moneys. Upon the issuance of refunding bond as authorized by RCW 47.56.711, the department of transportation may liquidate the existing bond fund and revenue fund established in the proceedings which authorized the issuance of the existing Spokane river toll bridge revenue bonds and apply the moneys contained in those funds to the redemption of outstanding Spokane river toll bridge revenue bonds, except that prior to such bond redemption, money sufficient to pay the first interest installment on the refunding bonds and any remaining money in such funds which cannot be used for such bond redemption shall be deposited in the Spokane river toll bridge account in the highway bond redemption fund. Any moneys in the existing change fund and operation and maintenance fund shall be transferred to corresponding funds established by the department of transportation and described in the proceedings authorizing the refunding bonds. [1979 c 131 § 3.]

Severability—1979 c 131: See note following RCW 47.56.711.

47.56.714 Spokane river toll bridges—Exemption from prohibition against construction of other bridges—Conditions. If the department of transportation enters into the agreement with the Washington public employees' retirement system and the Washington state teachers' retirement system as authorized by RCW 47.56.711, and thereafter refunding bonds are issued and exchanged for the existing Spokane river toll bridge revenue bonds pursuant to the agreement, the prohibition against the construction of other bridges within ten miles of an existing toll bridge as contained in RCW 47.56.220 as now or hereafter amended shall not apply to the Spokane river toll bridge. [1979 c 131 § 4.]

Severability—1979 c 131: See note following RCW 47.56.711.

47.56.715 Spokane river toll bridges—Repayment of motor vehicle fund—Continuation of tolls. Any money previously appropriated from the motor vehicle fund and expended on account of deficiencies in toll revenues to pay essential debt service on the existing Spokane river toll bridge revenue bonds, any money appropriated from the motor vehicle fund by *section 10 of this 1979 act and expended to pay the expenses of issuing the refunding bonds authorized by RCW 47.56.711, and any money in the motor vehicle fund subsequently used to pay principal and interest on the refunding bonds authorized by RCW 47.56.711 shall be repaid to the motor vehicle fund for use by the department of transportation, and tolls on the Spokane river bridge shall be continued for any required additional length of time for this purpose. [1979 c 131 § 5.]

***Reviser's note:** The reference to "section 10 of this 1979 act" is to an uncodified appropriation section.

Severability—1979 c 131: See note following RCW 47.56.711.

47.56.716 Spokane river toll bridges—Refunding bonds—Lien against fuel tax revenues. Except as otherwise provided by statute, the refunding bonds issued under authority of RCW 47.56.711, the bonds

authorized by RCW 47.60.560 through 47.60.640, the bonds authorized by chapter 5, Laws of 1979, and any general obligation bonds of the state of Washington which may be authorized by the forty-sixth legislature or thereafter and which pledge motor vehicle and special fuel excise taxes for the payment of principal thereof and interest thereon shall be an equal charge and lien against the revenues from such motor vehicle and special fuel excise taxes. [1979 c 131 § 6.]

Severability—1979 c 131: See note following RCW 47.56.711.

47.56.720 Puget Island–Westport ferry—Payments for operation and maintenance to Wahkiakum county—Toll free operation and provision of rest room facilities, when. (1) The legislature finds that the ferry operated by Wahkiakum county between Puget Island and Westport on the Columbia river provides service which is primarily local in nature with secondary benefits to the state highway system in providing a bypass for state route 4 and providing the only crossing of the Columbia river between the Astoria–Megler bridge and the Longview bridge.

(2) The department is hereby authorized to enter into a continuing agreement with Wahkiakum county pursuant to which the department shall pay to Wahkiakum county from moneys appropriated for such purpose the sum of one thousand dollars per month to be used in the operation and maintenance of the Puget Island ferry, commencing July 1, 1971.

Subject to the provisions of subsection (4) of this section, the department is authorized to include in the continuing agreement a provision to reimburse Wahkiakum county for eighty percent of the deficit incurred during each previous fiscal year in the operation and maintenance of the ferry, commencing with the fiscal year ending June 30, 1987. The state's eighty percent share of the annual operating and maintenance deficit shall include the one thousand dollars per month authorized in this subsection.

(3) The annual deficit, if any, incurred in the operation and maintenance of the ferry shall be determined by Wahkiakum county subject to the approval of the department. If eighty percent of the deficit for the preceding fiscal year exceeds the total amount paid to the county for that year, the additional amount shall be paid to the county by the department upon the receipt of a properly executed voucher. The total of all payments to the county in any biennium shall not exceed the amount appropriated for that biennium. The fares established by the county shall be comparable to those used for similar runs on the state ferry system.

(4) Whenever, subsequent to June 9, 1977, state route 4 between Cathlamet and Longview is closed to traffic pursuant to chapter 47.48 RCW due to actual or potential slide conditions and there is no suitable, reasonably short alternate state route provided, Wahkiakum county is authorized to operate the Puget Island ferry on a toll-free basis during the entire period of such closure. The state's share of the ferry operations and maintenance deficit during such period shall be one hundred percent.

(5) Whenever state route 4 between Cathlamet and Longview is closed to traffic, as mentioned in subsection (4) hereof, the state of Washington shall provide temporary rest room facilities at the Washington ferry landing terminal. [1987 c 368 § 1; 1984 c 7 § 285; 1977 c 11 § 1; 1973 2nd ex.s. c 26 § 1; 1971 ex.s. c 254 § 1.]

Effective date—1987 c 368: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 368 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—1973 2nd ex.s. c 26: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect October 1, 1973." [1973 2nd ex.s. c 26 § 3.]

47.56.725 Ferry systems operated by Pierce, Skagit, and Whatcom counties—Deficit reimbursements. (1) The department is hereby authorized to enter into a continuing agreement with Pierce, Skagit, and Whatcom counties pursuant to which the department shall, from time to time, direct the distribution to each of the counties the amounts authorized in subsection (2) of this section in accordance with RCW 46.68.100.

(2) The department is authorized to include in each such continuing agreement a provision for the distribution to each such county funds to reimburse the county for fifty percent of the deficit incurred during each previous fiscal year in the operation and maintenance of the ferry system owned and operated by the county, commencing with the fiscal year ending June 30, 1976. The total amount to be reimbursed to Pierce, Skagit, and Whatcom counties collectively shall not exceed five hundred thousand dollars in any biennium. Each county agreement shall contain a requirement that the county shall maintain tolls on its ferries at levels sufficient to produce aggregate annual revenues at least equal to the annual revenue of the county's ferry system in calendar year 1975.

(3) The annual fiscal year deficit, if any, shall be determined by Pierce, Skagit, and Whatcom counties subject to review and approval of the department. The annual fiscal year deficit is defined as the total of operations and maintenance expenditures less the sum of ferry toll revenues and that portion of fuel tax revenue distributions which are attributable to the county ferry as determined by the department. Distribution of the amounts authorized by subsection (2) of this section by the state treasurer shall be directed by the department upon the receipt of properly executed vouchers from each county. [1984 c 7 § 286; 1977 c 51 § 2; 1975-'76 2nd ex.s. c 57 § 2; 1975 1st ex.s. c 21 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1977 c 51: See note following RCW 46.68.100.

47.56.730 "No Smoking" areas on ferries—Establishment directed. The legislature finds that the public health, safety, and welfare require that "No Smoking" areas be established on all state ferries since there is a significant number of our citizens who are nonsmokers. The department is hereby authorized and

directed to adopt rules pursuant to the administrative procedure act, chapter 34.05 RCW, to establish and clearly designate areas on all state operated ferries that are expressly reserved for use by nonsmokers. [1984 c 7 § 287; 1974 ex.s. c 10 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.740 Columbia river bridge at Horn Rapids—Authorized—Approach routes. Subject to the provisions of RCW 47.56.741, 47.56.742, and 47.56.743, the department of transportation is hereby authorized and directed to make all necessary surveys and to design and construct a toll bridge across the Columbia river. The approaches to the toll bridge shall (1) extend from the bridge to state route number 240 on the west and may include the improvement of the Horn Rapids Road; (2) extend from the bridge easterly to state route number 395 and shall include the improvement of Alder Road; and (3) extend from a point on the easterly approach road southerly to state route number 182 and shall include the improvement of existing county roads. [1981 c 327 § 1; 1979 ex.s. c 212 § 1.]

Severability—1979 ex.s. c 212: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 212 § 21.]

47.56.741 Columbia river bridge at Horn Rapids—Agreements with local governments. If the transportation commission concludes that construction of a toll bridge across the Columbia river at North Richland in the vicinity of the Horn Rapids Road, including approaches, is economically feasible, the department is authorized to enter into agreements with Richland, Benton county, and Franklin county in accordance with RCW 47.56.742. [1979 ex.s. c 212 § 2.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.742 Columbia river bridge at Horn Rapids—Bonds—Agreements with local governments required. The transportation commission shall not request the issuance of any bonds for the construction of the toll bridge and its approaches unless and until:

(1) Either Richland or Benton county separately or Richland and Benton county jointly agree with the department to maintain to standards prescribed by the department the westerly approach from the bridge to state route number 240 including sections of Horn Rapids Road so long as any bonds issued to pay for the construction of the toll bridge and its approaches remain outstanding.

(2) Franklin county shall agree with the department to maintain to standards prescribed by the department the easterly approach from the bridge to state route number 395 and the approach from the easterly approach road southerly to state route number 182 so long as any bonds issued to pay for the construction of the toll bridge and its approaches remain outstanding. [1981 c 327 § 2; 1979 ex.s. c 212 § 3.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.743 Columbia river bridge at Horn Rapids—Bonds—Plans for funding obligations of local governments required. The transportation commission shall not request the issuance of any bonds for the construction of the toll bridge and its approaches until Benton and Franklin counties and Richland have adopted specific and acceptable plans to assure the funding of their respective obligations as established by the agreements authorized in RCW 47.56.742. [1979 ex.s. c 212 § 4.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.744 Columbia river bridge at Horn Rapids—Agreements with United States—Acceptance of public or private funds. In order to facilitate the financing of the toll bridge the department, Benton and Franklin counties, and Richland may consult, cooperate, and enter into agreements with the government of the United States or any of its agencies and accept and expend money from any public or private source which is now or may be available to assist in the construction of the bridge. [1979 ex.s. c 212 § 5.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.745 Columbia river bridge at Horn Rapids—General obligation bonds authorized—Additional bonds authorized, restriction. In order to provide funds for the construction of such bridge and approaches thereto, including but not limited to all costs of survey, acquisition of rights of way, design, engineering, and to pay the interest on the bonds when due during construction and for a period not exceeding six months after the bridge is open to traffic, there shall be issued and sold general obligation bonds of the state of Washington in the principal amount of not to exceed eighty million dollars or such lesser amount thereof, at such times as may be determined to be necessary by the department of transportation. At the request of the transportation commission the state finance committee may issue additional general obligation bonds of the state of Washington ranking on a parity with the bonds authorized hereinabove and subject to the provisions of RCW 47.56.740 through 47.56.756 as now amended, to pay the cost of further improving the approaches to the bridge or adding additional bridge lanes or constructing a parallel bridge: *Provided*, That such additional bonds shall not be issued without further express authorization of the legislature. [1981 c 327 § 3; 1979 ex.s. c 212 § 6.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.746 Columbia river bridge at Horn Rapids—Bonds—Issuance, sale, retirement supervised by state finance committee. The issuance, sale, and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the department of transportation shall provide

for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as the department of transportation shall determine to be necessary to meet the purposes specified in RCW 47.56.745. [1979 ex.s. c 212 § 7.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.747 Columbia river bridge at Horn Rapids—**Bonds**—**Term**—**Terms and conditions**—**Signatures**—**Registration**—**Where payable**—**Negotiable instruments**—**Legal investment for state funds**—**Bond anticipation notes.** Each of such bonds shall be made payable at any time not exceeding thirty years from the date of issuance. The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds and/or bond anticipation notes provided for in this section, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the fiscal agency of the state of Washington in Seattle or New York City as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder, unless registered, shall be fully negotiable instruments. The bonds shall be legal investments for all state funds or for funds under state control and all funds of municipal corporations.

At such time as a determination has been made to issue the general obligation bonds or a portion thereof as authorized in RCW 47.56.745, the state finance committee may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of the bonds, which notes shall be designated as "bond anticipation notes." If, prior to the issuance of such bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem such outstanding notes and to pay interest thereon. Such portion of the proceeds of the sale of the bonds as may be required for the payment of principal of and redemption premium, if any, and interest on the notes shall be applied thereto when the bonds are issued. [1979 ex.s. c 212 § 8.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.748 Columbia river bridge at Horn Rapids—**Bonds**—**Bond proceeds**—**Deposit and use.** Except for that portion of the proceeds required to pay bond anticipation notes under RCW 47.56.747, and except as provided in RCW 47.56.750, the money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the Columbia river toll bridge account

hereby created in the motor vehicle fund, and such money shall be available only for the purposes enumerated in RCW 47.56.745, for payment of the expense incurred in the issuance and sale of any such bonds and to repay the motor vehicle fund for any sums advanced to pay the cost of surveys, location, design, right of way, and all other things preliminary to the construction of the bridge and its approaches. [1981 c 327 § 4; 1979 ex.s. c 212 § 9.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.749 Columbia river bridge at Horn Rapids—**Bonds**—**Statement describing nature of obligation**—**Sources of payment.** Bonds and bond anticipation notes issued under the provisions of RCW 47.56.740 through 47.56.756 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in *this act from the proceeds of state excise taxes on motor vehicles and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW and from the tolls and revenues derived from the operation of such toll bridge. [1979 ex.s. c 212 § 10.]

***Reviser's note:** This act [1979 ex.s. c 212] consists of the enactment of RCW 47.56.740 through 47.56.756 and the amendment of RCW 47.56.220.

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.750 Columbia river bridge at Horn Rapids—**Bonds**—**Account created in highway bond retirement fund**—**Deposit of revenue**—**Pledge of excise taxes**—**Repayment procedure**—**Legislative covenant.** There is hereby created in the highway bond retirement fund in the state treasury a special account to be known as the Columbia river toll bridge account into which shall be deposited any capitalized interest from the proceeds of the bonds, and at least monthly all of the tolls and other revenues received from the operation of the toll bridge and from any interest which may be earned from the deposit or investment of these revenues after the payment of costs of operation, maintenance, management, and necessary repairs of the facility. The principal of and interest on the bonds shall be paid first from money deposited in the Columbia river toll bridge account in the highway bond retirement fund, and then, to the extent that money deposited in that account is insufficient to make any such payment when due, from the state excise taxes on motor vehicle and special fuels deposited in the highway bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapters 82.36, 82.37, and 82.38 RCW to pay the bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when

due, the principal and interest on the bonds if the money deposited in the Columbia river toll bridge account of the highway bond retirement fund is insufficient to make such payments. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee shall certify to the state treasurer such amount of additional moneys as may be required for debt service, and the treasurer shall thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the highway bond retirement fund. Any proceeds of such excise taxes required for these purposes shall first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the state. If the proceeds from the excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the bonds when due, the amount required to make the payments on the principal or interest shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.100 as now existing or hereafter amended. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns shall be repaid from the first moneys distributed to the state not required for redemption of the bonds or interest thereon. The legislature covenants and pledges that it shall at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the bonds. [1979 ex.s. c 212 § 11.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.751 Columbia river bridge at Horn Rapids—Operation by department of transportation—Amount and duration of tolls—Use of motor vehicle fund moneys—Priority of payments—Trust fund—Covenants by state finance committee. (1) The department of transportation is authorized to operate and assume full control of the bridge and shall fix and maintain the tolls and charges in the manner provided by RCW 47.56.240 so that when collected they will produce revenues sufficient to pay all expenses of operating, maintaining, managing, and repairing the toll bridge including all insurance costs and the amounts required to pay the principal and interest on the bonds when due and to satisfy the other obligations set forth in RCW 47.56.740 through 47.56.756 and 47.56.220 as now or hereafter amended: *Provided*, That revision of tolls and charges shall be determined by the department after considering the effect upon the traffic using the bridge and the projected revenues which will result from the increase of tolls and charges for the use of the bridge.

(2) To the extent that net revenues and income are insufficient to meet the required payments of principal and interest on bonds, the department shall use moneys pledged from the motor vehicle fund as provided in RCW 47.56.750.

(3) The payment of the principal of and the interest on the bonds shall constitute a first direct and exclusive charge and lien on all such tolls and other revenues and interest thereon received from the use and operation of the Columbia river toll bridge, after the payment of all expenses of operating, maintaining, managing, and repairing the toll bridge, and such tolls and revenues together with interest earned thereon, and all other money deposited in the Columbia river toll bridge account in the highway bond redemption fund, shall constitute a trust fund for the security and payment of such bonds, or bonds refunding such bonds, and shall not be used or pledged for any other purpose as long as such bonds or any of them are outstanding and unpaid.

(4) The state finance committee may on behalf of the state make such covenants in connection with the bond proceedings or otherwise to assure the maintenance of the tolls and charges on the Columbia river toll bridge, the proper application thereof, the proper operation, maintenance, management, and repair of the bridge to provide for and secure the timely payment of the bonds. Such covenants shall be binding on the department of transportation and transportation commission. [1979 ex.s. c 212 § 12.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.752 Columbia river bridge at Horn Rapids—Toll revenue trust fund—Transfer of surplus moneys. All tolls or other revenues received from the operation of the Columbia toll bridge constructed with the proceeds of bonds issued and sold hereunder shall be paid over by the department of transportation to the state treasurer who shall deposit the same forthwith as demand deposits in such depository or depositories as may be authorized by law to receive deposits of state funds to the credit of a special trust fund to be designated as the toll revenue fund of the Columbia river toll bridge, which fund shall be a trust fund and shall at all times be kept segregated and set apart from all other funds.

After provision has been made for payment of costs of operation, maintenance, management and necessary repairs of the facility, the surplus moneys available in the toll revenue fund, or so much thereof as may be required, shall be transferred monthly to the Columbia river toll bridge account of the highway bond retirement fund to pay the principal of and interest on the bonds authorized by RCW 47.56.745. [1979 ex.s. c 212 § 13.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.753 Columbia river bridge at Horn Rapids—Repayment of motor vehicle fund money—Continuation of tolls. Any moneys from the motor vehicle fund used by the department for payment of expenses of location, maintenance, repair, and operation of the bridge and approaches, and principal or interest on any bonds issued pursuant to RCW 47.56.745, or any subsequent refunding bond issue, shall be repaid to the motor vehicle fund from revenues of the project after all such bonds have been retired. Toll shall be continued for any

additional length of time necessary for this purpose. [1979 ex.s. c 212 § 14.]

Appropriation, repayment to motor vehicle fund—1981 c 327: "There is appropriated from the motor vehicle fund to the department of transportation for the biennium ending June 30, 1983, the sum of one million dollars, or so much thereof as may be necessary for the purpose of surveys, location, design, right of way, and all other things preliminary to the construction of the toll bridge described in RCW 47.56.740 as now amended together with its approaches. All funds expended from this appropriation shall be considered a loan and shall be repaid to the motor vehicle fund from the proceeds from the sale of bonds for this project." [1981 c 327 § 5.]

Appropriation, repayment to motor vehicle fund—1979 ex.s. c 212: "There is appropriated from the motor vehicle fund to the department of transportation for the biennium ending June 30, 1981, the sum of one million dollars, or so much thereof as may be necessary for the purpose of surveys, location, design, right of way, and all other things preliminary to the construction of the bridge and its approaches. All funds expended from this appropriation shall be considered a loan and shall be repaid to the motor vehicle fund upon the sale of bonds for this project." [1979 ex.s. c 212 § 20.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.754 Columbia river bridge at Horn Rapids—Ferries, urban arterials, Spokane river toll bridges, bonds—Lien against fuel tax revenues. Except as otherwise provided by statute, the bonds issued under authority of RCW 47.56.745, the bonds authorized by RCW 47.60.560 through 47.60.640, the bonds authorized by chapter 5, Laws of 1979, and chapter 131, Laws of 1979, and any additional general obligation bonds of the state of Washington which may be authorized by the forty-sixth legislature or thereafter and which pledge motor vehicle and special fuel excise taxes for the payment of principal thereof and interest thereon shall be an equal charge and lien against the revenues from such motor vehicle and special fuel excise taxes. [1979 ex.s. c 212 § 15.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.755 Columbia river bridge at Horn Rapids—When toll free—Conveyance to city or counties. Upon the redemption of all bonds issued pursuant to RCW 47.56.745 and the repayment of all other obligations to the motor vehicle fund as authorized by RCW 47.56.753, the department of transportation shall remove the tolls and transfer the bridge and its approaches to the city and/or counties having jurisdiction thereof, and the bridge and its approaches shall become a county road or in part a county road and in part a city street. The bridge, its approaches, and right of way shall be conveyed to the city or counties by deed executed by the secretary of transportation. [1979 ex.s. c 212 § 16.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.756 Additional bridge at Columbia point authorized. Notwithstanding the provisions of RCW 47.56.220 as now or hereafter amended, the department may design and construct an additional bridge across the

Columbia river in the vicinity of Columbia point. [1979 ex.s. c 212 § 17.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.760 First Avenue South bridge in Seattle—Study by commission—Bonds, tolls—Additional funding. (1) The transportation commission is authorized to conduct a study, to be paid from category C funds, to determine the economic and operational feasibility and consistency with federal laws of constructing, entirely or in part with toll-financed revenue bonds, a new parallel bridge and approaches on First Avenue South in Seattle, together with reconstruction of approaches to the existing bridge and connections to existing city street systems as necessary.

(2) If the commission concludes that construction, entirely or in part with toll-financed revenue bonds, of the facilities described in subsection (1) of this section is economically and operationally feasible and consistent with federal law, the commission may:

(a) Issue and sell revenue bonds under the provisions of this chapter for the purpose of constructing the facilities described in subsection (1) of this section; and

(b) Impose and collect tolls on the facilities for the purpose of funding the revenue bonds issued under this section.

(3) The commission shall seek additional funding for the bridge from local sources, including the city, county, and port district. Any funding obtained from local sources shall be matched by an equal amount of category C state funds under chapter 47.05 RCW. [1987 c 510 § 1.]

47.56.761 First Avenue South bridge in Seattle—Study by city—Tolls—Revenues. The city of Seattle is authorized to conduct a study, to be paid for wholly from city funds, to determine the operational feasibility and consistency with federal law of charging tolls on the First Avenue South Bridge on State Route 99. The study is to be conducted in cooperation with the department of transportation. If the city of Seattle and the department of transportation determine that the charging of tolls is feasible and consistent with federal law, then the city is authorized to charge reasonable tolls and to construct, operate and maintain toll collection facilities on the bridge.

The toll collection revenues less the costs of collection shall be placed in a separate account solely for the purpose of financial participation with the state and other local governmental entities in the construction, when commenced by the department of transportation, of a new parallel bridge and approaches on First Avenue South in Seattle, together with reconstruction of approaches to the existing bridge and connections to existing city street systems as necessary. Interest generated by funds within the account shall be credited to that account in their entirety. [1987 c 510 § 2.]

Chapter 47.58

EXISTING AND ADDITIONAL BRIDGES

Sections

47.58.010	Improvement of existing bridge and construction of new bridge as single project—Agreement—Tolls.
47.58.020	Examinations and surveys—Preliminary expenses—Financing.
47.58.030	Construction, operation of bridges—Collection of tolls—Schedule of charges.
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47.58.060	Bond resolution—Disposition of income and revenues.
47.58.070	Bonds legal investment for state moneys.
47.58.080	Eminent domain.
47.58.090	Study of projects—Specific authorization of construction and finance.
47.58.500	Manette bridge—Port Washington Narrows project.
47.58.900	Chapter provides additional method.

Bridges over navigable waters: RCW 79.91.090 through 79.91.120.

47.58.010 Improvement of existing bridge and construction of new bridge as single project—Agreement—Tolls. Whenever the legislature specifically authorizes, as a single project, the construction of an additional toll bridge, including approaches, and the reconstruction of an existing adjacent bridge, including approaches, and the imposition of tolls on both bridges, the department is authorized to enter into appropriate agreements whereunder the existing bridge or its approaches will be reconstructed and improved and an additional bridge, including approaches and connecting highways will be constructed as a part of the same project to be located adjacent to or within two miles of the existing bridge and will be financed through the issuance of revenue bonds of the same series. The department has the right to impose tolls for traffic over the existing bridge as well as the additional bridge for the purpose of paying the cost of operation and maintenance of the bridge or bridges and the interest on and creating a sinking fund for retirement of revenue bonds issued for account of such project, all in the manner permitted and provided by this chapter. [1984 c 7 § 288; 1961 c 13 § 47.58.010. Prior: 1955 c 208 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.020 Examinations and surveys—Preliminary expenses—Financing. For the purpose of obtaining information as to the necessity of the reconstruction or improvement of any such bridge and the expediency of constructing any such additional bridge it is the duty of the department to make any examination, investigation, survey, or reconnaissance pertaining thereto. The cost of any such examination, investigation, survey, or reconnaissance, and all preliminary expenses in the issuance of any revenue bonds, making surveys and appraisals and drafting, printing, issuance, and sale of bonds under this chapter, shall be advanced by any interested municipality, agency, or department of the state of Washington. All such advancements shall be reimbursed out of any proceeds derived from the sale of bonds or out

of tolls and revenues to be derived by the department through its operations hereunder for account of the project, as may be agreed upon between the department and the municipality, agency, or department. [1984 c 7 § 289; 1961 c 13 § 47.58.020. Prior: 1955 c 208 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.030 Construction, operation of bridges—Collection of tolls—Schedule of charges. The secretary shall have full charge of the construction of all such improvements and reconstruction work and the construction of any additional bridge, including approaches and connecting highways, that may be authorized under this chapter and the operation of such bridge or bridges, as well as the collection of tolls and other charges for services and facilities thereby afforded. The schedule of charges for the services and facilities shall be fixed and revised from time to time by the commission so that the tolls and revenues collected will yield annual revenue and income sufficient, after payment or allowance for all operating, maintenance, and repair expenses, to pay the interest on all revenue bonds outstanding under the provisions of this chapter for account of the project and to create a sinking fund for the retirement of the revenue bonds at or prior to maturity. The charges shall be continued until all such bonds and interest thereon and unpaid advancements, if any, have been paid. [1984 c 7 § 290; 1961 c 13 § 47.58.030. Prior: 1955 c 208 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.040 Revenue bonds—Form—Sale—Interim bonds—Deposit of proceeds. For the purpose of paying the cost of all or any part of the improvement and reconstruction work and the construction of any additional bridge, approaches thereto, and connecting highways, the department is hereby authorized by resolution to issue its revenue bonds which shall constitute obligations only of the department and shall be payable from any funds available except revenue from the general fund, including but not limited to the revenues and income from the operation of the bridge or bridges constituting the project as may be provided in and by such resolution. Each such revenue bond shall contain a recital that payment or redemption of the bond and payment of the interest thereon is secured by a direct charge and lien upon the tolls and revenues pledged for that purpose and that such bond does not constitute an indebtedness of the state of Washington. Such revenue bonds may bear such date or dates, may mature at such time or times as the department shall determine, may bear interest at such rate or rates, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be made subject to such terms of redemption with or without premium, and may contain such other terms and covenants not inconsistent with this chapter as may be provided in such resolution. Notwithstanding the form or tenor of the bond, and in the absence of an express recital on its face that the bond is nonnegotiable, each such revenue bond shall at

all times be and shall be treated as a negotiable instrument for all purposes. All such bonds shall be signed by the state treasurer and countersigned by the governor, and any interest coupons appertaining thereto shall bear the signature of the state treasurer. The countersignature of the governor on the bonds and the signature of the state treasurer on the coupons may be their printed or lithographed facsimile signatures. Pending the issuance of definitive bonds, temporary or interim bonds, certificates, or receipts of any denomination and with or without coupons attached may be issued as may be provided by the resolution. All bonds issued under or by authority of this chapter shall be sold to the highest and best bidder at such price or prices, at such rate or rates of interest, and after such advertising for bids as the department may deem proper, but it may reject any and all bids so submitted and thereafter sell the bonds so advertised under such terms and conditions as it deems advantageous. The purchase price of all bonds issued hereunder shall be paid to the state treasurer consistent with the provisions of the resolution pursuant to which the bonds have been issued or to the trustee designated in the bond resolution and held as a separate trust fund to be disbursed on the orders of the department. [1984 c 7 § 291; 1973 c 106 § 27; 1970 ex.s. c 56 § 64; 1969 ex.s. c 232 § 78; 1961 c 102 § 1; 1961 c 13 § 47.58.040. Prior: 1955 c 208 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—**Saving**—**Severability**—1969 ex.s. c 232: See notes following RCW 39.52.020.

47.58.050 Revenue bonds—Expenses includable—Conditions—Remedies of bondholders. In determining the amount of bonds required to be issued, there may be included any expenses incurred or approved by the department in connection with and incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and making inspections and examinations, required reserves, if any, interest during the estimated construction period and for six months thereafter, and a reasonable amount for initial operating expenses and prepaid insurance. The department is hereby empowered to include in any resolution authorizing the issuance of the bonds such covenants, stipulations, and conditions as it deems necessary with respect to the continued use and application of the revenues and income from the bridge or bridges. The holder of any bond or the trustee for any bonds designated by resolution may by mandamus or other appropriate proceeding compel performance of any duties imposed upon any state department, official, or employee, including any duties imposed upon or undertaken by the department or its officers, agents, and employees in connection with any improvement or reconstruction work on any existing bridge, the construction of any additional bridge, including approaches and connecting highways provided to be so constructed, the maintenance and operation of the bridge or bridges and in connection with the collection, deposit, investment, application, and disbursement of the proceeds of the bonds and the revenues

and income derived from the operation of the bridge or bridges. [1984 c 7 § 292; 1961 c 13 § 47.58.050. Prior: 1955 c 208 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.060 Bond resolution—Disposition of income and revenues. Each resolution providing for the issuance of revenue bonds shall provide for setting aside the necessary amounts for the reasonable and proper operation, maintenance, and repair expenses, and shall fix and determine the amounts to be set apart and applied to the payment of the interest on and retirement of the revenue bonds. All income and revenues as collected shall be paid to the state treasurer for the account of the department as a separate trust fund to be segregated and set apart for the payment of the revenue bonds, or may be remitted to and held by a designated trustee in such manner and with such collateral as may be provided in the resolution authorizing the issuance of the bonds. [1984 c 7 § 293; 1961 c 13 § 47.58.060. Prior: 1955 c 208 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.070 Bonds legal investment for state moneys. Notwithstanding any other provision of the law, bonds issued under this chapter shall be legal investments by the state investment board of any state moneys in its hands, except permanent school funds. [1981 c 3 § 39; 1961 c 13 § 47.58.070. Prior: 1955 c 208 § 7.]

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

47.58.080 Eminent domain. The department is hereby authorized and empowered to acquire in the name of the state by the exercise of the power of eminent domain any lands, property, rights, rights of way, franchises, easements, and other property of any person, firm, corporation, political subdivision, or other owner, deemed necessary or convenient for the construction, reconstruction, improvement, and operation of any project initiated and carried on by the department under this chapter. The proceedings shall be in accordance with and subject to the provisions of any and all laws applicable to the exercise of the power of eminent domain by the state. [1984 c 7 § 294; 1961 c 13 § 47.58.080. Prior: 1955 c 208 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.090 Study of projects—Specific authorization of construction and finance. Under the provisions of this chapter, projects other than those specifically authorized herein involving existing bridges may be studied and analyzed by the department, and recommendations therefor may be submitted to the legislature, but such other projects shall not be financed or constructed by the department under the provisions of this chapter until further specific authorization therefor has been provided by the legislature. [1984 c 7 § 295; 1961 c 13 § 47.58.090. Prior: 1955 c 208 § 11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.500 Manette bridge—Port Washington Narrows project. (1) The authority is especially authorized under the provisions of this chapter to reconstruct and improve the existing approaches and construct new approaches to the Manette bridge on secondary state highway 21-B in the city of Bremerton, and to construct an additional bridge, including approaches, over Port Washington Narrows in the vicinity of the said Manette bridge, at such exact location as may be selected by the director of highways, the state highway commission and the authority. Such project shall be known and designated as the Port Washington Narrows project and such new bridge and approaches when constructed shall be and become an integral part of the state highway system to be connected with and be a part of secondary state highway 21-B.

(2) The authority shall have the right to impose tolls for pedestrian and vehicular traffic over the existing Manette bridge, as well as such new bridge when constructed, for the purpose of paying the costs of reconstructing and improving approaches and constructing new approaches to the existing Manette bridge, constructing the new bridge in the vicinity thereof, to pay interest on and create a sinking fund for the retirement of revenue bonds issued for account of such project, and to pay any and all costs and expenses incurred by the authority in connection with and incidental to the issuance and sale of bonds, and for the preparation of surveys and estimates and to establish the required interest reserves for and during the estimated construction period and for six months thereafter. [1961 c 13 § 47.58.500. Prior: 1955 c 208 § 10.]

Reviser's note: Powers, duties, and functions of toll bridge authority, highway commission, and director of highways transferred to department of transportation; see RCW 47.01.031. Terms "authority" and "state highway commission" mean department of transportation; term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.58.900 Chapter provides additional method. This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers existing on June 8, 1955. [1961 c 13 § 47.58.900. Prior: 1955 c 208 § 9.]

Chapter 47.60

PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

Sections

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Credit permits for vehicular passage: RCW 47.56.247, 47.56.248.

Sale, lease of unneeded toll facility, ferry system property—Franchises for utility, railway purposes: RCW 47.56.253 through 47.56.257.

Traffic violations and unlawful acts on toll facility or ferry: RCW 46.61.690.

47.60.010 Ferry system, toll bridges, and facilities authorized—Power to contract, sell and lease back. The department is authorized to acquire by lease, charter, contract, purchase, condemnation, or construction,

and partly by any or all of such means, and to thereafter operate, improve, and extend, a system of ferries on and crossing Puget Sound and any of its tributary waters and connections thereof, and connecting with the public streets and highways in the state. The system of ferries shall include such boats, vessels, wharves, docks, approaches, landings, franchises, licenses, and appurtenances as shall be determined by the department to be necessary or desirable for efficient operation of the ferry system and best serve the public. The department may in like manner acquire by purchase, condemnation, or construction and include in the ferry system such toll bridges, approaches, and connecting roadways as may be deemed by the department advantageous in channeling traffic to points served by the ferry system. In addition to the powers of acquisition granted by this section, the department is empowered to enter into any contracts, agreements, or leases with any person, firm, or corporation and to thereby provide, on such terms and conditions as it shall determine, for the operation of any ferry or ferries or system thereof, whether acquired by the department or not.

The authority of the department to sell and lease back any state ferry, for federal tax purposes only, as authorized by 26 U.S.C., Sec. 168(f)(8) is confirmed. Legal title and all incidents of legal title to any ferry sold and leased back (except for the federal tax benefits attributable to the ownership thereof) shall remain in the state of Washington. [1984 c 18 § 1; 1984 c 7 § 296; 1961 c 13 § 47.60.010. Prior: 1949 c 179 § 1; Rem. Supp. 1949 § 6584–30.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.013 Emergency powers of governor to insure continued operation of ferry and toll bridge system—Cost reimbursement. The governor is authorized to take such actions as may be necessary to insure the continued operation of the Puget Sound ferry and toll bridge system under any emergency circumstances which threaten the continued operation of the system. In the event of such an emergency, the governor may assume all the powers granted by law to the transportation commission and department of transportation with respect to the ferry system. In addition, notwithstanding the provisions of chapters 47.60 and 47.64 RCW, the governor may contract with any qualified persons for the operation of the Washington state ferry system, or any part thereof, or for ferry service to be provided by privately owned vessels. Administrative costs to the office of the governor incurred in the exercise of this authority shall be reimbursed by the department. [1981 c 341 § 1.]

Severability—1981 c 341: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 341 § 2.]

47.60.015 "Washington State Ferries"—Name authorized. The department is authorized to operate its ferry system under the name: "Washington State Ferries." [1984 c 7 § 297; 1961 c 13 § 47.60.015. Prior: 1953 c 33 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.017 State ferry system a public mass transportation system. The legislature finds and declares that the state ferry system is a public mass transportation system. [1974 ex.s. c 105 § 1.]

47.60.020 Eminent domain—Condemnation proceedings. For the purpose of carrying out any or all of the powers granted in this chapter, the department has the power of eminent domain for the acquisition of either real or personal property, used or useful for the Puget Sound ferry system. Condemnation pursuant to this chapter shall be the procedure set out in chapter 8.04 RCW. The department may institute condemnation proceedings in the superior court of any county or other court of competent jurisdiction in which any of the property sought to be condemned is located or in which the owner of any thereof does business, and the court in any such action has jurisdiction to condemn property wherever located within the state. It shall not be necessary to allege or prove any offer to purchase or inability to agree with the owners thereof for the purchase of any such property in the proceedings. It is the intention of this section to permit the consolidation in one action of all condemnation proceedings necessary to acquire a ferry system and every type of property incident thereto, irrespective of its location within the state or diversity of ownership. Upon the filing of a petition for condemnation as provided in this section, the court may issue an order restraining the removal from the jurisdiction of the state of any personal property sought to be acquired by the proceeding during the pendency thereof. The court further has the power to issue such orders or process as are necessary to place the department into possession of any property condemned. [1984 c 7 § 298; 1961 c 13 § 47.60.020. Prior: 1949 c 179 § 2; Rem. Supp. 1949 § 6584–31.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.030 Existing contracts—Prior negotiations and bids validated. In any case where the department takes over any property or properties which are under lease, contract, or concession, or where the department has heretofore entered into any contract or negotiation or received any bid for any of the purposes set forth in this chapter, the department is authorized to continue in effect and carry out any such contract, lease, or concession or complete any such negotiation or accept any such bid or any modification of any of them which appears advantageous to the department without regard to any limitations or directions as to the manner thereof contained in this chapter. However, this section shall not be construed as requiring the department so to act, but this section is permissive only and then only in respect to contracts, leases, concessions, negotiations, or bids existing, entered into, or received prior to April 1, 1949. [1984 c 7 § 299; 1961 c 13 § 47.60.030. Prior: 1949 c 179 § 7; Rem. Supp. 1949 § 6584–36.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.040 Survey by department. For the purpose of obtaining information for the consideration of the department upon the acquisition of any ferries or ferry facilities or the construction of any toll bridge under this chapter, the department shall make any examination, investigation, survey, or reconnaissance for the determination of material facts pertaining thereto.

The cost of any such examination, investigation, survey, or reconnaissance, and all preliminary expenses leading up to and resulting in the issuance of any revenue bonds including, but not being limited to expenses in making surveys and appraisals and the drafting, printing, issuance, and sale of bonds under this chapter shall be borne by the department out of the motor vehicle fund. All such costs and expenses as well as any thereof heretofore incurred shall be reimbursed to the motor vehicle fund out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived by the department through its operations hereunder. [1984 c 7 § 300; 1961 c 13 § 47.60.040. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584–33, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.050 Improvement of facilities—Financing. Any facility that the department acquires or is authorized to acquire under the provisions of this chapter may be rehabilitated, rebuilt, enlarged, or improved, and the cost thereof may be paid from the revenues of the system or through the issuance of bonds as hereinafter provided. [1984 c 7 § 301; 1961 c 13 § 47.60.050. Prior: 1949 c 179 § 3, part; Rem. Supp. 1949 § 6584–32, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.060 Revenue bonds authorized—Issuance—Conditions—Negotiability—Interim bonds. For the purpose of paying the cost of acquiring by lease, charter, contract, purchase, condemnation, or construction all or any part of such Puget Sound ferry system, including toll bridges, approaches, and roadways incidental thereto, and for rehabilitating, rebuilding, enlarging, or improving all or any part of the system, the department is authorized by resolution to issue its revenue bonds which shall constitute obligations only of the department and shall be payable solely and only from all or such part of the revenues from the operation of the system as may be provided in and by the resolution.

Each revenue bond shall contain a recital that payment or redemption of the bond and payment of the interest thereon is secured by a direct charge and lien upon the tolls and revenues pledged for that purpose and that the bond does not constitute an indebtedness of the state of Washington.

The department is empowered to include in any resolution authorizing the issuance of the bonds such covenants, stipulations, and conditions as may be deemed necessary with respect to the continued use and application of the income and revenues from the undertaking.

The revenue bonds may bear such date or dates, may mature at such time or times as the department determines, may bear interest at such rate or rates, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be made subject to such terms of redemption with or without premium, and may contain such other terms and covenants not inconsistent with this chapter as may be provided in the resolution. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, each such revenue bond shall at all times be and shall be treated as a negotiable instrument for all purposes. All such bonds shall be signed by the state treasurer and countersigned by the governor, and any interest coupons appertaining thereto shall bear the signature of the state treasurer. The countersignature of the governor on the bonds and the signature of the state treasurer on the coupons may be their printed or lithographed facsimile signatures.

Pending the issuance of definitive bonds, temporary or interim bonds, certificates, or receipts of any denomination and with or without coupons attached may be issued as may be provided by the resolution. [1984 c 7 § 302; 1973 c 106 § 28; 1970 ex.s. c 56 § 65; 1969 ex.s. c 232 § 34; 1961 c 13 § 47.60.060. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—**Saving**—**Severability**—1969 ex.s. c 232: See notes following RCW 39.52.020.

47.60.080 Determining amount of bonds to be issued. In determining the amount of bonds required to be issued there may be included any expenses incurred by the department in connection with and incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and making inspections and examinations, interest during the estimated construction period, and for six months thereafter, and a reasonable amount for working capital and prepaid insurance. [1984 c 7 § 303; 1961 c 13 § 47.60.080. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.090 Sale of bonds—Deposit, disbursement of proceeds. All bonds issued under or by authority of this chapter shall be sold to the highest and best bidder after such advertising for bids as the department deems proper. However, the department may reject any and all bids so submitted and thereafter sell such bonds so advertised under such terms and conditions as it deems most advantageous to its own interests. The purchase price of all bonds issued under this chapter shall be paid to the state treasurer consistent with the provisions of the resolution pursuant to which the bonds have been issued or to the trustee designated in the bond resolution and held as a separate trust fund to be disbursed on the orders of the department. [1984 c 7 § 304; 1961 c 13 §

47.60.090. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.100 Bonds are legal investment for state moneys. Notwithstanding any other provision of the law, bonds issued by the authority shall be legal investments by the state investment board of any state moneys in its hands, except permanent school funds and motor vehicle funds. [1981 c 3 § 40; 1961 c 13 § 47.60.100. Prior: 1953 c 154 § 14; 1951 c 259 § 3; 1951 c 121 § 14; 1949 c 179 § 8; Rem. Supp. 1949 § 6584-37.]

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

47.60.110 Bondholders may compel performance. The holder of any bond or the trustee for any bonds designated by resolution may by mandamus or other appropriate proceeding require and compel performance of any duties imposed upon any state department, official or employee, including any duties imposed upon or undertaken by the authority or its officers, agents and employees in connection with the construction, maintenance and operation of the ferry system and in connection with the collection, deposit, investment, application and disbursement of the proceeds of the bonds and the revenue and income derived from the operation of the system. [1961 c 13 § 47.60.110. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

47.60.113 Refunding bonds—Authorization—Amount—Interest—Conditions. The department is authorized to refund, at the maturity thereof, or before the maturity thereof if they are subject to call prior to maturity or if all of the holders thereof consent thereto, upon such terms and conditions as it deems best, any or all of its revenue bonds now or hereafter outstanding, issued for the purpose of acquiring, constructing, or reconstructing any toll bridge, toll road, toll tunnel, ferry system, or any other toll facility of any sort, or issued for the purpose of refunding such bonds, which revenue bonds are payable out of all or part of the revenues of the toll facility. Refunding bonds may be issued hereunder in a sufficient amount to provide additional funds for acquiring, constructing, reconstructing, rehabilitating, rebuilding, enlarging, or improving any toll bridge, toll road, toll tunnel, ferry system, or any other toll facility of any sort, and to pay all refunding costs and expenses and to provide adequate reserves for the toll facility and for any such refunding bonds. Various issues and series of such outstanding bonds, including refunding bonds, may be combined and refunded by a single issue of refunding bonds. The refunding bonds shall bear interest at such rates and mature at such times, without limitation by the interest rates or maturity of the bonds being refunded, and shall contain such other covenants and conditions as the department determines by resolution. [1984 c 7 § 305; 1961 c 13 § 47.60.113. Prior: 1957 c 152 § 1; 1955 c 17 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.114 Refunding bonds—Payable from revenues. Any refunding bonds authorized by this chapter constitute obligations of the department only and not of the state of Washington. They shall be payable solely out of all or such part of the revenues derived from the operation of the toll bridge, toll road, toll tunnel, ferry system, or any other toll facility, as shall be provided in the resolution authorizing the issuance of the refunding bonds. [1984 c 7 § 306; 1961 c 13 § 47.60.114. Prior: 1957 c 152 § 2; 1955 c 17 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.115 Refunding bonds—Disposition—Laws applicable. The bonds herein authorized shall, in the discretion of the department, be exchanged at the best possible price for the bonds being refunded, or any such bonds not exchanged shall be sold in the manner provided in RCW 47.60.090. The bonds herein authorized shall be issued in accordance with, and shall be subject to, the provisions of RCW 47.60.050, 47.60.060, 47.60.080, 47.60.100, 47.60.110, and 47.60.120. [1983 c 3 § 134; 1961 c 13 § 47.60.115. Prior: 1957 c 152 § 3; 1955 c 17 § 3.]

47.60.120 Other crossings—Infringement of existing franchises—Protection of outstanding bonds. If the department acquires or constructs, maintains, and operates any ferry crossings upon or toll bridges over Puget Sound or any of its tributary or connecting waters there shall not be constructed, operated, or maintained any other ferry crossing upon or bridge over any such waters within ten miles of any such crossing or bridge operated or maintained by the department excepting such bridges or ferry crossings in existence, and being operated and maintained under a lawfully issued franchise at the time of the location of the ferry crossing or construction of the toll bridge by the department. The department shall not maintain and operate any ferry crossing or toll bridge over Puget Sound or any of its tributary or connecting waters that would infringe upon any franchise lawfully issued by the state and in existence and being exercised at the time of the location of the ferry crossing or toll bridge by the department, without first acquiring the rights granted to such franchise holder under the franchise.

While any revenue bonds issued by the department under the provisions of this chapter are outstanding no additional bonds may be issued for the purposes of acquiring, constructing, operating, or maintaining any ferries or toll bridges within the aforesaid ten mile distance by the department unless the revenues of any such additional ferries or toll bridges are pledged to the bonds then outstanding to the extent provided by the resolution authorizing the issue of the outstanding bonds. The provisions of this section are binding upon the state, and all of its departments, agencies, and instrumentalities, as well as any and all private, political, municipal, and public corporations and subdivisions, including cities, towns, counties, and other political subdivisions, and the prohibitions of this section shall restrict and limit the

powers of the legislature of the state in respect to the matters herein mentioned so long as any of such bonds are outstanding and unpaid and shall be deemed to constitute a contract to that effect for the benefit of the holders of all such bonds. [1984 c 7 § 307; 1961 c 13 § 47.60.120. Prior: 1949 c 179 § 6; Rem. Supp. 1949 § 6584–35.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.122 Ferries, terminal facilities—Interim revenue warrants authorized. For the purpose of paying the cost of acquiring, constructing, or reconstructing ferries or ferry terminal facilities, and all costs which may be incurred in connection therewith, the department is authorized to issue interim revenue warrants, which shall constitute obligations only of the department, and which shall not be obligations of the state of Washington. Such warrants shall be payable solely out of part or all of the revenues derived from the operation of the Puget Sound ferry system as shall be provided in the resolution authorizing their issuance, and shall be drawn upon, and the principal thereof and interest thereon shall be payable out of, such fund or funds as shall be created in and provided by the resolution. The warrants may be interest-bearing coupon warrants with a fixed maturity date, or may be interest-bearing registered warrants payable in order of their issuance whenever there is sufficient money in the fund upon which they were drawn to redeem any of them. [1984 c 7 § 308; 1961 c 13 § 47.60.122. Prior: 1953 c 159 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.124 Revenue refunding bonds to redeem interim warrants. If it is deemed advisable or found necessary to redeem any or all of such warrants, the department is authorized to issue its revenue refunding bonds for that purpose. The bonds shall constitute obligations only of the department, and shall not be obligations of the state of Washington. The refunding bonds shall be payable solely out of part or all of the revenues derived from the operation of the Puget Sound ferry system as shall be provided in the resolution authorizing their issuance. [1984 c 7 § 309; 1961 c 13 § 47.60.124. Prior: 1953 c 159 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.126 Interim warrants and refunding bonds—Laws applicable. All provisions of chapter 47.60 RCW pertaining and applicable to the revenue bonds of the department authorized in that chapter are applicable to the warrants and revenue refunding bonds authorized herein except insofar as otherwise provided by RCW 47.60.122 through 47.60.126. [1984 c 7 § 310; 1961 c 13 § 47.60.126. Prior: 1953 c 159 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.130 Unit or combined operation—Continuous project—Rental, charter, lease, of system property—Sale of unneeded property. Such ferry system,

including any toll bridges, approaches, and roadways incidental thereto, may be financed and operated in combination or separately as one or more units as the department of transportation may determine, and such ferry system together with any toll bridge hereafter constructed by the department upon or across the waters of Puget Sound or Hood Canal, or any part of either, replacing one or more presently operated ferry routes, is declared to be a continuous project within the meaning of RCW 47.56.070. The department is empowered to rent, lease, or charter any property acquired under this chapter. If the department determines that any real property (including lands, improvements thereon, and any interests or estates) originally acquired for the ferry system is no longer required for the purposes of the ferry system, the department shall offer it for sale in the manner and with the authority authorized to the department by RCW 47.12.063 or 47.12.283. The secretary of transportation may adopt rules further implementing this section. The proceeds of all such sales shall be paid into the separate trust fund of the state treasury established pursuant to RCW 47.60.150. [1979 ex.s. c 189 § 6; 1973 1st ex.s. c 177 § 5; 1961 c 13 § 47.60.130. Prior: 1955 c 22 § 1; 1953 c 32 § 1; 1949 c 179 § 3, part; Rem. Supp. 1949 § 6584–32, part.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

47.60.140 System as self-liquidating undertaking—Powers of department—Concessions. (1) The department is empowered to operate such ferry system, including all operations, whether intrastate or international, upon any route or routes, and toll bridges as a revenue-producing and self-liquidating undertaking. The department has full charge of the construction, rehabilitation, rebuilding, enlarging, improving, operation, and maintenance of the ferry system, including toll bridges, approaches, and roadways incidental thereto that may be authorized by the department, including the collection of tolls and other charges for the services and facilities of the undertaking. The department has the exclusive right to enter into leases and contracts for use and occupancy by other parties of the concessions and space located on the ferries, wharves, docks, approaches, and landings, but, except as provided in subsection (2) of this section, no such leases or contracts may be entered into for more than five years, nor without public advertisement for bids as may be prescribed by the department. However, except as provided in subsection (2) of this section, the Colman Dock facilities may be leased for a period not to exceed ten years.

(2) As part of a joint development agreement under which a public or private developer constructs improvements on ferry system property, the department may lease such property and improvements to such developers for that period of time, not to exceed fifty-five years, or not to exceed thirty years for those areas located within harbor areas, which the department determines is necessary to allow the developer to make reasonable recovery on its initial investment. Any lease entered into as provided for in this subsection that involves state aquatic

lands shall conform with the Washington state Constitution and applicable statutory requirements as determined by the department of natural resources. That portion of the lease rate attributable to the state aquatic lands shall be distributed in the same manner as other lease revenues derived from state aquatic lands as provided in RCW 79.24.580. [1987 c 69 § 1; 1984 c 7 § 311; 1965 ex.s. c 170 § 58; 1961 c 13 § 47.60.140. Prior: 1951 c 259 § 1; 1949 c 179 § 5, part; Rem. Supp. 1949 § 6584–34, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.145 Historic ferries—Acquisition by qualified persons or organizations. (1) An "historic ferry" is any vessel in the Washington state ferries fleet which has been listed in the Washington state register of historic places.

(2) When the department of transportation determines that an historic ferry is surplus to the needs of Washington state ferries, the department shall call for proposals from persons who wish to acquire the historic ferry. Proposals for the acquisition of an historic ferry shall be accepted only from persons or organizations that (a) are a governmental entity or a nonprofit corporation or association dedicated to the preservation of historic properties; (b) agree to a contract approved by the state historic preservation officer, which requires the preservation and maintenance of the historic ferry and provides that title to the ferry reverts to the state if the secretary of transportation determines that the contract has been violated; and (c) demonstrate the administrative and financial ability successfully to comply with the contract.

(3) The department shall evaluate the qualifying proposals and shall select the proposal which is most advantageous to the state. Factors to be considered in making the selection shall include but not be limited to:

- (a) Extent and quality of restoration;
- (b) Retention of original design and use;
- (c) Public access to the vessel;
- (d) Provisions for historical interpretation;
- (e) Monetary return to the state.

(4) If there are no qualifying proposals, an historic ferry shall be disposed of in the manner provided by state law. [1982 c 210 § 1.]

Severability—1982 c 210: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 210 § 2.]

Archaeology and historic preservation, office of: Chapter 27.34 RCW.

47.60.150 Fixing of charges—Deposit, segregation, and disbursement of revenues. Subject to the provisions of RCW 47.60.326, the schedule of charges for the services and facilities of the system shall be fixed and revised from time to time by the commission so that the tolls and revenues collected together with any moneys in the Puget Sound ferry operations account appropriated for maintenance and operation, and all moneys in the Puget Sound capital construction account available for

debt service will yield annual revenue and income sufficient, after allowance for all operating, maintenance, and repair expenses to pay the interest and principal and sinking fund charges for all outstanding revenue bonds, and to create and maintain a fund for ordinary renewals and replacements: *Provided*, That if provision is made by any resolution for the issuance of revenue bonds for the creation and maintenance of a special fund for rehabilitating, rebuilding, enlarging, or improving all or any part of the ferry system then such schedule of tolls and rates of charges shall be fixed and revised so that the revenue and income will also be sufficient to comply with such provision.

All income and revenues as collected shall be paid to the state treasurer for the account of the department as a separate trust fund and to be segregated and disbursed upon order of the department: *Provided*, That the fund so segregated and set apart for the payment of the revenue bonds may be remitted to and held by a designated trustee in such manner and with such collateral as may be provided in the resolution authorizing the issuance of said bonds. No expenditure may be made from the revenue fund established under this section and the bond resolution without an appropriation by law. [1986 c 66 § 2; 1986 c 23 § 1; 1983 c 3 § 135; 1972 ex.s. c 24 § 5; 1961 c 13 § 47.60.150. Prior: 1949 c 179 § 5, part; Rem Supp. 1949 § 6584-34, part.]

Reviser's note: This section was amended by 1986 c 23 § 1 and by 1986 c 66 § 2, both effective July 1, 1987, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1986 c 66: See note following RCW 46.68.100.

Effective date—1986 c 23: "This act shall take effect on July 1, 1987. The secretary of transportation may immediately take such steps as may be necessary to insure that this act is implemented on its effective date." [1986 c 23 § 2.]

47.60.160 Reimbursement of motor vehicle fund. If it be ascertained that any expense to the motor vehicle fund has been incurred in any manner under this chapter through the department or otherwise, all such expenses shall be promptly reimbursed to the motor vehicle fund out of tolls and revenues derived by the department through any or all of its operations hereunder. [1984 c 7 § 312; 1961 c 13 § 47.60.160. Prior: 1949 c 179 § 5, part; Rem. Supp. 1949 § 6584-34, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.170 Ferries revolving fund authorized—Deposit of excess funds. Nothing in RCW 47.60.150 forbids the establishment by the department of a Washington state ferries revolving fund of not to exceed six hundred thousand dollars from the proceeds of any bonds sold under the provisions of this chapter. The fund may be deposited by the department in such banks or financial institutions as it may select throughout the state. RCW 43.01.050 does not apply to the fund or any deposits therein made by the department under this section. The department may deposit all moneys received under this chapter in the fund. All expenses whatsoever

arising in the operations of the Puget Sound ferry system shall be paid from the fund, if established, by check or voucher in such manner as may be prescribed by the department.

All moneys received by the department or any employee under the foregoing sections of this chapter, except an amount of petty cash for each day's needs as fixed by the regulation of the department, shall each day and as often during the day as advisable, be deposited in the nearest authorized depository selected by the department under this section.

Whenever the fund exceeds six hundred thousand dollars, the department shall forthwith transmit the excess to the state treasurer for deposit in the trust fund established by RCW 47.60.150. [1984 c 7 § 313; 1970 ex.s. c 85 § 6; 1961 c 13 § 47.60.170. Prior: 1951 c 259 § 13.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—1970 ex.s. c 85: See note following RCW 47.60.500.

47.60.200 Consent to liability not general liability of state. Any consent to liability given under the provisions of this chapter creates liability of the department only and does not create any general liability of the state. [1984 c 7 § 314; 1961 c 13 § 47.60.200. Prior: 1951 c 259 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.210 Seamen may sue for injuries—Venue. The state consents to suits against the department by seamen for injuries occurring upon vessels of the department in accordance with the provisions of section 688, title 46, of the United States code. The venue of such actions may be in the superior court for Thurston county or the county where the injury occurred. [1984 c 7 § 315; 1961 c 13 § 47.60.210. Prior: 1951 c 259 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.220 Department as common carrier—Rights and liabilities. The department has all the obligations, duties, and rights of a common carrier of persons and property in its operation of ferries, terminals, or other facilities used in its ferry operations, including the right to participate in joint rates and through routes, agreements, and divisions of through and joint rates with railroads and other common carriers and the right to make any filings with the interstate commerce commission, the United States maritime commission, or any other state or federal regulatory or governmental body and to comply with the lawful rules and regulations or requirements of any such body, and is subject to laws relating to carrier's liability for loss or damage to property transported, and for personal injury or death of persons transported. [1984 c 7 § 316; 1961 c 13 § 47.60.220. Prior: 1951 c 259 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.230 Liability for damages as to persons or property. In case of property loss or damage or personal injuries or death resulting from the operation of any

ferry or terminal by the department, any person or the personal representative of any person, subject to and to the extent hereinafter provided, has a right of action against the department for the damage, loss, injury, or death. [1984 c 7 § 317; 1961 c 13 § 47.60.230. Prior: 1951 c 259 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.240 Liability to persons other than shippers or passengers—Limitation. The right of action extended by this chapter is applicable to loss or damage of property and/or personal injury or death resulting from the operation of ferries or terminals by the department to persons other than shippers or passengers, but any recovery of damages in such cases shall not exceed an amount equal to the limitations of the insurance carried by the department to insure it against loss for such liability. [1984 c 7 § 318; 1961 c 13 § 47.60.240. Prior: 1951 c 259 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.250 Claim for damages—Filing—Contents—Time limitations. As a condition to a recovery thereon, a verified claim against the department growing out of such damages, loss, injuries, or death must first be presented to the department and filed with the secretary within one hundred twenty days after the time when the claim accrued. If the claimant is incapacitated from verifying and filing a claim within the one hundred twenty days, or if the claimant is a minor, then the claim may be verified and presented on behalf of the claimant by his or her relative, attorney, or agent. Each claim must accurately locate and describe the event or defect that caused the damage, loss, injury, or death, reasonably describe the damage, loss, or injury, and state the time when the damage, loss, or injury occurred, give the claimant's residence for the last six months, and contain the items of damages claimed. No action may be maintained against the department upon the claim until the claim has been presented to, and filed with, the department and sixty days have elapsed after the presentation and filing, nor more than three years after the claim accrued.

With respect to the content of the claims, this section shall be liberally construed so that substantial compliance will be deemed satisfactory. [1984 c 7 § 319; 1967 c 164 § 3; 1961 c 13 § 47.60.250. Prior: 1951 c 259 § 10.]

Severability—1984 c 7: See note following RCW 47.01.141.

Purpose—**Severability**—1967 c 164: See notes following RCW 4.96.010.

Claims against the state: Chapter 4.92 RCW.

47.60.260 Payment of claims. The department may upon such terms and conditions as it may impose and under such rules as it may adopt, pay claims arising under its operation of ferries or terminals or compromise or settle the claims. No claim may be paid by the department or any settlement or compromise of it be made except from the operating revenues of the department derived from its operation of ferries or terminals or from

the proceeds of insurance recoveries. [1984 c 7 § 320; 1961 c 13 § 47.60.260. Prior: 1951 c 259 § 11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.270 Venue of actions—Enforcement of judgment. Actions for the recovery of damages under RCW 47.60.220 through 47.60.260 may be brought in Thurston county or in the county in which the aggrieved person resides. No execution upon a judgment or attachment may be levied against the property of the department, nor does the state consent to any maritime lien against vessels of the department, but the department may be required by order of court to pay any judgment. [1984 c 7 § 321; 1961 c 13 § 47.60.270. Prior: 1951 c 259 § 12.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.275 Authority and jurisdiction of local law enforcement officers at state ferry terminals and upon ferries. Law enforcement officers of cities, towns, and counties which are served by state ferries shall have, and are hereby authorized to exercise, concurrent jurisdiction and authority with state law enforcement officers in the enforcement of laws of the state and local governmental divisions at those state ferry terminals located within the respective governmental division served by such local law enforcement officers and on state ferries at the terminals and throughout the ferry runs, notwithstanding that the ferry may not be in the officer's governmental division. [1969 ex.s. c 13 § 1.]

47.60.277 "No Smoking" areas on state ferries—Establishment directed. See RCW 47.56.730.

47.60.280 Ferry service—Lummi Island to Orcas Island—Limitation on operation. The department is authorized and directed to establish and operate a ferry service from a suitable point on Lummi Island in Whatcom county to a suitable point on Orcas Island in San Juan county by the most feasible route if and when Whatcom county constructs a bridge from Gooseberry Point on the mainland to Lummi Island. The actual operation of the ferry service shall not begin until Whatcom county has completed the construction of such bridge. [1984 c 7 § 322; 1961 c 13 § 47.60.280. Prior: 1959 c 198 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.282 Ferry service between Port Townsend and Keystone—Operation authorized, when. The department is authorized to operate a ferry service between Port Townsend and Keystone on Admiralty Inlet if the certificate of convenience and necessity for the ferry operation is theretofore surrendered, rights thereunder are abandoned, and the ferry service is discontinued. In no event may the department undertake such a ferry service preceding events as set forth herein or before April 1, 1973. [1984 c 7 § 323; 1972 ex.s. c 44 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.283 Ferry service between Port Townsend and Keystone—Purpose. The purpose of RCW 47.60.282 and 47.60.283 is to provide service on the ferry route between Port Townsend and Keystone to be determined by the department. Operation of this route is necessary for the economic health, safety, and welfare of the people of the state. Additionally, state operation of this route will further benefit the people of the state by providing better access to important installations maintained by the United States Navy and the United States Coast Guard. [1984 c 7 § 324; 1972 ex.s. c 44 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.290 State ferries—Review of tariffs and charges. Subject to the provisions of RCW 47.60.326, the department is hereby authorized and directed to review tariffs and charges as applicable to the operation of the Washington state ferries for the purpose of establishing a more fair and equitable tariff to be charged passengers, vehicles, and commodities on the routes of the Washington state ferries. [1983 c 3 § 136; 1972 ex.s. c 24 § 6; 1961 c 13 § 47.60.290. Prior: 1959 c 199 § 1.]

47.60.300 State ferries—Scope of review—Periodic reviews required. The review shall include but not be limited to tariffs for automobiles, passengers, trucks, commutation rates, and volume discounts. The review shall give proper consideration to time of travel, distance of travel, operating costs, maintenance and repair expenses, and the resultant effect any change in tariff might have on the debt service requirements of the department as specifically provided in existing financing programs. The review shall also include the allocation of vessels to particular runs, the scheduling of particular runs, the adequacy and arrangements of docks and dock facilities, and any other subject deemed by the department to be properly within the scope of the review. The department is further authorized and directed to make a like review within every three-year period. [1984 c 7 § 325; 1961 c 13 § 47.60.300. Prior: 1959 c 199 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.310 State ferries—Local expressions—Ferry advisory committees. (1) The department is further directed to conduct such review by soliciting and obtaining expressions from local community groups in order to be properly informed as to problems being experienced within the area served by the Washington state ferries. In order that local representation may be established, the department shall give prior notice of the review to the ferry advisory committees.

(2) The legislative authorities of San Juan, Skagit, Clallam, and Jefferson counties shall each appoint a committee to consist of five members to serve as an advisory committee to the department or its designated representative in such review. The legislative authorities of other counties that contain ferry terminals shall appoint ferry advisory committees consisting of three members for each terminal area in each county, except for Vashon Island, which shall have one committee, and its members shall be appointed by the Vashon/Maury

Island community council. At least one person appointed to each ferry advisory committee shall be representative of an established ferry user group or of frequent users of the ferry system. Each member shall reside in the vicinity of the terminal that the advisory committee represents.

(3) The members of the San Juan, Clallam, and Jefferson county ferry advisory committees shall be appointed for four-year terms. The initial terms shall commence on July 1, 1982, and end on June 30, 1986. Any vacancy shall be filled for the remainder of the unexpired term by the appointing authority. At least one person appointed to the advisory committee shall be representative of an established ferry-user group or of frequent users of the ferry system, at least one shall be representative of persons or firms using or depending upon the ferry system for commerce, and one member shall be representative of a local government planning body or its staff. Every member shall be a resident of the county upon whose advisory committee he or she sits, and not more than three members shall at the time of their appointment be members of the same major political party.

(4) The members of each terminal area committee shall be appointed for four-year terms. The initial terms of the members of each terminal area committee shall be staggered as follows: All terms shall commence September 1, 1988, with one member's term expiring August 31, 1990, one member's term expiring August 31, 1991, and the remaining member's term expiring August 31, 1992. Any vacancy shall be filled for the remainder of the unexpired term by the appointing authority. Not more than two members of any terminal-area committee may be from the same political party at the time of their appointment, and in a county having more than one committee, the overall party representation shall be as nearly equal as possible.

(5) The chairmen of the several committees constitute an executive committee of the Washington state ferry users. The executive committee shall meet twice each year with representatives of the marine division of the department to review ferry system issues.

(6) The committees to be appointed by the county legislative authorities shall serve without fee or compensation. [1988 c 100 § 1; 1983 c 15 § 24; 1983 c 3 § 137; 1977 c 29 § 1; 1961 c 13 § 47.60.310. Prior: 1959 c 199 § 3.]

Severability—1983 c 15: See RCW 47.64.910.

47.60.326 Schedule of charges for state ferries and Hood Canal bridge—Review by department, factors considered—Rule-making by commission. (1) In order to maintain an adequate, fair, and economically sound schedule of charges for the transportation of passengers, vehicles, and commodities on the Washington state ferries, including the Hood Canal bridge, the department of transportation each year shall conduct a full review of such charges.

(2) Prior to February 1st of each odd-numbered year the department shall transmit to the transportation

commission a report of its review together with its recommendations for the revision of a schedule of charges for the ensuing biennium. The commission on or before July 1st of that year shall adopt as a rule, in the manner provided by the Washington administrative procedure act, a schedule of charges for the Washington state ferries for the ensuing biennium commencing July 1st. The schedule may initially be adopted as an emergency rule if necessary to take effect on, or as near as possible to, July 1st.

(3) The department in making its review and formulating recommendations and the commission in adopting a schedule of charges may consider any of the following factors:

- (a) The amount of subsidy available to the ferry system for maintenance and operation;
- (b) The time and distance of ferry runs;
- (c) The maintenance and operation costs for ferry runs with a proper adjustment for higher costs of operating outmoded or less efficient equipment;
- (d) The efficient distribution of traffic between cross-sound routes;
- (e) The desirability of reasonable commutation rates for persons using the ferry system to commute daily to work;
- (f) The effect of proposed fares in increasing walk-on and vehicular passenger use;
- (g) The effect of proposed fares in promoting all types of ferry use during nonpeak periods;
- (h) Such other factors as prudent managers of a major ferry system would consider.

(4) If at any time during the biennium it appears that projected toll revenues from the ferry system, together with the appropriation from the Puget Sound ferry operations account and any other operating subsidy available to the Washington state ferries, will be less than the projected total cost of maintenance and operation of the Washington state ferries for the biennium, the department shall forthwith undertake a review of its schedule of charges to ascertain whether or not the schedule of charges should be revised. The department shall, upon completion of its review report, submit its recommendation to the transportation commission which may in its sound discretion revise the schedule of charges as required to meet necessary maintenance and operation expenditures of the ferry system for the biennium or may defer action until the regular annual review and revision of ferry charges as provided in subsection (2) of this section.

(5) The provisions of *RCW 47.60.330 relating to public participation shall apply to the process of revising ferry tolls under this section. [1983 c 15 § 25; 1981 c 344 § 5.]

***Reviser's note:** The reference in 1983 c 15 § 25(5) to "section 25 of this act" has been translated to RCW 47.60.330. A literal translation of the session law reference would have been "RCW 47.60.326," which appears to be erroneous. A floor amendment to Substitute Senate Bill No. 3108 added a new section 24 to the bill and directed that internal references be corrected accordingly. The directed change was not made in the preparation of Engrossed Substitute Senate Bill No. 3108. The correction has been made in codification.

Severability—1983 c 15: See RCW 47.64.910.

Severability—1981 c 344: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 344 § 8.]

47.60.330 Public participation. (1) Before a substantial expansion or curtailment in the level of service provided to ferry users, or a revision in the schedule of ferry tolls or charges, the department of transportation shall consult with affected ferry users. The consultation shall be: (a) By public hearing in affected local communities; (b) by review with the affected ferry advisory committees pursuant to RCW 47.60.310; (c) by conducting a survey of affected ferry users; or (d) by any combination of (a) through (c).

(2) There is created a ferry system productivity council consisting of a representative of each ferry advisory committee empanelled under RCW 47.60.310, elected by the members thereof, and two representatives of employees of the ferry system appointed by mutual agreement of all of the unions representing ferry employees, which shall meet from time to time with ferry system management to discuss means of improving ferry system productivity.

(3) Before increasing ferry tolls the department of transportation shall consider all possible cost reductions with full public participation as provided in subsection (1) of this section and, consistent with public policy, shall consider adapting service levels equitably on a route-by-route basis to reflect trends in and forecasts of traffic usage. Forecasts of traffic levels shall be developed by the bond covenant traffic engineering firm appointed under the provisions of RCW 47.60.450. Provisions of this section shall not alter obligations under RCW 47.60.450. Before including any toll increase in a budget proposal by the commission, the department of transportation shall consult with affected ferry users in the manner prescribed in (1)(b) of this section plus the procedure of either (1) (a) or (c) of this section. [1983 c 15 § 26.]

Sections captions—Severability—1983 c 15: See RCW 47.64.900 and 47.64.910.

47.60.400 Refunding bonds authorized, 1961 Act. The Washington toll bridge authority is authorized to issue revenue bonds to refund all or any part of the authority's outstanding 1955 Washington state ferry system refunding revenue bonds and 1957 ferry and Hood Canal bridge revenue bonds. With respect to the issuing of such bonds and the payment of principal and interest thereon, the payment into reserves, sinking funds, and the fixing and revision of charges for services and facilities of the system, and in managing all its fiscal operations, the authority shall have all the powers and shall follow the same procedures established for it under existing laws, except as otherwise provided herein. [1986 c 66 § 3; 1961 ex.s. c 9 § 1.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

Effective date—1986 c 66: See note following 46.68.100.

Appropriation—1961 ex.s. c 9: "There is hereby appropriated from the motor vehicle fund to the Washington toll bridge authority, for the biennium ending June 30, 1963, the sum of two million six hundred thousand dollars or so much thereof as may be necessary for the operation and maintenance of the Washington state ferries and the payments of principal and interest on outstanding 1955 Washington state ferry system refunding revenue bonds and 1957 ferry and Hood Canal bridge revenue bonds and payments into reserves thereof as required by resolutions adopted by the authority with respect to such bond issues. Whenever such bond issues shall be refunded, any unexpended part of this appropriation shall lapse." [1961 ex.s. c 9 § 8.]

47.60.420 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Prior charge against Puget Sound capital construction account if ferry system and Hood Canal bridge revenues insufficient—Repayment. To the extent that all revenues from the Washington state ferry system and the Hood Canal bridge available therefor are insufficient to provide for the payment of principal and interest on the bonds authorized and issued under RCW 47.60.400 through 47.60.470 and for sinking fund requirements established with respect thereto and for payment into such reserves as the department has established with respect to the securing of the bonds, there is imposed a first and prior charge against the Puget Sound capital construction account of the motor vehicle fund created by RCW 47.60.505 and, to the extent required, against all revenues required by RCW 46.68.100 to be deposited in the Puget Sound capital construction account.

To the extent that the revenues from the Washington state ferry system and the Hood Canal bridge available therefor are insufficient to meet required payments of principal and interest on bonds, sinking fund requirements, and payments into reserves, the department shall use moneys in the Puget Sound capital construction account for such purpose. Any moneys from the Puget Sound capital construction account used by the department to pay the obligations shall be repaid by the department to the motor vehicle fund from tolls of the Washington state ferry system and the Hood Canal bridge, and tolls shall be continued for any required additional length of time necessary for this purpose. [1986 c 66 § 4; 1984 c 7 § 330; 1961 ex.s. c 9 § 3.]

Effective date—1986 c 66: See note following RCW 46.68.100.

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.430 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Agreement to continue imposition of certain taxes. So long as any bonds issued as authorized herein are outstanding, the state hereby agrees to continue to impose at least one-quarter cent of motor vehicle fuel tax and one-quarter cent of special fuel tax required by law and to deposit the proceeds of these taxes in the Puget Sound capital construction account of the motor vehicle fund. [1986 c 66 § 5; 1961 ex.s. c 9 § 4.]

Effective date—1986 c 66: See note following RCW 46.68.100.

47.60.440 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Ferry system a revenue-producing undertaking—Debt service—Tolls on ferry system and Hood Canal bridge. The Washington state

ferry system shall be efficiently managed, operated, and maintained as a revenue-producing undertaking. Subject to the provisions of RCW 47.60.326 the commission shall maintain and revise from time to time as necessary a schedule of tolls and charges on said ferry system and Hood Canal bridge which together with any moneys in the Puget Sound ferry operations account appropriated for maintenance and operation and all moneys in the Puget Sound capital construction account available for debt service will produce net revenue available for debt service, in each fiscal year, in an amount at least equal to minimum annual debt service requirements as herein-after provided. Minimum annual debt service requirements as used in this section shall include required payments of principal and interest, sinking fund requirements, and payments into reserves on all outstanding revenue bonds authorized by RCW 47.60.400 through 47.60.470.

The provisions of law relating to the revision of tolls and charges to meet minimum annual debt service requirements from net revenues as required by this section shall be binding upon the commission but shall not be deemed to constitute a contract to that effect for the benefit of the holders of such bonds. [1986 c 66 § 6; 1983 c 3 § 139; 1972 ex.s. c 24 § 7; 1963 ex.s. c 3 § 42; 1961 ex.s. c 9 § 5.]

Effective date—1986 c 66: See note following RCW 46.68.100.

47.60.450 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Revision of tolls to meet debt service. If the net revenue together with all moneys in the Puget Sound capital construction account available for debt service in any fiscal year fail to meet minimum annual debt service for the year, as defined in RCW 47.60.440, the commission shall promptly revise the tolls and charges after considering supporting data and recommendations therefor which shall be furnished by a nationally recognized traffic engineering firm retained by the commission in the manner provided in the bond proceedings.

Tolls and charges shall not be increased in any case when in the opinion of the engineering firm the increase would so reduce traffic that no net gain in revenue would result. This section is a covenant for the benefit of the holders of the bonds. [1986 c 66 § 7; 1984 c 7 § 331; 1961 ex.s. c 9 § 6.]

Effective date—1986 c 66: See note following RCW 46.68.100.

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.460 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Repayment of 1961 appropriation for Hood Canal bridge—Continuation of tolls—Obligations subordinate to obligations subsequently incurred for ferry system and bridge. See RCW 47.56.365.

47.60.470 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Periodic reports. The department shall periodically report to the chairs of the transportation committees of the senate and house of representatives, including one copy to the staff of each of

the committees, its plans and progress relating to the financing and refinancing of the Washington state ferries and Hood Canal bridge, including the issuance of bonds authorized by RCW 47.60.400 through 47.60.470, to the end that the committee may be informed of plans which may affect its recommendations to the legislature. [1987 c 505 § 52; 1984 c 7 § 332; 1961 ex.s. c 9 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.500 Acquisition of additional ferries—**Legislative finding**—**Department authority**. (1) The legislature finds that the state's ferry fleet available for mass transportation of people within the urban region of Puget Sound is critically deficient and that substantial financial assistance for the acquisition of new ferries is necessary if the Washington state ferries is to continue to fulfill its role in the Puget Sound regional urban transportation system.

(2) The department is authorized:

(a) To apply to the United States secretary of transportation for a financial grant to assist the state to acquire urgently needed ferries;

(b) To enter into an agreement with the United States secretary of transportation or other duly authorized federal officials and to assent to such conditions as may be necessary to obtain financial assistance for the acquisition of additional ferries. In connection with the agreement the department may pledge any moneys in the Puget Sound capital construction account, not required for debt service, in the motor vehicle fund or any moneys to be deposited in the account for the purpose of paying the state's share of the cost of acquiring ferries. To the extent of the pledge the department shall use the moneys available in the Puget Sound capital construction account to meet the obligations as they arise. [1986 c 66 § 8; 1984 c 7 § 333; 1970 ex.s. c 85 § 1.]

Effective date—1986 c 66: See note following RCW 46.68.100.

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—1970 ex.s. c 85: "This 1970 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect April 1, 1970." [1970 ex.s. c 85 § 9.]

47.60.502 Hood Canal bridge—**Legislative finding**—**Authority to restore or replace**. The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, the department of transportation is authorized and directed to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget

Sound and upon the Kitsap and Olympic peninsulas. The department is further authorized and directed to proceed immediately with all necessary measures to survey the damage to the Hood Canal bridge and to undertake the planning, design, and construction necessary to restore or replace the Hood Canal bridge. [1979 c 27 § 1.]

Severability—1979 c 27: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 27 § 10.]

47.60.503 Hood Canal bridge—**Authority to obtain federal emergency relief funds**. The department of transportation is authorized and directed to take all necessary steps to obtain federal emergency relief funds to assist the state of Washington in restoring transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas, including both interim measures and the ultimate reconstruction or replacement of the Hood Canal bridge. [1979 c 27 § 2.]

Severability—1979 c 27: See note following RCW 47.60.502.

47.60.505 Puget Sound capital construction account—**Created**—**Use**. There is hereby created in the motor vehicle fund the Puget Sound capital construction account. All moneys hereafter deposited in said account shall be used by the department of transportation for:

(1) Reimbursing the motor vehicle fund for all transfers therefrom made in accordance with RCW 47.60.620; and

(2) Improving the Washington state ferry system including, but not limited to, vessel acquisition, vessel construction, major and minor vessel improvements, terminal construction and improvements, and reconstruction or replacement of, and improvements to, the Hood Canal bridge, reimbursement of the motor vehicle fund for any state funds, other than insurance proceeds, expended therefrom for reconstruction or replacement of and improvements to the Hood Canal bridge, pursuant to proper appropriations: *Provided*, That any funds accruing to the Puget Sound capital construction account after June 30, 1979, which are not required to reimburse the motor vehicle fund pursuant to RCW 47.60.620 as such obligations come due nor are required for capital improvements of the Washington state ferries pursuant to appropriations therefor shall from time to time as shall be determined by the department of transportation be transferred by the state treasurer to the Puget Sound ferry operations account in the motor vehicle fund.

(3) The department may pledge any moneys in the Puget Sound capital construction account or to be deposited in that account to guarantee the payment of principal or interest on bonds issued to refund the outstanding 1955 Washington state ferry system refunding bonds and the 1957 ferry and Hood Canal bridge revenue bonds.

The department may further pledge moneys in the Puget Sound capital construction account to meet any sinking fund requirements or reserves established by the

department with respect to any bond issues provided for in this section.

To the extent of any pledge authorized in this section, the department shall use the first moneys available in the Puget Sound capital construction account to meet such obligations as they arise, and shall maintain a balance of not less than one million dollars in the account for this purpose.

(4) The treasurer shall never transfer any moneys from the Puget Sound capital construction account for use by the department for state highway purposes so long as there is due and unpaid any obligations for payment of principal, interest, sinking funds, or reserves as required by any pledge of the Puget Sound capital construction account. Whenever the department has pledged any moneys in the account for the purposes authorized in this section, the state agrees to continue to deposit in the Puget Sound capital construction account the motor vehicle fuel taxes and special fuel taxes as provided in RCW 82.36.020 and 82.38.290 and further agrees that, so long as there exists any outstanding obligations pursuant to such pledge, to continue to impose such taxes.

(5) Funds in the Puget Sound capital construction account of the motor vehicle fund that are not required by the department for payment of principal or interest on bond issues or for any of the other purposes authorized in this chapter may be invested by the department in bonds and obligations of the nature eligible for the investment of current state funds as provided in RCW 43.84.080. [1986 c 66 § 9; 1979 c 27 § 3; 1977 ex.s. c 360 § 10; 1970 ex.s. c 85 § 2.]

Transfer of funds—1986 c 66: "Moneys in the Puget Sound reserve account and ferry improvement fund on July 1, 1987, shall be transferred to the Puget Sound capital construction account." [1986 c 66 § 13.]

Effective date—1986 c 66: See note following RCW 46.68.100.

Severability—1979 c 27: See note following RCW 47.60.502.

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

Effective date—1970 ex.s. c 85: See note following RCW 47.60.500.

47.60.530 Puget Sound ferry operations account—Created—Use. There is hereby created in the motor vehicle fund the Puget Sound ferry operations account to the credit of which shall be deposited all moneys directed by law to be deposited therein. All moneys deposited in this account shall be expended pursuant to appropriations only for reimbursement of the motor vehicle fund for any state moneys, other than insurance proceeds, expended therefrom for alternate transportation services instituted as a result of the destruction of the Hood Canal bridge, and for maintenance and operation of the Washington state ferries including the Hood Canal bridge, supplementing as required the revenues available from the Washington state ferry system. [1979 c 27 § 4; 1972 ex.s. c 24 § 3.]

Severability—1979 c 27: See note following RCW 47.60.502.

47.60.540 Puget Sound ferry operations account—Transfer of excess funds. (1) Whenever in a biennium

there has been paid into the Puget Sound ferry operations account sums equal to the appropriations from the account for the biennium, all additional sums accruing to the account shall forthwith be transferred from the account and shall be expended by the department pursuant to proper appropriations for state highway purposes.

(2) One month after the end of each biennium sums which were paid into the Puget Sound ferry operations account during the biennium just ended which remain unexpended shall be transferred from the account and shall be expended by the department pursuant to proper appropriation for state highway purposes. [1984 c 7 § 334; 1972 ex.s. c 24 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.543 Repayment of motor vehicle fund from Puget Sound capital construction account and ferry operations account. Any state funds expended from the motor vehicle fund pursuant to the appropriations contained in sections 5 and 6 of this 1979 act which are not reimbursed by federal emergency relief funds or by insurance settlements shall be repaid to the motor vehicle fund from the Puget Sound capital construction account and the Puget Sound ferry operations account of the motor vehicle fund before July 1, 1990. [1979 c 27 § 7.]

Appropriation—Restoration of transportation services across Hood Canal—1979 c 27: "There is hereby appropriated from the motor vehicle fund to the department of transportation for the period ending June 30, 1981, the sum of fifty-five million dollars, consisting of five million dollars of state funds and fifty million dollars of federal and local funds, or so much thereof as may be necessary to restore transportation services disrupted by the loss of the Hood Canal bridge on state route 104 on February 13, 1979, including, but not limited to: (1) The operation and maintenance costs of interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas, including expenditures for personal service contracts, leases, and related operating activities and auxiliary services such as buses, vans, and marine vessels; and (2) preliminary engineering, right of way acquisition, acquisition or construction of capital facilities, and improvement of capital facilities required to restore and maintain transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas including, but not limited to, improvements to highways, development of park and ride facilities, development and improvement of ferry terminal facilities, acquisition and improvement of marine vessels, surveys of damage to the Hood Canal bridge, and reconstruction or replacement of the Hood Canal bridge: *Provided*, That the transportation commission may reduce the state funds and increase by a like amount the federal and local funds contained in this appropriation or may increase the state funds and decrease by a like amount the federal and local funds contained in this appropriation to properly reflect the total amount of federal and local funds available to the state for assistance in restoring transportation services disrupted by loss of the Hood Canal bridge. The commission shall obtain the approval of the office of financial management and the legislative transportation committee prior to reducing or increasing either the state funds or the federal or local funds contained in this appropriation." [1979 c 27 § 5.]

Appropriation—Replacing revenues lost due to destruction of Hood Canal bridge—1979 c 27: "There is hereby appropriated from the motor vehicle fund to the department of transportation for the period ending June 30, 1981, the sum of eleven million dollars consisting entirely of state funds, for the operation and maintenance of the Washington state ferries, supplementing revenues available from the Washington state ferry system and replacing revenues lost, directly or indirectly, due to the destruction of the Hood Canal bridge: *Provided*, That should any funds from use and occupancy insurance claims settlements resulting from the loss of the Hood Canal bridge be received by the department of transportation and either be available for deposit

in, or cause a like amount of funds in the Puget Sound capital construction account to be available for transfer to, the Puget Sound ferry operations account for maintenance and operation of the Washington state ferries and Hood Canal bridge, then the appropriation of state funds contained in this section shall be reduced by the same amount, and that same amount but not to exceed eleven million dollars is hereby appropriated to the department of transportation from the Puget Sound ferry operations account for the period ending June 30, 1981." [1979 c 27 § 6.]

Severability—1979 c 27: See note following RCW 47.60.502.

47.60.544 Report and consultation with legislative transportation committee. The department of transportation shall each quarter report to and consult with the legislative transportation committee on the implementation of *sections 1 through 7 of this 1979 act. [1979 c 27 § 8.]

***Reviser's note:** Sections 1 through 7 of this 1979 act [1979 c 27] consist of the enactment of RCW 47.60.502, 47.60.503, and 47.60.543, the two uncodified appropriation sections noted following RCW 47.60.543, and the amendment of RCW 47.60.505 and 47.60.530.

Severability—1979 c 27: See note following RCW 47.60.502.

47.60.550 Parking or holding area for ferry patrons in conjunction with municipal off-street parking facilities. (1) Whenever a county, city, or other municipal corporation acquires or constructs a facility to be used in whole or in part for off-street parking of motor vehicles which is in the immediate vicinity of an existing or planned ferry terminal, the department may enter into an agreement with the local governmental body providing for the use in part or at specified times of the facility as a holding area for traffic waiting to board a ferry or for parking by ferry patrons.

(2) As a part of an agreement authorized by subsection (1) of this section, the department, subject to the limitations contained in RCW 47.60.505, may pledge any moneys in the Puget Sound capital construction account in the motor vehicle fund, or to be deposited in the account, to guarantee the payment of principal and interest on bonds issued by a county, city, or other municipal corporation to finance the acquisition or construction of the parking facility. In making the pledge, the department shall reserve the right to issue its own bonds for the purpose of paying the costs of acquiring ferry vessels with the provision that the bonds shall rank on parity with the bonds authorized by this section as a lien upon moneys in or to be deposited in the Puget Sound capital construction account.

The department shall also reserve the right to pledge moneys in the Puget Sound capital construction account to guarantee subsequent bonds issued by any county, city, or other municipal corporation to finance parking facilities as authorized in subsection (1) of this section with the provision that the subsequent bonds shall rank on parity with prior bonds guaranteed pursuant to this section as a lien upon moneys in or to be deposited in the Puget Sound capital construction account. To the extent of any pledge herein authorized, the department shall use the first moneys available in the Puget Sound capital construction account to meet the obligations as they arise. [1986 c 66 § 10; 1984 c 7 § 335; 1975-'76 2nd ex.s. c 69 § 1.]

Effective date—1986 c 66: See note following RCW 46.68.100.

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.560 General obligation bonds—Ferries—Authorized—Purposes—Passenger-only vessels—Issuance, sale, and retirement. In order to provide funds necessary for vessel acquisition, vessel construction, major and minor vessel improvements, and terminal construction and improvements for the Washington state ferries, there shall be issued and sold upon the request of the department general obligation bonds of the state of Washington in the sum of one hundred thirty-five million dollars or such amount thereof as may be required (together with other funds available therefor). If the state of Washington is able to obtain matching funds from the urban mass transportation administration or other federal government agencies for the acquisition of passenger-only vessels capable of operating as an integral part of the Washington state ferries on Puget Sound and the Straits of Juan de Fuca, a sufficient amount of the proceeds of the bonds authorized herein shall be used to pay the state's share of the acquisition cost of the passenger-only vessels. Upon request being made by the department, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds in accordance with chapter 39.42 RCW. The bonds may be sold from time to time in such amounts as may be necessary for the orderly progress in constructing the ferries. The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued under this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [1986 c 290 § 8; 1985 c 176 § 1; 1984 c 7 § 336; 1977 ex.s. c 360 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1977 ex.s. c 360: "If any provision of this 1977 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 360 § 13.]

47.60.570 Disposition of proceeds from sale of bonds. The proceeds from the sale of the bonds shall be deposited in the Puget Sound capital construction account of

the motor vehicle fund and such proceeds shall be available only for the purposes enumerated in RCW 47.60.560, for the payment of bond anticipation notes, if any, and for the payment of the expense incurred in the drafting, printing, issuance, and sale of such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1986 c 290 § 9; 1977 ex.s. c 360 § 2.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.580 Bonds—Terms—Principal and interest payable from proceeds of state excise taxes on motor vehicle and special fuels. Bonds issued under the provisions of RCW 47.60.560 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.60.560 through 47.60.640 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.60.560 through 47.60.640 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.60.560 through 47.60.640. [1977 ex.s. c 360 § 3.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.590 Repayment of bonds—Fund sources. Any funds required to repay the bonds authorized by RCW 47.60.560 or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state for expenditure pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1977 ex.s. c 360 § 4.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.600 Bonds—Powers and duties of state finance committee. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of such bonds, the state finance committee

shall estimate, subject to the provisions of RCW 47.60.590, the percentage of the receipts in money of the motor vehicle fund resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments when due and shall notify the treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the ferry bond retirement fund hereby created in the state treasury, which funds shall be available solely for payment of the principal of and interest on the bonds when due. If in any month it shall appear that the estimated percentage of moneys so made is insufficient to meet the requirements for payment of the principal thereof or interest thereon, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for the interest on and principal of all bonds issued shall be fully met at all times. [1977 ex.s. c 360 § 5.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.610 Excess repayment funds—Disposition. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the bond retirement fund proves more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee and with the concurrence of the department, be available for the prior redemption of any bonds or remain available in the fund to reduce requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1984 c 7 § 337; 1977 ex.s. c 360 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.620 Reimbursements and transfers of funds. Whenever, pursuant to RCW 47.60.600, the state treasurer shall transfer funds from the motor vehicle fund to the ferry bond retirement fund, the state treasurer shall at the same time reimburse the motor vehicle fund in an identical amount from the Puget Sound capital construction account. After each transfer by the treasurer of funds from the motor vehicle fund to the bond retirement fund and to the extent permitted by RCW 47.60.420, 47.60.505(3), and 47.60.505(4), the obligation to reimburse the motor vehicle fund as required herein shall constitute a first and prior charge against the funds within and accruing to the Puget Sound capital construction account, including the proceeds of the additional two-tenths of one percent excise tax imposed by RCW 82.44.020, as amended by chapter 332, Laws of 1977 ex. sess. All funds reimbursed to the motor vehicle fund as provided herein shall be distributed to the state

for expenditure pursuant to RCW 46.68.130. [1986 c 66 § 11; 1977 ex.s. c 360 § 7.]

Effective date—1986 c 66: See note following RCW 46.68.100.

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.630 Bonds legal investment for public funds.

The bonds authorized in RCW 47.60.560 through 47.60.640 shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1977 ex.s. c 360 § 8.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.640 Bonds—Equal charge against revenues from motor vehicle and special fuel excise taxes. Bonds issued under authority of RCW 47.60.560 through 47.60.640 and any subsequent general obligation bonds of the state of Washington which may be authorized and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1977 ex.s. c 360 § 9.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.651 Passenger-only ferry purchase—Notice of intent to purchase. Whenever the department is authorized to purchase one or more new passenger-only ferry vessels of a proven and operational design pursuant to this section, it shall publish a notice of its intent once a week for at least two consecutive weeks in at least one trade paper and one other paper, both of general circulation in the state. The department shall mail the notice to any firm known to the department that has constructed and has had placed in operation within the previous five years a vessel meeting the department's performance criteria. The notice shall contain, but not be limited to, the following information:

(1) The number of passenger-only ferry vessels to be purchased, their passenger capacity, and the proposed delivery date for each vessel;

(2) A short summary of the requirements for prequalification of bidders including a statement that prequalification is a prerequisite to consideration by the department of any proposal, and a statement that in order to be prequalified a firm must, in addition to the requirements contained in RCW 47.60.680 and applicable rules, (a) submit complete plans and specifications for its proposed vessel and obtain the certification of the department's marine architect as to the completeness of these plans and specifications, and (b) submit evidence that its proposed vessel has a history of successful operation within the last five years;

(3) An address and telephone number that may be used to obtain the request for proposal. [1987 c 183 § 1.]

47.60.653 Passenger-only ferry purchase—Request for proposal. The department shall send to any

firm that requests it, a request for proposal outlining the criteria for the passenger-only ferry vessels. The request for proposal shall include, but not be limited to, the following information:

(1) Solicitation of a proposal to sell to the department vessels of proven and operational design that meet or exceed specified performance criteria;

(2) The number of vessels to be contracted for (if more than one vessel is to be contracted for, the request for proposal shall provide for the initial purchase of one vessel with an option to purchase additional vessels);

(3) The proposed delivery date for each vessel, the port on Puget Sound where delivery will be taken, and the location where acceptance trials will be held;

(4) The maximum purchase price, and an explanation that no proposal will be considered that quotes a price greater than that amount;

(5) The amount of the required contractor's bond;

(6) A copy of the vessel construction contract that will be signed by the winning bidder;

(7) The date by which proposals for ferry vessel procurement must be received by the department in order to be considered;

(8) A requirement that all vessels proposed for purchase shall conform to the American Bureau of Shipping (ABS) and the United States Coast Guard standards for the design of passenger vessels;

(9) A statement that any proposal submitted constitutes an offer and remains open until ninety days after the deadline for submitting proposals, unless the firm submitting it withdraws it by formal written notice received by the department before the department's selection of the firm submitting the most advantageous proposal, together with an explanation of the requirement that all proposals submitted be accompanied by a deposit in the amount of five percent of the proposed cost of the first vessel to be purchased. [1987 c 183 § 2.]

47.60.655 Passenger-only ferry purchase—Evaluation of proposals. The department shall evaluate all timely proposals received from prequalified firms for compliance with the requirements specified in the request for proposal and shall estimate the operation and maintenance costs of each firm's passenger-only vessel design by applying appropriate criteria developed by the department for this purpose. [1987 c 183 § 3.]

47.60.657 Passenger-only ferry purchase—Decision, appeal. (1) Upon concluding its evaluation, the department shall:

(a) Select the firm presenting the proposal most advantageous to the state, taking into consideration the requirements stated in the request for proposal, and rank the remaining firms in order of preference, judging them by the same standards; or

(b) Reject all proposals as not in compliance with the requirements contained in the request for proposals.

(2) The department shall immediately notify those firms that were not selected as the firm presenting the

most advantageous proposal of the department's decision. The department's decision is conclusive unless appeal from it is taken by an aggrieved firm to the superior court of Thurston county within five days after receiving notice of the department's final decision. The appeal shall be heard summarily within ten days after it is taken and on five days' notice to the department. The court shall hear any such appeal on the administrative record that was before the department. The court may affirm the decision of the department, or it may reverse the decision if it determines the action of the department was arbitrary or capricious. [1987 c 183 § 4.]

47.60.659 Passenger-only ferry purchase—Contract. (1) Upon selecting the firm that has presented the most advantageous proposal and ranking the remaining firms in order of preference, the department shall:

(a) Sign a contract with the firm presenting the most advantageous proposal; or

(b) If a final agreement satisfactory to the department cannot be signed with the firm presenting the most advantageous proposal, the department may sign a contract with the firm ranked next highest in order of preference. If necessary, the department may repeat this procedure with each firm in order of rank until the list of firms has been exhausted.

(2) In developing a contract for the procurement of ferry vessels, the department may, subject to the provisions of RCW 39.25.020, authorize the use of foreign-made materials and components in the construction of ferries in order to minimize costs. [1987 c 183 § 5.]

47.60.661 Passenger-only ferry purchase—Proposals, deposit. Proposals submitted by firms pursuant to this section constitute an offer and shall remain open for ninety days. When submitted, each proposal shall be accompanied by a deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the amount of the proposed contract price, and no proposal may be considered unless the deposit is enclosed therewith. If the department awards a contract to a firm under the procedures of RCW 47.60.651 through 47.60.661 and the firm fails to enter into the contract and furnish a satisfactory bond as required by *RCW 39.08.090 within twenty days, exclusive of the day of the award, its deposit shall be forfeited to the state and be deposited by the state treasurer to the credit of the Puget Sound capital construction account. Upon the execution of a ferry construction contract all proposal deposits shall be returned. [1987 c 183 § 6.]

*Reviser's note: RCW 39.08.090 was repealed by 1987 c 183 § 7. Cf. RCW 39.08.100.

47.60.680 Prequalification of contractors required. No contract for the construction, improvement, or repair of a ferry, ferry terminal, or other facility operated by the Washington state ferries or for the repair, overhaul, or the dry-docking of any ferry operated by Washington state ferries may be awarded to any contractor who has not first been prequalified to perform the work by the department of transportation. No bid or proposal for

such a contract may be received from any contractor who has not first been prequalified to perform the work by the department of transportation. [1983 c 133 § 1.]

47.60.690 Qualifications of contractor—Rules to assure. The secretary of transportation shall adopt rules prescribing standards and criteria to assure that each ferry system construction and repair contract described in RCW 47.60.680 shall be awarded to a competent and responsible contractor who has all of the following qualifications:

(1) Adequate financial resources, which may take into account the ability of the contractor to secure such resources;

(2) The necessary organization, personnel, equipment, facilities, experience, and technical qualification[s] to perform ferry system construction and repair contracts generally and with respect to any specific contract such additional special qualifications as may be necessary to perform the contract;

(3) The ability to comply with the department's performance schedules taking into account the outstanding work on all of the contractor's construction and repair contracts;

(4) A satisfactory record of performing previous contracts;

(5) A satisfactory record of integrity, judgment, and skills; and

(6) Such other qualifications as the secretary may prescribe to assure that prequalified contractors are competent and responsible. [1983 c 133 § 2.]

47.60.700 Application for prequalification—Form. Any contractor desiring to submit bids or proposals for ferry system construction or repair contracts as described in RCW 47.60.680 shall file an application for prequalification with the department. The application shall be on a standard form supplied by the department. The form shall require a complete statement of the applicant's financial ability, including a statement of the applicant's current net assets and working capital. The form shall require such additional information as may be necessary for the department to determine whether or not the applicant is entitled to be prequalified in accordance with RCW 47.60.680 through 47.60.760 and the rules adopted thereunder. [1983 c 133 § 3.]

47.60.710 Department authority to obtain information. Upon request by the department an applicant for prequalification shall authorize the department to obtain any information pertinent to the application, including information relating to the applicant's net worth, assets, and liabilities, from banks or other financial institutions, surety companies, and material and equipment suppliers. [1983 c 133 § 4.]

47.60.720 Additional investigation—Terms of prequalification—Notice of nonqualification. Upon receipt of an application by a contractor for prequalification to perform ferry system construction and repair contracts, the department shall conduct such

additional investigation as it deems necessary. If it finds that the applicant is qualified in accordance with the rules as adopted by the secretary, the department shall prequalify the contractor to perform the contracts for a period of one year. The prequalification shall fix the aggregate dollar amount of work, including any contract let by the department, that the contractor may have under contract and uncompleted at any one time and may limit the contractor to the submission of bids or proposals upon a certain class of work. Subject to any restrictions on the dollar amount or class of work specified thereunder, the prequalification shall authorize a contractor to bid or submit proposals on all ferry system construction and repair contracts mentioned in RCW 47.60.680 except contracts requiring special prequalification. If the department determines that an applicant is not entitled to prequalification, it shall give written notice of the determination to the applicant. [1983 c 133 § 5.]

47.60.730 Renewal of prequalification—Nonrenewal or revocation, notice. A contractor may apply annually for renewal of its prequalification by submission of a new or supplemental questionnaire and financial statement on standard forms provided by the department. Based upon information received at the time of renewal or at any other time the department may amend the prequalification of the contractor as to the dollar amount or class of work that the contractor may perform or may refuse to renew the prequalification or may revoke a prequalification previously approved, all in accordance with the same standards and criteria used for considering an original application for prequalification. The department shall give written notice of any such action to the contractor. [1983 c 133 § 6.]

47.60.740 Rejection of bid despite prequalification—Unqualified bidder. If the department finds, after the opening of bids, that facts exist that would disqualify the lowest bidder, or that the lowest bidder is not competent or responsible in accordance with the standards and criteria for prequalifying contractors, the department shall reject the bid despite the prior prequalification of the bidder. No contract may be awarded to a bidder not qualified to bid on it at the time fixed for receiving bids. [1983 c 133 § 7.]

47.60.750 Appeal of refusal, modification, or revocation of prequalification. The action of the department in refusing, modifying, or revoking the prequalification of any contractor under RCW 47.60.680 through 47.60.740 is conclusive unless an appeal is filed with the Thurston county superior court within ten days after receiving written notice of the refusal, modification, or revocation. The appeal shall be heard summarily within twenty days after the appeal is taken and on five days notice thereof to the department. The court shall hear any such appeal on the administrative record that was before the department. The court may affirm the decision of the department, or it may reverse the decision if it determines the

action of the department was arbitrary or capricious. [1983 c 133 § 8.]

47.60.760 Financial information regarding qualifying not public. The department of transportation shall not be required to make available for public inspection and copying financial information supplied by any person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750. [1983 c 133 § 9.]

Chapter 47.61

ACQUISITION OF NEW FERRY VESSELS PURSUANT TO URBAN MASS TRANSPORTATION ACT OF 1964

Sections

47.61.010	Authority to enter into agreement and apply for financial assistance.
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47.61.040	Bonds—Signatures—Registration—Where payable—Negotiable instruments.
47.61.050	Bonds—Denominations—Manner and terms of sale—Legal investment for state funds.
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47.61.090	Designation of funds to repay bonds and interest.
47.61.100	Bond repayment procedure—Highway bond retirement fund.
47.61.110	Sums in excess of bond retirement requirements—Use.

47.61.010 Authority to enter into agreement and apply for financial assistance. Recognizing that the Washington state ferries system is an integral part of the state highway system, the department is authorized to enter into an agreement with the administrator of the housing and home finance agency and to make application for a grant for financial assistance for the acquisition by construction or purchase of new vessels pursuant to the provisions of the Urban Mass Transportation Act of 1964. [1984 c 7 § 338; 1965 ex.s. c 56 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.61.020 Bonds for matching funds—Issuance and sale. In order to provide necessary state matching funds as required by the Urban Mass Transportation Act of 1964, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of eleven million dollars, or such amount thereof and at such times as determined to be necessary by the state highway commission. No bonds shall be issued under the provisions of this chapter until the administrator of the housing and home finance agency has approved a grant to the Washington state highway commission of not less than fifty percent of the cost of acquisition of vessels referred to in RCW 47.61.010. The issuance, sale and retirement of said bonds shall be under the supervision and

control of the state finance committee which, upon request being made by the Washington state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as may be necessary for the orderly progress of said project. [1965 ex.s. c 56 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.61.030 Term of bonds—Terms and conditions. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the time of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. [1965 ex.s. c 56 § 3.]

47.61.040 Bonds—Signatures—Registration—Where payable—Negotiable instruments. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1965 ex.s. c 56 § 4.]

47.61.050 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of this chapter shall be legal investment for any of the funds of the state, except the permanent school fund. [1965 ex.s. c 56 § 5.]

47.61.060 Proceeds of bonds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the acquisition by construction or purchase of new ferry vessels and for the payment of all expense incurred in the drafting, printing, issuance, and sale of any such bonds. [1965 ex.s. c 56 § 6.]

47.61.070 Statement describing nature of bond obligation—Pledge of excise taxes. Bonds issued under the provisions of this chapter shall distinctly state that they are not a general obligation of the state but are payable in the manner provided in this chapter from the proceeds of state excise taxes on motor vehicle fuels imposed by chapters 82.36 and *82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of this chapter, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of this chapter. [1965 ex.s. c 56 § 7.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33, effective January 1, 1972.

47.61.080 Bonds to reflect terms and conditions of grant agreement. Bonds issued under the provisions of RCW 47.61.020 shall fully reflect the terms and conditions of the grant agreement to be executed pursuant to the provisions of RCW 47.61.010. [1965 ex.s. c 56 § 8.]

47.61.090 Designation of funds to repay bonds and interest. Funds required to repay the bonds, or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of the funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on the bonds. [1984 c 7 § 339; 1965 ex.s. c 56 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.61.100 Bond repayment procedure—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under the provisions of this chapter when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such

committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1965 ex.s. c 56 § 10.]

47.61.110 Sums in excess of bond retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, or in the event there is appropriated from time to time additional amounts to be placed in the said bond retirement fund, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1965 ex.s. c 56 § 11.]

Chapter 47.64

MARINE EMPLOYEES—PUBLIC EMPLOYMENT RELATIONS

Sections

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47.64.005 Declaration of policy. The state of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state. [1961 c 13 § 47.64.005. Prior: 1949 c 148 § 1; Rem. Supp. 1949 § 6524–22.]

47.64.006 Public policy. The legislature declares that it is the public policy of the state of Washington to: (1)

Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions. [1989 c 327 § 1; 1983 c 15 § 1.]

47.64.011 Definitions. As used in this chapter, unless the context otherwise requires, the definitions in this section shall apply.

(1) "Arbitration" means the procedure whereby the parties involved in an impasse submit their differences to a third party for a final and binding decision or as provided in this chapter.

(2) "Arbitrator" means either a single arbitrator or a panel of three arbitrators as provided in RCW 47.64.240.

(3) "Collective bargaining representative" means the persons designated by the secretary of transportation and employee organizations to be the exclusive representatives during collective bargaining negotiations.

(4) "Department of transportation" means the department as defined in RCW 47.01.021.

(5) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

(6) "Ferry employee organization" means any labor organization recognized to represent a collective bargaining unit of ferry employees.

(7) "Ferry system management" means those management personnel of the marine transportation division of the department of transportation who have been vested with the day-to-day management responsibilities of the Washington state ferry system by the transportation commission and who are not members of a collective bargaining unit represented by a ferry employee organization.

(8) "Lockout" means the refusal of ferry system management to furnish work to ferry employees in an effort to get ferry employee organizations to make concessions during collective bargaining, grievance, or other labor relation negotiations. Curtailment of employment of ferry employees due to lack of work resulting from a strike or work stoppage, as defined in subsection (11) of this section, shall not be considered a lockout.

(9) "Marine employees' commission" means the commission created in RCW 47.64.280.

(10) "Office of financial management" means the office as created in RCW 43.41.050.

(11) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her wilful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike for the purposes of this chapter.

(12) "Transportation commission" means the commission as defined in RCW 47.01.021. [1983 c 15 § 2.]

47.64.060 Federal social security—State employees' retirement. All employees engaged in the operation of ferries acquired by the department shall remain subject to the federal social security act and shall be under the state employees' retirement act. The department shall make such deductions from salaries of employees and contributions from revenues of the department as shall be necessary to qualify the employees for benefits under the federal social security act. The appropriate officials are authorized to contract with the secretary of health, education and welfare to effect the coverage. [1984 c 7 § 340; 1961 c 13 § 47.64.060. Prior: 1957 c 271 § 7; 1951 c 82 § 2; 1949 c 148 § 5; Rem. Supp. 1949 § 6524–26.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.64.070 Employees subject to industrial insurance laws. Employees, except the masters and members of the crews of vessels, shall be subject to and entitled to the benefits of the industrial insurance laws of the state, and are hereby declared to be in extrahazardous employment within the meaning of such laws. [1961 c 13 § 47.64.070. Prior: 1951 c 259 § 2; 1949 c 148 § 6; Rem. Supp. 1949 § 6524–27.]

47.64.080 Employee seniority rights. Employees employed at the time of the acquisition of any ferry or ferry system by the department have seniority rights to the position they occupy aboard the ferries or ferry system. In the event of curtailment of ferry operations for any reason, employees shall be relieved of service on the basis of their duration of employment in any ferry or ferry system acquired by the department. [1984 c 7 § 341; 1961 c 13 § 47.64.080. Prior: 1949 c 148 § 7; Rem. Supp. 1949 § 6524–28.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.64.090 Other party operating ferry by rent, lease, or charter subject to chapter—Working conditions—Adjudication of labor disputes. If any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions and seniority rights of employees will be established by the marine employees' commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW. [1983 c 15 § 27; 1961 c 13 § 47.64.090. Prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524–29.]

Severability—1983 c 15: See RCW 47.64.910.

47.64.120 Scope of negotiations. Ferry system management and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times, to negotiate in good faith with respect to wages, hours, working conditions, insurance, and health care benefits as limited by RCW 47.64.270, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. [1983 c 15 § 3.]

47.64.130 Unfair labor practices for employer, employee organization, enumerated. (1) It is an unfair labor practice for ferry system management or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: *Provided*, That subject to rules made by the commission pursuant to RCW 47.64.280, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160: *Provided*, That nothing prohibits ferry system management from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter: *Provided*, That this paragraph does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer, when it is the representative of its employees subject to RCW 47.64.170.

(3) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit. [1983 c 15 § 4.]

47.64.140 Strikes, work stoppages, and lockouts prohibited. (1) It is unlawful for any ferry system employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify, or participate in a strike or work stoppage against the ferry system.

(2) It is unlawful for ferry system management to authorize, consent to, or condone a strike or work stoppage; or to conduct a lockout; or to pay or agree to pay any ferry system employee for any day in which the employee participates in a strike or work stoppage; or to pay or agree to pay any increase in compensation or benefits to any ferry system employee in response to or as a result of any strike or work stoppage or any act that violates subsection (1) of this section. It is unlawful for any official, director, or representative of the ferry system to authorize, ratify, or participate in any violation of this subsection. Nothing in this subsection prevents new or renewed bargaining and agreement within the scope of negotiations as defined by this chapter, at any time. No collective bargaining agreement provision regarding suspension or modification of any court-ordered penalty provided in this section is binding on the courts.

(3) In the event of any violation or imminently threatened violation of subsection (1) or (2) of this section, any citizen domiciled within the jurisdictional boundaries of the state may petition the superior court for Thurston county for an injunction restraining the violation or imminently threatened violation. Rules of civil procedure regarding injunctions apply to the action. However, the court shall grant a temporary injunction if it appears to the court that a violation has occurred or is

imminently threatened; the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure him or her; and no bond may be required of the plaintiff unless the court determines that a bond is necessary in the public interest. Failure to comply with any temporary or permanent injunction granted under this section is a contempt of court as provided in chapter 7.21 RCW. The court may impose a penalty of up to ten thousand dollars for an employee organization or the ferry system, for each day during which the failure to comply continues. The sanctions for a ferry employee found to be in contempt shall be as provided in chapter 7.21 RCW. An individual or an employee organization which makes an active good faith effort to comply fully with the injunction shall not be deemed to be in contempt.

(4) The right of ferry system employees to engage in strike or work slowdown or stoppage is not granted and nothing in this chapter may be construed to grant such a right.

(5) Each of the remedies and penalties provided by this section is separate and several, and is in addition to any other legal or equitable remedy or penalty.

(6) In addition to the remedies and penalties provided by this section the successful litigant is entitled to recover reasonable attorney fees and costs incurred in the litigation.

(7) Notwithstanding the provisions of chapter 88.04 RCW and chapter 88.08 RCW, the department of transportation shall promulgate rules and regulations allowing vessels, as defined in *RCW 88.04.300, as well as other watercraft, to engage in emergency passenger service on the waters of Puget Sound in the event ferry employees engage in a work slowdown or stoppage. Such emergency rules and regulations shall allow emergency passenger service on the waters of Puget Sound within seventy-two hours following a work slowdown or stoppage. Such rules and regulations that are promulgated shall give due consideration to the needs and the health, safety, and welfare of the people of the state of Washington. [1989 c 373 § 25; 1983 c 15 § 5.]

*Reviser's note: RCW 88.04.300 was repealed by 1989 c 295 § 16. For later enactment, see RCW 88.04.015.

Severability—1989 c 373: See RCW 7.21.900.

47.64.150 Grievance procedures. An agreement with a ferry employee organization that is the exclusive representative of ferry employees in an appropriate unit may provide procedures for the consideration of ferry employee grievances and of disputes over the interpretation and application of agreements. Negotiated procedures may provide for binding arbitration of ferry employee grievances and of disputes over the interpretation and application of existing agreements. An arbitrator's decision on a grievance shall not change or amend the terms, conditions, or applications of the collective bargaining agreement. The procedures shall provide for the invoking of arbitration only with the approval of the employee organization. The costs of arbitrators shall be shared equally by the parties.

Ferry system employees shall follow either the grievance procedures provided in a collective bargaining agreement, or if no such procedures are so provided, shall submit the grievances to the marine employees' commission as provided in RCW 47.64.280. [1983 c 15 § 6.]

47.64.160 Union security provisions—Scope—Agency shop provision, collection of dues or fees. A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions shall safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. [1983 c 15 § 7.]

47.64.170 Collective bargaining procedures. (1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

(2) A ferry employee organization or organizations and the secretary of transportation may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of ferry system management or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties. Any meeting of the transportation commission, during which a collective bargaining agreement is subject to ratification, shall be open to the public.

(4) Terms of any collective bargaining agreement may be enforced by civil action in Thurston county superior court upon the initiative of either party.

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with a member of the transportation commission if the commission has appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative, unless the member of the commission is the designated bargaining representative of the ferry system.

(6) The negotiation of a proposed collective bargaining agreement by representatives of ferry system management and a ferry employee organization shall commence in each odd-numbered year immediately following adoption by the legislature and approval by the governor of the biennial budget.

(7) Until a new collective bargaining agreement is negotiated, or until an award is made by the arbitrator, the terms and conditions of the previous collective bargaining agreement shall remain in force. The wage and benefit provisions of any collective bargaining agreement, or arbitrator's award in lieu thereof, that is concluded after July 1st of an odd-numbered year shall be retroactive to July 1st. It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical.

(8) Any ferry union contract terminating before July 1, 1983, shall, with the agreement of the parties, remain in effect until a contract can be concluded under RCW 47.64.006, 47.64.011, and 47.64.120 through 47.64.280. The contract may be retroactive to the expiration date of the prior contract, and the cost to the department of three months retroactive compensation and benefits for this 1983 contract negotiation only shall not be included in calculating the limitation imposed by RCW 47.64.180. If the parties cannot agree to contract extension, any increase agreed to for the three-month period shall be included in calculating the limit imposed by RCW 47.64.180.

(9) Any ferry union contract which would terminate after July 1, 1983, may, by agreement of the parties, be terminated as of July 1, 1983, and a new contract concluded pursuant to RCW 47.64.006, 47.64.011, and 47.64.120 through 47.64.280. Any contract terminating after July 1, 1983, is subject to this chapter only upon its expiration and shall not be renewed for a period beyond July 1, 1985. [1983 c 15 § 8.]

47.64.180 Agreements and awards limited by appropriation. (1) No collective bargaining agreement or arbitrator's award is valid or enforceable if its implementation would be inconsistent with any statutory limitation on the department of transportation's funds, spending, or budget. The department of transportation shall, in good faith, exercise its administrative discretion with full public participation as required by *RCW 47.60.330, subject only to legislative limitations and conditions, to implement the terms of any collective bargaining agreement or arbitrator's award.

(2) In no event may the transportation commission or the department of transportation authorize an increase in tolls after the enactment of the budget that is in excess of the Seattle consumer price index for the preceding twelve months for the purpose of providing revenue to fund a collective bargaining agreement or arbitrator's award. The commission or the department may increase tolls after the first fiscal year of the biennium by the amount that the Seattle consumer price index increased

after the previous toll increase. This subsection shall not be construed to prevent increases due to items that are not labor-related and that are beyond the direct control of the department. [1983 c 15 § 9.]

***Reviser's note:** The reference in 1983 c 15 § 9 to "section 25 of this act" has been translated to "RCW 47.60.330." A literal translation of the session law reference would have been "RCW 47.60.326," which appears to be erroneous. A floor amendment to Substitute Senate Bill No. 3108 added a new section 24 to the bill and directed that internal references be corrected accordingly. The correction was not made in the preparation of Engrossed Substitute Senate Bill No. 3108, but has been made in codification.

47.64.190 Marine employees' commission review for compliance with fiscal limitations—Effective date of agreements and arbitration orders. (1) No negotiated agreement or arbitration order may become effective and in force until five calendar days after an agreement has been negotiated or an arbitration order entered for each and every ferry employee bargaining unit.

(2) Upon the conclusion of negotiations or arbitration procedures with all ferry employee bargaining units, the secretary shall ascertain whether the cumulative fiscal requirements of all such agreements and arbitration orders are within the limitations imposed by RCW 47.64.180.

(3) If the secretary finds that budgetary or fare restrictions will be exceeded, he shall, within five calendar days of completion of negotiations or arbitration with the last bargaining unit to conclude an agreement, submit all agreements and arbitration awards to the marine employees' commission for a binding determination whether the limitations of RCW 47.64.180 have been exceeded.

(4) The marine employees' commission shall review all negotiated agreements and arbitration orders, and may take written or oral testimony from the parties, regarding compliance with RCW 47.64.180. Within fifteen calendar days of receiving the secretary's request for review, the commission shall determine by a majority vote of its members whether or not the cumulative effect of all such agreements and orders exceeds the limitations of RCW 47.64.180.

(5) If the marine employees' commission determines that the limitations of RCW 47.64.180 would be exceeded if all agreements and arbitration orders were given full force and effect, it shall order the minimum percentage reduction in straight time wage provisions applied equally across the board to all agreements or arbitration orders which will result in compliance with RCW 47.64.180.

(6) Whenever the secretary requests a determination by the marine employees' commission pursuant to this section, the effect of all agreements and arbitration orders shall be stayed, pending the commission's final determination. [1983 c 15 § 10.]

47.64.200 Impasse procedures. As the first step in the performance of their duty to bargain, ferry system management and the employee organization shall endeavor to agree upon impasse procedures. The agreement shall provide for implementation of these impasse

procedures not later than July 1st in each odd-numbered year following enactment of the biennial budget. If the parties fail to agree upon impasse procedures under this section, the impasse procedures provided in RCW 47.64.210 through 47.64.230 apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in RCW 47.64.210 through 47.64.230. [1983 c 15 § 11.]

47.64.210 Mediation. In the absence of an impasse agreement between the parties or the failure of either party to utilize its procedures by August 1st in each odd-numbered year, the marine employees' commission shall, upon the request of either party, appoint an impartial and disinterested person to act as mediator pursuant to RCW 47.64.280. It is the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator shall not compel the parties to agree. [1983 c 15 § 12.]

47.64.220 Salary survey, fact-finding. Prior to collective bargaining, the marine employees' commission shall conduct a salary survey which shall be a public document comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved. Such survey shall be for the purpose of disclosing generally prevailing levels of compensation, benefits, and conditions of employment. It shall be used to guide generally but not to define or limit collective bargaining between the parties. The commission shall make such other findings of fact as the parties may request during bargaining or impasse. [1989 c 327 § 2; 1983 c 15 § 13.]

47.64.230 Waiver of mediation and fact-finding. By mutual agreement, the parties may waive mediation and fact-finding, as provided for in RCW 47.64.210 and 47.64.220, and proceed with binding arbitration as provided for in RCW 47.64.240. The waiver shall be in writing and be signed by the representatives of the parties. [1983 c 15 § 14.]

47.64.240 Binding arbitration. (1) If impasse persists fourteen days after the mediator has been appointed, or beyond any other date mutually agreed to by the parties, all impasse items shall be submitted to arbitration pursuant to this section, and that arbitration shall be binding upon the parties.

(2) Each party shall submit to the other within four days of request, a final offer on the impasse items with proof of service of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached and the name of its selected

arbitrator. The parties may continue to negotiate all offers until an agreement is reached or a decision rendered by the panel of arbitrators.

As an alternative procedure, the two parties may agree to submit the dispute to a single arbitrator. If the parties cannot agree on the arbitrator within four days, the selection shall be made pursuant to subsection (5) of this section. The full costs of arbitration under this provision shall be shared equally by the parties to the dispute.

(3) The submission of the impasse items to the arbitrators shall be limited to those issues upon which the parties have not reached agreement. With respect to each such item, the arbitration panel award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board on each impasse item.

(4) The panel of arbitrators shall consist of three members appointed in the following manner:

(a) One member shall be appointed by the secretary of transportation;

(b) One member shall be appointed by the ferry employee organization;

(c) One member shall be appointed mutually by the members appointed by the secretary of transportation and the employee organization. The last member appointed shall be the chairman of the panel of arbitrators. No member appointed may be an employee of the parties;

(d) Ferry system management and the employee organization shall each pay the fees and expenses incurred by the arbitrator each selected. The fee and expenses of the chairman of the panel shall be shared equally by each party.

(5) If the third member has not been selected within four days of notification as provided in subsection (2) of this section, a list of seven arbitrators shall be submitted to the parties by the marine employees' commission. The two arbitrators selected by ferry system management and the ferry employee organization shall determine by lot which arbitrator shall remove the first name from the list submitted by the marine employees' commission. The second arbitrator and the first arbitrator shall alternately remove one additional name until only one name remains. The person whose name remains shall become the chairman of the panel of arbitrators and shall call a meeting within thirty days, or at such time mutually agreed to by the parties, at a location designated by him or her. In lieu of a list of seven nominees for the third member being submitted by the marine employees' commission, the parties may mutually agree to have either the Federal Mediation and Conciliation Service or the American Arbitration Association submit a list of seven nominees.

(6) If a vacancy occurs on the panel of arbitrators, the selection for replacement of that member shall be in the same manner and within the same time limits as the original member was chosen. No final award under subsection (3) of this section may be made by the panel until three arbitrators have been chosen.

(7) The panel of arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.

(8) From the time of appointment until such time as the panel of arbitrators makes its final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the members of the panel of arbitrators with parties other than those who are direct parties to the dispute. The panel of arbitrators may conduct formal or informal hearings to discuss offers submitted by both parties.

(9) The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

(a) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

(b) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;

(c) The interests and welfare of the public, the ability of the ferry system to finance economic adjustments, and the effect of the adjustments on the normal standard of services;

(d) The right of the legislature to appropriate and to limit funds for the conduct of the ferry system; and

(e) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature.

(10) The chairman of the panel of arbitrators may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such powers to other members of the panel of arbitrators. The chairman of the panel of arbitrators may petition the superior court in Thurston county, or any county in which any hearing is held, to enforce the order of the chairman compelling the attendance of witnesses and the production of records.

(11) A majority of the panel of arbitrators shall within thirty days after its first meeting select the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties.

(12) The selections by the panel of arbitrators and items agreed upon by the ferry system management and the employee organization shall be deemed to be the collective bargaining agreement between the parties.

(13) The determination of the panel of arbitrators shall be by majority vote and shall be final and binding, subject to RCW 47.64.180 and 47.64.190. The panel of arbitrators shall give written explanation for its selection and inform the parties of its decision. [1989 c 327 § 3; 1983 c 15 § 15.]

47.64.250 Legal actions. (1) Any ferry employee organization and the department of transportation may sue or be sued as an entity under this chapter. Service upon

any party shall be in accordance with law or the rules of civil procedure. Nothing in this chapter may be construed to make any individual or his assets liable for any judgment against the department of transportation or a ferry employee organization if the individual was acting in his official capacity.

(2) Any legal action by any ferry employee organization or the department of transportation under this chapter shall be filed in Thurston county superior court within ten days of when the cause of action arose. The court shall consider those actions on a priority basis and determine the merits of the actions within thirty days of filing. [1983 c 15 § 16.]

47.64.260 Notice and service. Any notice required under this chapter shall be in writing, but service thereof is sufficient if mailed by restricted certified mail, return receipt requested, addressed to the last known address of the parties, unless otherwise provided in this chapter. Refusal of restricted certified mail by any party shall be considered service. Prescribed time periods commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice. [1983 c 15 § 17.]

47.64.270 Insurance and health care. Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and health care plans for ferry system employees and dependents, as determined by the state health care authority, under chapter 41.05 RCW. The ferry system management and employee organizations may collectively bargain for other insurance and health care plans, and employer contributions may exceed that of other state agencies as provided in RCW 41.05.050, subject to RCW 47.64.180. To the extent that ferry employees by bargaining unit have absorbed the required offset of wage increases by the amount that the employer's contribution for employees' and dependents' insurance and health care plans exceeds that of other state general government employees in the 1985–87 fiscal biennium, employees shall not be required to absorb a further offset except to the extent the differential between employer contributions for those employees and all other state general government employees increases during any subsequent fiscal biennium. If such differential increases in the 1987–89 fiscal biennium or the 1985–87 offset by bargaining unit is insufficient to meet the required deduction, the amount available for compensation shall be reduced by bargaining unit by the amount of such increase or the 1985–87 shortage in the required offset. Compensation shall include all wages and employee benefits. [1988 c 107 § 21; 1987 c 78 § 2; 1983 c 15 § 18.]

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Intent—1987 c 78: "The legislature finds that the provisions of RCW 47.64.270 have been subject to misinterpretation. The objective of this act is to clarify the intent of RCW 47.64.270 as originally enacted." [1987 c 78 § 1.]

Effective date—1987 c 78: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of

the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 78 § 3.]

47.64.280 Marine employees' commission. (1) There is created the marine employees' commission. The governor shall appoint the commission with the consent of the senate. The commission shall consist of three members: One member to be appointed from labor, one member from industry, and one member from the public who has significant knowledge of maritime affairs. The public member shall be chairman of the commission. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Commission members are eligible for reappointment. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission. Members of the commission shall be compensated in accordance with RCW 43.03-.250 and shall receive reimbursement for official travel and other expenses at the same rate and on the same terms as provided for the transportation commission by RCW 47.01.061. The payments shall be made from the Puget Sound ferry operations account.

(2) The marine employees' commission shall: (a) Adjust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system as provided in RCW 47.64.150; (b) provide for impasse mediation as required in RCW 47.64.210; (c) conduct fact-finding and provide salary surveys as required in RCW 47.64.220; and (d) provide for the selection of an impartial arbitrator as required in RCW 47.64.240(5).

(3) In adjudicating all complaints, grievances, and disputes, the party claiming labor disputes shall, in writing, notify the marine employees' commission, which shall make careful inquiry into the cause thereof and issue an order advising the ferry employee, or the ferry employee organization representing him or her, and the department of transportation, as to the decision of the commission.

The parties are entitled to offer evidence relating to disputes at all hearings conducted by the commission. The orders and awards of the commission are final and binding upon any ferry employee or employees or their representative affected thereby and upon the department.

The commission shall adopt rules of procedure under chapter 34.05 RCW.

The commission has the authority to subpoena any ferry employee or employees, or their representatives, and any member or representative of the department, and any witnesses. The commission may require attendance of witnesses and the production of all pertinent records at any hearings held by the commission. The

subpoenas of the commission are enforceable by order of any superior court in the state of Washington for the county within which the proceeding may be pending. The commission may hire staff as necessary, appoint consultants, enter into contracts, and conduct studies as reasonably necessary to carry out this chapter. [1984 c 287 § 95; 1983 c 15 § 19.]

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

47.64.290 Toll bridge employees subject to civil service. Notwithstanding any other provisions of this chapter, toll bridge employees of the marine transportation division are subject to chapter 41.06 RCW. [1984 c 48 § 2.]

47.64.900 Section captions not part of law—1983 c 15. Section captions used in this act constitute no part of the law. [1983 c 15 § 29.]

47.64.910 Severability—1983 c 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 15 § 30.]

Chapter 47.68 AERONAUTICS

(Formerly: Chapter 14.04 RCW, Aeronautics commission)

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47.68.010 Statement of policy. It is hereby declared that the purpose of this chapter is to further the public interest and aeronautical progress by providing for the protection and promotion of safety in aeronautics; by cooperating in effecting uniformity of the laws and regulations relating to the development and regulation of aeronautics in the several states consistent with federal aeronautics laws and regulations; by granting to a state agency such powers and imposing upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, assist in the development of a state-wide system of airports, cooperate with and assist the municipalities of this state and others engaged in aeronautics, and encourage and develop aeronautics; by establishing only such regulations as are essential in order that persons engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and by providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state. [1947 c 165 § 2; Rem. Supp. 1947 § 10964–82. Formerly RCW 14.04.010.]

47.68.015 Change of meaning, certain terms. Unless the language specifically indicates otherwise, or unless the context plainly requires a different interpretation:

Wherever in any provision in the Revised Code of Washington the term "Washington state aeronautics commission", "the state aeronautics commission", "the aeronautics commission of the state", "the aeronautics commission", or "the commission" (when referring to the Washington state aeronautics commission) is used, it shall mean the department of transportation created in RCW 47.01.031.

Wherever in any provision in the Revised Code of Washington the term "state director of aeronautics", "director of aeronautics", or "director" (when referring to the state director of aeronautics) is used, it shall mean the secretary of transportation whose office is created in RCW 47.01.041. [1977 ex.s. c 151 § 22.]

47.68.020 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Aeronautics" means the science and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes;

the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(2) "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(3) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or right-of-way, together with all airport buildings and facilities located thereon.

(4) "Department" means the state department of transportation.

(5) "Secretary" means the state secretary of transportation.

(6) "State" or "this state" means the state of Washington.

(7) "Air navigation facility" means any facility, other than one owned or operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(8) "Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft in the airspace over this state or upon any airport within this state.

(9) "Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances, and any individual who serves in the capacity of aircraft dispatcher or air-traffic control tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the person.

(10) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics, but excludes any instructor in a public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, while in the performance of his or her duties at such school, university, or institution.

(11) "Air school" means any person who advertises, represents, or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics whether for or without hire or reward; but

excludes any public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work.

(12) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(13) "Municipal" means pertaining to a municipality, and "municipality" means any county, city, town, authority, district, or other political subdivision or public corporation of this state.

(14) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off.

(15) "State airway" means a route in the navigable airspace over and above the lands or waters of this state, designated by the department as a route suitable for air navigation. [1984 c 7 § 342; 1947 c 165 § 1; Rem. Supp. 1947 § 10964-81. Formerly RCW 14.04.020.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.060 Offices. Suitable offices and office equipment shall be provided by the state for the aeronautics division of the department of transportation in a city in the state that it may designate, and the department may incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the administration of this chapter. [1984 c 7 § 343; 1947 c 165 § 6; Rem. Supp. 1947 § 10964-86. Formerly RCW 14.04.060.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.070 General powers. The department has general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and to encourage the establishment of airports and air navigation facilities. It shall cooperate with and assist the federal government, the municipalities of this state, and other persons in the development of aeronautics, and shall seek to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the department in the development of aeronautics and aeronautical facilities in this state. [1984 c 7 § 344; 1947 c 165 § 7; Rem. Supp. 1947 § 10964-87. Formerly RCW 14.04.070.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.080 Drafts of legislation, other duties. The department may draft and recommend necessary legislation to advance the interests of the state in aeronautics, represent the state in aeronautical matters before federal agencies and other state agencies, and participate as party plaintiff or defendant or as intervener on behalf of the state or any municipality or citizen thereof in any controversy which involves the interest of the state in aeronautics. [1984 c 7 § 345; 1947 c 165 § 8; 1945 c 252

§ 5; Rem. Supp. 1947 § 10964--88. Formerly RCW 14.04.080.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.090 Aid to municipalities, Indian tribes—

Federal aid. The department of transportation may make available its engineering and other technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports or air navigation facilities.

The department may render financial assistance by grant or loan or both to any municipality or municipalities acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities, or to any Indian tribe recognized as such by the federal government or such tribes acting jointly in the planning, acquisition, construction, improvement, maintenance or operation of an airport, owned or controlled, or to be owned or controlled by such tribe or tribes and to be held available for the general use of the public, out of appropriations made by the legislature for such purposes. Such financial assistance may be furnished in connection with federal or other financial aid for the same purposes: *Provided*, That no grant or loan or both shall be in excess of two hundred fifty thousand dollars for any one project: *Provided further*, That no grant or loan or both shall be granted unless the municipality or municipalities acting jointly, or the tribe or tribes acting jointly shall from their own funds match any funds made available by the department upon such ratio as the department may prescribe.

The department is authorized to act as agent of any municipality or municipalities acting jointly or any tribe or tribes acting jointly, upon the request of such municipality or municipalities, or such tribe or tribes in accepting, receiving, receipting for and disbursing federal moneys, and other moneys public or private, made available to finance, in whole or in part, the planning, acquisition, construction, improvement, maintenance or operation of an airport or air navigation facility; and if requested by such municipality or municipalities, or tribe or tribes, may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance, or operation; and all municipalities and tribes are authorized to designate the department as their agent for the foregoing purposes. The department, as principal on behalf of the state, and any municipality on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the department upon such terms and conditions as are prescribed by the United States. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such

moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available: *Provided*, That any landing fee or charge imposed by any Indian tribe or tribes for the privilege of use of an airport facility planned, acquired, constructed, improved, maintained, or operated with financial assistance from the department pursuant to this section must apply equally to tribal and nontribal members: *Provided further*, That in the event any municipality or municipalities or Indian tribe or tribes, or any distributor of aircraft fuel as defined by RCW 82.42.020 which operates in any airport facility which has received financial assistance pursuant to this section, fails to collect the aircraft fuel excise tax as specified in chapter 82.42 RCW, all funds or value of technical assistance given or paid to such municipality or municipalities or Indian tribe or tribes under the provisions of this section shall revert to the department, and shall be due and payable to the department immediately. [1980 c 67 § 1; 1975 1st ex.s. c 161 § 1; 1947 c 165 § 9; Rem. Supp. 1947 § 10964--89. Formerly RCW 14.04.090.]

Distributor of aircraft fuel defined: RCW 82.42.010(7).

47.68.100 Acquisition and disposal of airports, facilities, etc. The department is authorized on behalf of and in the name of the state, out of appropriations and other moneys made available for such purposes, to plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports, air navigation facilities, and air markers and/or air marking systems, either within or without the state, including the construction, installation, equipment, maintenance, and operation at the airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers. For such purposes the department may by purchase, gift, devise, lease, condemnation, or otherwise, acquire property, real or personal, or any interest therein, including easements or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or to permit the removal, elimination, marking, or lighting of obstructions or airport hazards, or to prevent the establishment of airport hazards. In like manner the department may acquire existing airports and air navigation facilities. However, it shall not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of the municipality. The department may by sale, lease, or otherwise, dispose of any property, airport, air navigation facility, or portion thereof or interest therein. The disposal by sale, lease, or otherwise shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposals to any municipality or state government or the United States for aeronautical purposes incident thereto, the sale, lease, or

other disposal may be effected in such manner and upon such terms as the department deems in the best interest of the state. The department may exercise any powers granted by this section jointly with any municipalities, agencies, or departments of the state government, with other states or their municipalities, or with the United States. [1984 c 7 § 346; 1947 c 165 § 10; Rem. Supp. 1947 § 10964–90. Formerly RCW 14.04.100.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.110 Zoning powers not interfered with. Nothing contained in this chapter shall be construed to limit any right, power or authority of the state or a municipality to regulate airport hazards by zoning. [1947 c 165 § 11; Rem. Supp. 1947 § 10964–91. Formerly RCW 14.04.110.]

Planning commissions: Chapter 35.63 RCW.

47.68.120 Condemnation, how exercised. In the condemnation of property authorized by this chapter, the department shall proceed in the name of the state in the manner that property is acquired by the department for public uses. [1984 c 7 § 347; 1947 c 165 § 12; Rem. Supp. 1947 § 10964–92. Formerly RCW 14.04.120.]

Severability—1984 c 7: See note following RCW 47.01.141.

Acquisition of highway property: Chapter 47.12 RCW.

Eminent domain by state: Chapter 8.04 RCW.

47.68.130 Contracts or leases of facilities in operating airports. In operating an airport or air navigation facility owned or controlled by the state, the department may enter into contracts, leases, and other arrangements for a term not exceeding twenty-five years with any persons. The department may grant the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes, confer the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility, or make available services to be furnished by the department or its agents at the airport or air navigation facility. In each case the department may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the cost of operation to the state. In no case shall the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion or facility thereof. [1984 c 7 § 348; 1947 c 165 § 13; Rem. Supp. 1947 § 10964–93. Formerly RCW 14.04.130.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.140 Lease of airports. The department may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed twenty-five years the privilege of operating, as agent of the state or otherwise, any airport owned or controlled by the state: *Provided*, That no such person

shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the department might not have undertaken under RCW 47.68.130. [1983 c 3 § 141; 1947 c 165 § 14; Rem. Supp. 1947 § 10964–94. Formerly RCW 14.04.140.]

47.68.150 Lien for state's charges. To enforce the payment of any charges for repairs to, improvements, storage, or care of any personal property made or furnished by the department or its agents in connection with the operation of an airport or air navigation facility owned or operated by the state, the state shall have liens on such property, which shall be enforceable by the department as provided by law. [1984 c 7 § 349; 1947 c 165 § 15; Rem. Supp. 1947 § 10964–95. Formerly RCW 14.04.150.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.160 Acceptance of federal moneys. The department is authorized to accept, receive, receipt for, disburse, and expend federal moneys, and other moneys public or private, made available to accomplish, in whole or in part, any of the purposes of this section. All federal moneys accepted under this section shall be accepted and expended by the department upon such terms and conditions as are prescribed by the United States. In accepting federal moneys under this section, the department shall have the same authority to enter into contracts on behalf of the state as is granted to the department under RCW 47.68.090 with respect to federal moneys accepted on behalf of municipalities. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purpose of which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available. [1983 c 3 § 142; 1947 c 165 § 16; 1945 c 252 § 7; Rem. Supp. 1947 § 10964–96. Formerly RCW 14.04.160.]

47.68.170 State airways system. The department may designate, design, and establish, expand, or modify a state airways system that will best serve the interest of the state. It may chart the airways system and arrange for publication and distribution of such maps, charts, notices, and bulletins relating to the airways as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned, if the facilities conform to federal safety standards. [1984 c 7 § 350; 1947 c 165 § 17; Rem. Supp. 1947 § 10964–97. Formerly RCW 14.04.170.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.180 Execution of necessary contracts. The department may enter into any contracts necessary to the execution of the powers granted it by this chapter. All contracts made by the department, either as the agent of the state or as the agent of any municipality, shall be made pursuant to the laws of the state governing the making of like contracts. Where the planning, acquisition, construction, improvement, maintenance, or operation of any airport or air navigation facility is financed wholly or partially with federal moneys, the department as agent of the state or of any municipality, may let contracts in the manner prescribed by the federal authorities acting under the laws of the United States and any rules or regulations made thereunder. [1984 c 7 § 351; 1947 c 165 § 18; Rem. Supp. 1947 § 10964-98. Formerly RCW 14.04.180.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.185 Establishment of procedures required by conditions of federal transfers of facilities. The department is authorized to establish the necessary accounts or administrative procedures required by conditions attached to transfers of airport facilities from the federal government to the state of Washington. [1984 c 7 § 352; 1963 c 73 § 1. Formerly RCW 14.04.185.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.190 Exclusive grants prohibited. The department shall not grant any exclusive right for the use of any landing area or air navigation facility under its jurisdiction. This section shall not be construed to prevent the making of contracts, leases, and other arrangements pursuant to this chapter. [1984 c 7 § 353; 1947 c 165 § 19; Rem. Supp. 1947 § 10964-99. Formerly RCW 14.04.190.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.200 Exercise of powers, public and governmental purpose. The acquisition of any lands or interest therein pursuant to this chapter, the planning, acquisition, establishment, construction, improvement, maintenance, equipment, and operation of airports and air navigation facilities, whether by the state separately or jointly with any municipality or municipalities, and the exercise of any other powers herein granted to the department are public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the state in the manner and for the purposes enumerated in this chapter shall and are declared to be acquired and used for public and governmental purposes and as a matter of public necessity. [1984 c 7 § 354; 1947 c 165 § 20; Rem. Supp. 1947 § 10964-100. Formerly RCW 14.04.200.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.210 Rules—Standards. The department of transportation may perform such acts, issue and amend such orders, make, promulgate, and amend such reasonable general rules, and procedures, and establish such

minimum standards, consistent with the provisions of this chapter, as it shall deem necessary to perform its duties hereunder; all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons operating, using or traveling in aircraft or persons receiving instruction in flying or ground subjects pertaining to aeronautics, and the safety of persons and property on land or water, and developing and promoting aeronautics in this state. No rule of the department shall apply to airports or air navigation facilities owned or operated by the United States.

The department shall keep on file with the code reviser, and at the principal office of the department, a copy of all its rules for public inspection.

The department shall provide for the publication and general distribution of all its orders, rules, and procedures having general effect. [1982 c 35 § 198; 1947 c 165 § 21; Rem. Supp. 1947 § 10964-101. Formerly RCW 14.04.210.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Notice of meetings: Chapter 42.30 RCW.

47.68.220 Operating aircraft recklessly or under influence of intoxicants or drugs. It shall be unlawful for any person to operate an aircraft in the air, or on the ground or water, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air or on the ground or water, in a careless manner so as to endanger the life or property of another. In any proceeding charging careless or reckless operation of aircraft in violation of this section, the court in determining whether the operation was careless or reckless may consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics. [1947 c 165 § 22; Rem. Supp. 1947 § 10964-102. Formerly RCW 14.04.220.]

47.68.230 Aircraft and airman certificates required. It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective certificate, permit or license issued by the United States, if such certificate, permit or license is required by the United States, and a current registration certificate issued by the secretary of transportation, if registration of the aircraft with the department of transportation is required by this chapter. It shall be unlawful for any person to engage in aeronautics as an airman in the state unless he has an appropriate effective airman certificate, permit, rating or license issued by the United States authorizing him to engage in the particular class of aeronautics in which he is engaged, if such certificate, permit, rating or license is required by the United States and a current airman's registration certificate issued by the department of transportation as required by RCW 47.68.233.

Where a certificate, permit, rating or license is required for an airman by the United States or by RCW 47.68.233, it shall be kept in his personal possession

when he is operating within the state. Where a certificate, permit or license is required by the United States or by this chapter for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state and shall be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors. Such certificates shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official or employee of the department of transportation authorized pursuant to this chapter to enforce the aeronautics laws, or any official, manager or person in charge of any airport, or upon the reasonable request of any person. [1987 c 220 § 1; 1979 c 158 § 205; 1967 ex.s. c 68 § 2; 1967 ex.s. c 9 § 7; 1949 c 49 § 11; 1947 c 165 § 23; Rem. Supp. 1949 § 10964-103. Formerly RCW 14.04.230.]

Transfer of aircraft registration program: "All powers, duties, and functions as well as all reports, documents, surveys, books, records, files, papers, or written material of the department of licensing pertaining to aircraft registration are transferred to the department of transportation. All existing contracts and obligations shall remain in full force and shall be performed by the department of transportation." [1987 c 220 § 10.]

Severability—1987 c 220: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 220 § 12.]

Purpose—1967 ex.s. c 68: "The purpose of this act is to correct inconsistencies in amendment to section 23, chapter 165, Laws of 1947 and RCW 14.04.230, occasioned by two amendments to the same section by two different bills neither of which took cognizance of the other." [1967 ex.s. c 68 § 1.] This applies to RCW 47.68.230 (formerly RCW 14.04.230) and to 1967 ex.s. c 68 § 3 which repealed 1967 c 207 § 1 which also amended RCW 47.68.230 (formerly RCW 14.04.230).

Federal airmen certification: 52 U.S. Stat. at Large 1008, 49 U.S.C. 1952 ed. § 552.

Federal certification of aircraft: 52 U.S. Stat. at Large 1009, 49 U.S.C. 1952 ed. § 553.

Federal licensing of aircraft and airmen required: RCW 14.16.020, 14.16.030.

47.68.233 Registration of pilots—Certificates—Fees—Exemptions—Use of fees. The department shall require that every pilot who is a resident of this state and every nonresident pilot who regularly operates any aircraft in this state be registered with the department. The department shall charge an annual fee not to exceed ten dollars for each registration. All registration certificates issued under this section shall be renewed annually during the month of the registrant's birthdate.

The registration fee imposed by this section shall be used by the department for the purpose of (a) search and rescue of lost and downed aircraft and airmen under the direction and supervision of the secretary and (b) safety and education.

Registration shall be effected by filing with the department a certified written statement that contains the information reasonably required by the department. The department shall issue certificates of registration and in connection therewith shall prescribe requirements for the possession and exhibition of the certificates.

The provisions of this section do not apply to:

(1) A pilot who operates an aircraft exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia;

(2) A pilot registered under the laws of a foreign country;

(3) A pilot engaged exclusively in commercial flying constituting an act of interstate or foreign commerce;

(4) A person piloting an aircraft equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a bona fide prospective purchaser.

Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties incident thereto. [1987 c 220 § 2; 1984 c 7 § 355; 1983 c 3 § 143; 1967 c 207 § 2. Formerly RCW 14.04.233.]

Severability—1987 c 220: See note following RCW 47.68.230.

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.236 Aircraft search and rescue, safety, and education account. There is hereby created in the state treasury an account to be known as the aircraft search and rescue, safety, and education account. All moneys received by the department under RCW 47.68.233 shall be deposited in such account. All earnings of investments of balances in the aircraft search and rescue, safety, and education account shall be credited to the general fund. [1985 c 57 § 63; 1983 c 3 § 144; 1967 c 207 § 3. Formerly RCW 14.04.236.]

Effective date—1985 c 57: See note following RCW 15.52.320.

47.68.240 Penalties for violations. Any person violating any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant thereto, shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both such fine and imprisonment: *Provided*, That any person violating any of the provisions of RCW 47.68.220 or 47.68.230 shall be guilty of a gross misdemeanor which shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year or by both in any proceeding brought in superior court and by a fine of not more than five hundred dollars or by imprisonment for not more than six months or by both in any proceedings brought in district court. In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court. [1987 c 202 § 216; 1983 c 3 § 145; 1947 c 165 § 24; Rem. Supp. 1947 § 10964-104. Formerly RCW 14.04.240.]

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

47.68.250 Registration of aircraft. Every aircraft shall be registered with the department for each calendar year in which the aircraft is operated within this state. A fee of four dollars shall be charged for each such registration and each annual renewal thereof.

Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section shall be the only requisites for registration of an aircraft under this section.

The registration fee imposed by this section shall be payable to and collected by the secretary. The fee for any calendar year must be paid during the month of January, and shall be collected by the secretary at the time of the collection by him or her of the said excise tax. If the secretary is satisfied that the requirements for registration of the aircraft have been met, he or she shall thereupon issue to the owner of the aircraft a certificate of registration therefor. The secretary shall pay to the state treasurer the registration fees collected under this section, which registration fees shall be credited to the aeronautics account in the general fund.

It shall not be necessary for the registrant to provide the secretary with originals or copies of federal certificates, permits, ratings, or licenses. The secretary shall issue certificates of registration, or such other evidences of registration or payment of fees as he or she may deem proper; and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

The provisions of this section shall not apply to:

(1) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft registered under the laws of a foreign country;

(3) An aircraft which is owned by a nonresident and registered in another state: *Provided*, That if said aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

(4) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(5) An aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(6) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW.

The secretary shall be notified within one week of any change in ownership of a registered aircraft. The notification shall contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the secretary, the registration of that aircraft may be canceled by the secretary, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner. [1987 c 220 § 3; 1979 c 158 § 206; 1967 ex.s. c 9 § 8; 1955 c 150 § 11; 1949 c 49 § 12; 1947 c 165 § 25; Rem. Supp. 1949 § 10964-105. Formerly RCW 14.04.250.]

Severability—1987 c 220: See note following RCW 47.68.230.

Aircraft dealers: Chapter 14.20 RCW.

Definition of terms: RCW 14.20.010, 47.68.020.

47.68.280 Investigations, hearings, etc.—Subpoenas—Compelling attendance. The department or any officer or employee of the department designated by it has the power to hold investigations, inquiries, and hearings concerning matters covered by this chapter including accidents in aeronautics within this state. Hearings shall be open to the public and, except as hereinafter provided, shall be held upon such call or notice as the department deems advisable. The department and every officer or employee of the department designated by it to hold any inquiry, investigation, or hearing has the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and order the attendance of witnesses and the production of papers, books and documents. In case of the failure of a person to comply with a subpoena or order issued under the authority of this section, the department or its authorized representatives may invoke the aid of a competent court of general jurisdiction. The court may thereupon order the person to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof. [1984 c 7 § 356; 1947 c 165 § 28; Rem. Supp. 1947 § 10964-108. Formerly RCW 14.04.280.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.290 Joint hearings—Cooperation. The department may confer with or hold joint hearings with any agency of the United States in connection with any matter arising under this chapter or relating to the development of aeronautics.

The department may avail itself of the cooperation, services, records, and facilities of the agencies of the United States as fully as may be practicable in the administration and enforcement of this chapter, and shall furnish to the agencies of the United States such services, records, and facilities as are practicable.

The department shall report to the appropriate agency of the United States all accidents in aeronautics in this state of which it is informed, and shall in so far as is practicable preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until the federal agency institutes an investigation. [1984 c 7 § 357; 1947 c 165 §

29; Rem. Supp. 1947 § 10964–109. Formerly RCW 14.04.290.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.300 State and municipal agencies to cooperate. In carrying out this chapter the department may use the facilities and services of other agencies of the state and of the municipalities of the state to the utmost extent possible, and the agencies and municipalities are authorized and directed to make available their facilities and services. [1984 c 7 § 358; 1947 c 165 § 30; Rem. Supp. 1947 § 10964–110. Formerly RCW 14.04.300.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.310 Enforcement of aeronautics laws. It is the duty of the secretary, the department, the officers and employees of the department, and every state and municipal officer charged with the enforcement of state and municipal laws to enforce and assist in the enforcement of this chapter and of all other laws of this state relating to aeronautics. The secretary and those officers or employees of the department designated by the secretary in writing are granted police powers solely for the enforcement of state aeronautics laws and the rules having the effect of law. [1984 c 7 § 359; 1955 c 204 § 1; 1947 c 165 § 31; Rem. Supp. 1947 § 10964–111. Formerly RCW 14.04.310.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.320 Service of orders—Hearings—Review. Every order of the department requiring performance of certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate, or license shall set forth the reasons and shall state the acts to be done or requirements to be met before approval by the department will be given or the approval, license, or certificate granted or restored, or the order modified or changed. Orders issued by the department under this chapter shall be served upon the persons affected either by certified mail or in person. In every case where notice and opportunity for a hearing are required under this chapter, the order of the department shall, on not less than ten days notice, specify a time when and place where the person affected may be heard, or the time within which the person may request a hearing, and the order shall become effective upon the expiration of the time for exercising the opportunity for a hearing, unless a hearing is held or requested within the time provided, in which case the order shall be suspended until the department affirms, disaffirms, or modifies the order after a hearing has been held or default by the person has been affected. To the extent practicable, hearings on the orders shall be in the county where the affected person resides or does business. Any person aggrieved by an order of the department or by the grant, denial, or revocation of an approval, license, or certificate may have the action of the department reviewed by the courts of this state under chapter 34.05 RCW. [1984 c 7 § 360; 1947 c 165 § 32; Rem. Supp. 1947 § 10964–112. Formerly RCW 14.04.320.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.330 Exchange of data, reports of violations, etc. The department is authorized to report to the appropriate federal agencies and agencies of other states all proceedings instituted charging violation of RCW 47.68.220 and 47.68.230 and all penalties, of which it has knowledge, imposed upon airmen or the owners or operators of aircraft for violations of the law of this state relating to aeronautics or for violations of the rules, regulations, or orders of the department. The department is authorized to receive reports of penalties and other data from agencies of the federal government and other states and, when necessary, to enter into agreements with federal agencies and the agencies of other states governing the delivery, receipt, exchange, and use of reports and data. The department may make the reports and data of the federal agencies, the agencies of other states, and the courts of this state available, with or without request therefor, to any and all courts of this state. [1983 c 3 § 146; 1947 c 165 § 33; Rem. Supp. 1947 § 10964–113. Formerly RCW 14.04.330.]

47.68.340 Hazardous structures and obstacles—Marking—Hearing to determine hazard. A structure or obstacle that obstructs the air space above ground or water level, when determined by the department after a hearing to be a hazard or potential hazard to the safe flight of aircraft, shall be plainly marked, illuminated, painted, lighted, or designated in a manner to be approved in accordance with the general rules of the department so that the structure or obstacle will be clearly visible to airmen. In determining which structures or obstacles constitute or may become a hazard to air flight, the department shall take into account only those obstacles located at river, lake, and canyon crossings and in other low-altitude flight paths usually traveled by aircraft. [1984 c 7 § 361; 1961 c 263 § 2. Formerly RCW 14.04.340.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.350 Hazardous structures and obstacles—Reporting location—Subpoenas. The secretary may require owners, operators, lessees, or others having the control or management of structures or obstacles over one hundred fifty feet above ground or water level and that are or may become a hazard to air flight to report the location of the existing or proposed structures or obstacles to the department. For that purpose the secretary may issue subpoenas and subpoenas duces tecum returnable within twenty days to the department. If a person refuses to obey the secretary's subpoena, the department may certify to the superior court all facts of the refusal. The court shall summarily hear evidence on the refusal, and, if the evidence warrants, punish the person refusing in the same manner and to the same extent as a contempt committed before the court. [1984 c 7 § 362; 1961 c 263 § 3. Formerly RCW 14.04.350.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.360 Hazardous structures and obstacles—Exemption of structures required by federal law to be marked. RCW 47.68.340 and 47.68.350 shall not apply to structures required to be marked by federal regulations. [1983 c 3 § 147; 1961 c 263 § 4. Formerly RCW 14.04.360.]

47.68.370 Washington wing civil air patrol—Declaration of public purpose—Consultation, cooperation, and contracts with department. It is the public policy of the state of Washington to direct the financial resources of this state toward the support and aid of air search, rescue, and emergency services within the state in order to promote the general welfare of its citizens. The legislature further declares that the operation of crash, rescue, emergency operations, and organization communications in the event of natural or other disasters, the performance of emergency missions for other federal and state agencies such as the patrol of forests, pipelines, flood areas, the transportation of critical parts and supplies, and the education and character development of our young people with the cadet program of the Washington wing civil air patrol serves the public interest. The Washington wing civil air patrol is a nonprofit, federally chartered, private corporation, which is an auxiliary of the United States Air Force and is engaged in cooperation with the national, state, and local emergency services effort and the department, which serves the public interest and purpose, and is staffed by civilian volunteers engaged in their contribution to the public welfare with no reimbursement for their efforts.

In expending moneys appropriated by the legislature, the Washington wing civil air patrol shall consult and cooperate with the department so that maximum education and development in aeronautical matters can be accomplished and the maximum contribution to emergency services can be made.

The department may contract with the Washington wing civil air patrol to accomplish the purposes set forth in this section, and to furnish accommodations, goods, and services to the Washington wing civil air patrol as may be necessary to accomplish the purposes of this section. [1984 c 7 § 363; 1975-'76 2nd ex.s. c 73 § 1. Formerly RCW 14.04.370.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.900 Severability—1947 c 165. If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable. [1947 c 165 § 35. Formerly RCW 14.04.900.]

Chapter 47.72

NAVIGATION CANALS

(Formerly: Chapter 91.12 RCW, Canal commission)

Sections

47.72.010	Declaration of purpose.
47.72.050	Powers and duties.
47.72.060	"Canal" defined.

47.72.010 Declaration of purpose. The purposes of this chapter are to aid commerce and navigation, including the development of recreational facilities related thereto, and to otherwise promote the general welfare by the development of navigation canals within the boundaries of the state of Washington. [1965 ex.s. c 123 § 1. Formerly RCW 91.12.010.]

47.72.050 Powers and duties. In its capacity as successor to the canal commission, the department of transportation may:

(1) Adopt rules and regulations necessary to carry out the purposes of this chapter.

(2) Make such investigations, surveys, and studies it deems necessary to determine the feasibility of the development of a navigation canal, or systems of navigation canals within the state of Washington.

(3) Construct, maintain, and/or operate any navigation canal, or navigation canal systems deemed feasible by the department of transportation.

(4) Acquire by gift, purchase, or condemnation from any person, municipal, public, or private corporation, or the state of Washington, or lease from the United States of America, any lands, rights of way, easements, or property rights in, over, or across lands or waters necessary for the construction, operation, or maintenance of any navigation canal, or navigation canal system. The acquisition of such rights is for a public use. The exercise of the right of eminent domain shall be in the manner provided by chapter 8.04 RCW, and all actions initiated thereunder shall be brought in the name of the department of transportation.

(5) Hold public hearings. Prior to a determination of feasibility for any proposed project, the department shall hold a public hearing so that members of the public may present their views thereon.

(6) Accept and expend moneys appropriated by the legislature or received from any public or private source, including the federal government, in carrying out the purposes of this chapter.

(7) Negotiate and cooperate with the United States of America for the purpose of inducing the United States to undertake the construction, operation, or maintenance of any navigation canal, or navigation canal system provided for in this chapter.

(8) As a local sponsor cooperate, contract, and otherwise fully participate on behalf of the state of Washington with the United States of America, in any study relating to a determination of feasibility of a navigation canal or navigation canal system, and in any project relating to the construction, operation, or maintenance of a navigation canal, or navigation canal system to be undertaken by the United States of America.

The authority granted herein includes, but is not limited to, contributing such moneys to the United States of America as may be required and appropriated for that purpose by the legislature and furnishing without cost to the United States of America all lands, easements, and rights of way, performing all necessary alterations to utilities arising from any project, and holding the United States of America free from any claims for damages arising out of the construction of any project. [1977 ex.s. c 151 § 75; 1965 ex.s. c 123 § 5. Formerly RCW 91.12.050.]

47.72.060 "Canal" defined. For the purposes of this chapter, "canal" is defined as any waterway for navigation created by construction of reservoirs or construction of channels by excavation in dry ground, in streams, rivers or in tidal waters and any existing waterway incorporated into such a canal and including any appurtenant features necessary for operation and maintenance of the canal. [1965 ex.s. c 123 § 6. Formerly RCW 91.12.060.]

Chapter 47.74

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Sections

47.74.010	Multistate Highway Transportation Agreement enacted, terms.
47.74.020	Appointment of delegates to represent state.

47.74.010 Multistate Highway Transportation Agreement enacted, terms. The Multistate Highway Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining therein as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

ARTICLE I

Findings and Purposes

SECTION 1. Findings. The participating jurisdictions find that:

- The expanding regional economy depends on expanding transportation capacity;
- Highway transportation is the major mode for movement of people and goods in the western states;
- Uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;
- A number of western states, already having adopted substantially the 1964 Bureau of Public Roads recommended vehicle size and weight standards, still find current federal limits more restrictive;
- The 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle

size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and widths are increased, even though the interstate system is nearly ninety-two percent complete; and

(f) The participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

SECTION 2. Purposes. The purposes of this agreement are to:

(a) Adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system;

(b) Establish a system authorizing the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards;

(c) Promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement;

(d) Secure uniformity insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards;

(e) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

ARTICLE II

Definitions

SECTION 1. As used in this agreement:

(a) "Designated representative" means a legislator or other person authorized to represent the jurisdiction;

(b) "Jurisdiction" means a state of the United States or the District of Columbia;

(c) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards which operates in two or more participating jurisdictions.

ARTICLE III

General Provisions

SECTION 1. Qualifications for Membership. Participation in this agreement is open to jurisdictions which subscribe to the findings, purposes, and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

SECTION 2. Cooperation. The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

SECTION 3. Effect of Headings. Article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

SECTION 4. Vehicle Laws and Regulations. This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

SECTION 5. Interpretation. The final decision regarding interpretation of questions at issue relating to

this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

SECTION 6. Amendment. This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, article III. Any amendment shall be placed in writing and become a part hereof.

SECTION 7. Restrictions, Conditions, or Limitations. Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition, or limitation on the general terms of this agreement, if any.

SECTION 8. Additional Jurisdictions. Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

ARTICLE IV

Cooperating Committee

SECTION 1. Pursuant to section 2, article III, the designated representatives of the participating jurisdictions shall constitute a committee which shall have the power to:

(a) Collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters;

(b) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken;

(c) Recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules or regulations which would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

SECTION 2. Each participating jurisdiction shall be entitled to one vote only. No action of the committee shall be binding unless a majority of the total number of votes cast by participating jurisdictions are in favor thereof.

SECTION 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman, and a secretary.

SECTION 4. The committee shall submit annually to the legislature of each participating jurisdiction, no later than November 1st, a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable. Copies of all such reports shall be made available to the Transportation Committee of the Western Conference, Council of State Governments, and to the Western Association of State Highway and Transportation Officials.

ARTICLE V

Objectives of the Participating Jurisdictions

SECTION 1. Objectives. The participating jurisdictions hereby declare that:

(a) It is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight of 20,000 pounds, a tandem-axle weight of 34,000 pounds, and a gross vehicle or combination weight of that resulting from application of the formula:

$$W = 500 ((LN/N - 1) + 12N + 36)$$

where W = maximum weight in pounds carried on any group of two or computed to nearest 500 pounds.

L = distance in feet between the extremes of any group of two or more consecutive axles.

N = number of axles in group under consideration.

(b) It is the further objective of the participating jurisdictions that in the event the operation of a vehicle or combination of vehicles according to the provisions of subsection (a) of this section would result in withholding or forfeiture of federal-aid funds pursuant to section 127, title 23, U.S. Code, the operation of such vehicle or combination of vehicles at axle and gross weights within the limits set forth in subsection (a) of this section will be authorized under special permit authority by each participating jurisdiction which could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956, are adhered to.

(c) The objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions and/or weights in excess of the maximum statutory limits in each participating jurisdiction will not be affected.

(d) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including, but not limited to, the development of: uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent.

(e) In recognition of the limited prospects of federal revision of section 127, title 23, U.S. Code, and in order

to protect participating jurisdictions against any possibility of withholding or forfeiture of federal-aid highway funds, it is the further objective of the participating jurisdictions to secure congressional approval of this agreement and, specifically of the vehicle size and weight standards set forth in subsection (a) of this section.

(f) In recognition of desire for a degree of national uniformity of size and weight regulations, it is the further objective to encourage development of broad, uniform size and weight standards on a national basis, and further that procedures adopted under this agreement be compatible with national standards.

ARTICLE VI

Entry Into Force and Withdrawal

SECTION 1. This agreement shall enter into force when enacted into law by any two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, article III.

SECTION 2. Any participating jurisdiction may withdraw from this agreement by canceling the same, but no such withdrawal shall take effect until thirty days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

ARTICLE VII

Construction and Severability

SECTION 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

SECTION 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

ARTICLE VIII

Filing of Documents

SECTION 1. A copy of this agreement, its amendments, and rules or regulations promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

ARTICLE IX

Existing Statutes Not Repealed

SECTION 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

ARTICLE X

State Government Departments

Authorized to Cooperate with Cooperating Committee

SECTION 1. Within appropriations available therefor, the departments, agencies, and officers of the government of this state shall cooperate with and assist the cooperating committee within the scope contemplated by

article IV, section 1 (a) and (b) of the agreement. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said cooperating committee. [1983 c 82 § 1.]

47.74.020 Appointment of delegates to represent state. The chairman of the legislative transportation committee shall appoint a delegate and such alternates as may be appropriate to represent the state on the cooperating committee established by the Multistate Highway Transportation Agreement. [1983 c 82 § 2.]

Chapter 47.76

RAIL FREIGHT SERVICE

Sections

47.76.010	Legislative findings.
47.76.020	State rail plan—Contents.
47.76.030	Essential rail assistance account—Purchase of unused right of way.
47.76.040	Sale for use as rail service—Time limit.
47.76.050	Sale for other use—Authorized buyers, notice, terms, deed, deposit of moneys.
47.76.060	Sale for other use—Governmental entity.
47.76.070	Rent or lease of lands.
47.76.080	Sale at public auction.
47.76.090	Eminent domain exemptions.

47.76.010 Legislative findings. The legislature finds that the abandonment of rail lines and rail freight service may alter the delivery to market of many commodities. In addition, the resultant motor vehicle freight traffic increases the burden on state highways and county roads. In many cases, the cost of upgrading the state highways and county roads exceeds the cost of maintaining rail freight service. Thus, the economy of the state will be best served by a policy of maintaining and encouraging a healthy rail freight system by creating a mechanism which keeps rail freight lines operating if the benefits of the service outweigh the cost. [1983 c 303 § 4.]

Severability—1983 c 303: See RCW 36.60.905.

47.76.020 State rail plan—Contents. (1) The department of transportation shall prepare and periodically update a state rail plan, the objective of which is to identify, evaluate, and encourage essential rail service. The plan shall:

- (a) Identify and evaluate those rail freight lines that may be abandoned or have recently been abandoned;
- (b) Quantify the costs and benefits of maintaining rail service on those lines that are likely to be abandoned and the acquisition of right of way for the eventual restoration of service on lines recently abandoned; and
- (c) Establish priorities for determining which rail lines should receive state support. The priorities should include the anticipated benefits to the state and local economy, the anticipated cost of road and highway improvements necessitated by the abandonment of the rail line, the likelihood the rail line receiving funding can meet operating costs from freight charges, surcharges on rail traffic, and other funds authorized to be raised by a

county or port district, and the impact of abandonment on changes in energy utilization and air pollution.

(2) The state rail plan may be prepared in conjunction with the rail plan prepared by the department pursuant to the federal railroad revitalization and regulatory reform act. [1985 c 432 § 1; 1983 c 303 § 5.]

Severability—1983 c 303: See RCW 36.60.905.

47.76.030 Essential rail assistance account—**Purchase of unused right of way.** (1) The essential rail assistance account is hereby created in the state treasury. Moneys in the account may be appropriated only for the purposes specified in this section.

(2) Moneys in the account may be distributed to county rail districts and port districts for the purpose of:

(a) Acquiring, maintaining, or improving branch rail lines; or

(b) Operating railroad equipment necessary to maintain essential rail service.

(3) Moneys in the account may be distributed to the department to purchase unused rail right of way that meets the following criteria:

(a) The right of way has been identified, evaluated, and analyzed in the state rail plan prepared pursuant to RCW 47.76.020;

(b) The right of way has been abandoned and is available for acquisition;

(c) The right of way has potential for future rail service; and

(d) Reestablishment of rail service in the future would benefit the state of Washington.

The department may exercise its authority to use moneys in the account for the purposes of this subsection only with legislative appropriation for this purpose or upon receipt of a donation of funds sufficient to cover the property acquisition and management costs. The department may receive donations of funds for this purpose, which shall be conditioned upon, and made in consideration for the repurchase rights contained in RCW 47.76.040. Nothing in this section shall be interpreted or applied so as to impair the reversionary rights of abutting landowners, if any, without just compensation.

(4) County rail districts and port districts may grant franchises to private railroads for the right to operate on lines acquired, repaired, or improved under this chapter.

(5) Moneys distributed under subsection (2) of this section shall not exceed eighty percent of the cost of the service or project undertaken. At least twenty percent of the cost shall be provided by the county, port district, or other local sources.

(6) The amount distributed under this section shall be repaid to the state by the county rail district or port district. The repayment shall occur within ten years of the distribution of the moneys and shall be deposited in the essential rail assistance account. The repayment schedule and rate of interest, if any, shall be set at the time of the distribution of the moneys.

(7) All earnings of investments of balances in the essential rail assistance account shall be credited to the

general fund. [1985 c 432 § 2; 1985 c 57 § 64; 1983 c 303 § 6.]

Reviser's note: This section was amended by 1985 c 57 § 64 and by 1985 c 432 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1985 c 57: See note following RCW 15.52.320.

Severability—1983 c 303: See RCW 36.60.905.

County rail districts: Chapter 36.60 RCW.

Port districts, acquisition and operation of facilities: RCW 53.08.020.

47.76.040 Sale for use as rail service—**Time limit.** The department shall sell property acquired under RCW 47.76.030 to a county rail district established under chapter 36.60 RCW, a port district, or any other public or private entity authorized to operate rail service. Any public or private entity which originally donated funds to the department pursuant to RCW 47.76.030 shall receive credit against the purchase price for the amount donated to the department, less management costs, in the event such public or private entity purchases the property from the department.

If no county rail district, port district, or other public or private entity authorized to operate rail service offers to purchase such property within six years after its acquisition by the department, the department may sell such property in the manner provided in RCW 47.76.050. Failing this, the department may sell or convey all such property in the manner provided in RCW 47.76.060 or 47.76.080. [1985 c 432 § 3.]

47.76.050 Sale for other use—**Authorized buyers, notice, terms, deed, deposit of moneys.** (1) If real property acquired by the department under RCW 47.76.030 is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may sell the property at fair market value to any of the following governmental entities or persons:

(a) Any other state agency;

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

(c) Any other municipal corporation;

(d) The former owner, heir, or successor of the property from whom the property was acquired;

(e) Any abutting private owner or owners.

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

(3) Sales to purchasers may at the department's option be for cash or by real estate contract.

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

(5) All moneys received under this section shall be deposited in the essential rail assistance account of the general fund. [1985 c 432 § 4.]

47.76.060 Sale for other use—**Governmental entity.** If real property acquired by the department under

RCW 47.76.030 is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may transfer and convey the property to the United States, its agencies or instrumentalities, to any other state agency, to any county or city or port district of this state when, in the judgment of the secretary, the transfer and conveyance is consistent with the public interest. Whenever the secretary makes an agreement for any such transfer or conveyance, the secretary shall execute and deliver to the grantee a deed of conveyance, easement, or other instrument, duly acknowledged, as necessary to fulfill the terms of the agreement. All moneys paid to the state of Washington under this section shall be deposited in the essential rail assistance account of the general fund. [1985 c 432 § 5.]

47.76.070 Rent or lease of lands. The department is authorized subject to the provisions and requirements of zoning ordinances of political subdivisions of government, to rent or lease any lands acquired under RCW 47.76.030, upon such terms and conditions as the department determines. [1985 c 432 § 6.]

47.76.080 Sale at public auction. (1) If real property acquired by the department under RCW 47.76.030 is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may, in its discretion, sell the property at public auction in accordance with subsections (2) through (5) of this section.

(2) The department shall first give notice of the sale by publication on the same day of the week for two consecutive weeks, with the first publication at least two weeks before the date of the auction, in a legal newspaper of general circulation in the area where the property to be sold is located. The notice shall be placed in both the legal notices section and the real estate classified section of the newspaper. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) In accordance with the terms set forth in the notice, the department shall sell the property at the public auction to the highest and best bidder if the bid is equal to or higher than the appraised fair market value of the property.

(4) If no bids are received at the auction or if all bids are rejected, the department may, in its discretion, enter into negotiations for the sale of the property or may list the property with a licensed real estate broker. No property may be sold by negotiations or through a broker for less than the property's appraised fair market value. Any offer to purchase real property under this subsection shall be in writing and may be rejected at any time before written acceptance by the department.

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

(6) All moneys received under this section shall be deposited in the essential rail assistance account of the general fund. [1985 c 432 § 7.]

47.76.090 Eminent domain exemptions. Transfers of ownership of property acquired under RCW 47.76.030 are exempt from chapters 8.25 and 8.26 RCW. [1985 c 432 § 8.]

Chapter 47.78

RAIL SERVICE DEVELOPMENT

Sections

47.78.010 Rail development account.

47.78.010 Rail development account. There is hereby established in the state treasury the rail development account. Money in the account shall be used, after appropriation, for local rail passenger and rail freight purposes. All earnings of investments of any balances in the rail development account shall be credited to the rail development account. [1987 c 428 § 1.]

Effective date—1987 c 428: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 428 § 4.]

Chapter 47.98

CONSTRUCTION

Sections

47.98.010 Continuation of existing law.
 47.98.020 Provisions to be construed in pari materia.
 47.98.030 Title, chapter, section headings not part of law.
 47.98.040 Invalidity of part of title not to affect remainder.
 47.98.041 Severability—1963 ex.s. c 3.
 47.98.042 Severability—1965 ex.s. c 170.
 47.98.043 Severability—1967 ex.s. c 145.
 47.98.044 Severability—1967 c 108.
 47.98.045 Severability—1969 ex.s. c 281.
 47.98.050 Repeals and saving.
 47.98.060 Emergency—1961 c 13.
 47.98.070 Federal requirements.
 47.98.080 Severability—1977 ex.s. c 151.
 47.98.090 Liberal construction.

47.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. Nothing in this 1961 reenactment of this title shall be construed as authorizing any new bond issues or new or additional appropriations of moneys but the bond issue authorizations herein contained shall be construed only as continuations of bond issues authorized by prior laws herein repealed and reenacted, and the appropriations of moneys herein contained are continued herein for historical purposes only and this act shall not be construed as a reappropriation thereof and no appropriation contained herein shall be deemed to be extended or revived hereby and such appropriation shall lapse or

shall have lapsed in accordance with the original enactment: *Provided*, That this act shall not operate to terminate, extend, or otherwise affect any appropriation for the biennium commencing July 1, 1959 and ending June 30, 1961. [1961 c 13 § 47.98.010.]

47.98.020 Provisions to be construed in pari materia. The provisions of this title shall be construed in pari materia even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title shall also be construed in pari materia with the provisions of Title 46 RCW, and with other laws relating to highways, roads, streets, bridges, ferries and vehicles. This section shall not operate retroactively. [1961 c 13 § 47.98.020.]

47.98.030 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 13 § 47.98.030.]

47.98.040 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 13 § 47.98.040.]

47.98.041 Severability—1963 ex.s. c 3. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1963 ex.s. c 3 § 57.]

47.98.042 Severability—1965 ex.s. c 170. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 170 § 70.]

47.98.043 Severability—1967 ex.s. c 145. If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 145 § 73.]

47.98.044 Severability—1967 c 108. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 108 § 14.]

47.98.045 Severability—1969 ex.s. c 281. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 281 § 64.]

47.98.050 Repeals and saving. See 1961 c 13 § 47.98.050.

47.98.060 Emergency—1961 c 13. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing institutions and shall take effect immediately: *Provided*, That the effective date of sections *47.16.160, 47.20.110, and 47.20.380 shall be July 1, 1961. [1961 c 13 § 47.98.060.]

***Reviser's note:** RCW 47.16.160, 47.20.110, and 47.20.380 were repealed by 1970 ex.s. c 51.

47.98.070 Federal requirements. If any part of this title or any section of *this 1977 amendatory act is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds to the state, or to any department or agencies thereof, such conflicting part or section is declared to be inoperative solely to the extent of the conflict. No such ruling shall affect the operation of the remainder of the act. Any internal reorganization carried out under the terms of this title or any section of *this 1977 amendatory act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1977 ex.s. c 151 § 76.]

***Reviser's note:** This 1977 amendatory act [1977 ex.s. c 151] consisted of the enactment of new sections codified as RCW 1.08.120, 41-.06.079, 47.01.011, 47.01.021, 47.01.031, 47.01.041, 47.01.051, 47.01.061, 47.01.071, 47.01.081, 47.01.091, 47.01.101, 47.01.111, 47-.01.121, 47.01.131, 47.01.250, 47.04.015, 47.04.150, 47.68.015, 47.98-.070, 47.98.080, and 47.98.090, new sections 12, 14, 15, 16, 17, and 25 which were not codified but appear as footnotes to certain of the above sections, the amendment of RCW 43.17.010, 43.17.020, 43.63A.070, 46.44.080, 46.44.090, 46.44.091, 46.44.092, 46.44.095, 46.61.405, 46-.61.410, 46.61.415, 46.61.425, 46.61.430, 46.61.450, 46.61.570, 46.61-.575, 46.68.120, 47.01.070, 47.05.020, 47.05.030, 47.05.070, 47.12.010, 47.12.060, 47.12.070, 47.12.080, 47.12.120, 47.12.130, 47.12.140, 47-.12.150, 47.12.190, 47.12.200, 47.12.220, 47.24.010, 47.26.140, 47.28-.010, 47.36.020, 47.36.030, 47.52.027, 47.52.139, 47.52.150, 47.52.180, 47.56.030, 47.56.070, 47.56.080, 47.56.090, 47.56.120, 47.56.250, 47-.56.254, 88.16.010, 88.16.020, and 91.12.050 (recodified as RCW 47-.72.050), the repeal of RCW 14.04.030, 14.04.040, 14.04.050, 47.01.010, 47.01.020, 47.01.030, 47.01.040, 47.01.050, 47.01.060, 47-.01.080, 47.01.090, 47.01.100, 47.01.110, 47.01.120, 47.01.130, 47.01-.160, 47.56.034, 91.12.020, 91.12.030, and 91.12.040, and directed the recodification of chapters 14.04 and 91.12 RCW as new chapters in Title 47 RCW.

47.98.080 Severability—1977 ex.s. c 151. If any provision of *this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 151 § 77.]

***Reviser's note:** For translation of "this 1977 amendatory act," see note following RCW 47.98.070.

47.98.090 Liberal construction. The rule of strict construction shall have no application to this title, and it shall be liberally construed in order to carry out the objectives for which it is designed. Any ambiguities arising from its interpretation should be resolved consistently with the broad purposes set forth in *RCW 47.01.011. [1977 ex.s. c 151 § 78.]

***Reviser's note:** RCW 47.01.011 was decodified pursuant to 1985 c 6 § 26.

Title 48

INSURANCE

Chapters

- 48.01 Initial provisions.
- 48.02 Insurance commissioner.
- 48.03 Examinations.
- 48.04 Hearings and appeals.
- 48.05 Insurers—General requirements.
- 48.06 Organization of domestic insurers.
- 48.07 Domestic insurers—Powers.
- 48.08 Domestic stock insurers.
- 48.09 Mutual insurers.
- 48.10 Reciprocal insurers.
- 48.11 Insuring powers.
- 48.12 Assets and liabilities.
- 48.13 Investments.
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- 48.15 Unauthorized insurers.
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- 48.17 Agents, brokers, solicitors, and adjusters.
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- 48.21A Disability insurance—Extended health.
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- savings banks as: RCW 32.08.140, 32.08.160.*
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Chapter 48.01

INITIAL PROVISIONS

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48.01.080	Penalties.
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48.01.100	Existing officers.
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48.01.180	Adopted children—Insurance coverage.
48.01.190	Immunity from civil liability.

Certain provisions of insurance policies deemed nontestamentary: RCW 11.02.090.

48.01.010 Short title. Title 48 RCW constitutes the insurance code. [1975 1st ex.s. c 266 § 2; 1947 c 79 § .01.01; Rem. Supp. 1947 § 45.01.01.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.01.020 Scope of code. All insurance and insurance transactions in this state, or affecting subjects located wholly or in part or to be performed within this state, and all persons having to do therewith are governed by this code. [1947 c 79 § .01.02; Rem. Supp. 1947 § 45.01.02.]

48.01.030 Public interest. The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives rests the duty of preserving inviolate the integrity of insurance. [1947 c 79 § .01.03; Rem. Supp. 1947 § 45.01.03.]

48.01.035 "Developmental disability" defined. The term "developmental disability" as used in this title means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological condition closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual. [1985 c 264 § 1.]

48.01.040 "Insurance" defined. Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. [1947 c 79 § .01.04; Rem. Supp. 1947 § 45.01.04.]

48.01.050 "Insurer" defined. "Insurer" as used in this code includes every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal or interinsurance exchange is an "insurer" as used in this code. Two or more hospitals, as defined in RCW 70.39.020(3), which join and organize as a mutual corporation pursuant to chapter 24.06 RCW for the purpose of insuring or self-insuring against liability claims, including medical liability, through a contributing trust fund shall not be deemed an "insurer" under this code. Two or more local governmental entities, as defined in RCW 48.62.020, which pursuant to RCW 48.62.040, 48.62.035, or any other provision of law join together and organize to form an organization for the purpose of jointly self-insuring or self-funding shall not be deemed an "insurer" under this code. [1985 c 277 § 9; 1979 ex.s. c 256 § 13; 1975-'76 2nd ex.s. c 13 § 1; 1947 c 79 § .01.05; Rem. Supp. 1947 § 45.01.05.]

Retrospective application—1985 c 277: See note following RCW 48.62.035.

"Domestic," "foreign," "alien" insurers defined: RCW 48.05.010.

Merger, rehabilitation, liquidation situations—"Insurer" defined: RCW 48.31.020, 48.31.110.

"Reciprocal insurance, insurer" defined: RCW 48.10.010, 48.10.020.

48.01.060 "Insurance transaction" defined. "Insurance transaction" includes any:

(1) Solicitation.

- (2) Negotiations preliminary to execution.
- (3) Execution of an insurance contract.
- (4) Transaction of matters subsequent to execution of the contract and arising out of it.
- (5) Insuring. [1947 c 79 § .01.06; Rem. Supp. 1947 § 45.01.06.]

48.01.070 "Person" defined. "Person" means any individual, company, insurer, association, organization, reciprocal or interinsurance exchange, partnership, business trust, or corporation. [1947 c 79 § .01.07; Rem. Supp. 1947 § 45.01.07.]

48.01.080 Penalties. Violation of any provision of this code is punishable by a fine of not less than ten dollars nor more than one thousand dollars, or by imprisonment for not more than one year, or both fine and imprisonment, in addition to any other penalty or forfeiture provided herein or otherwise by law. [1947 c 79 § .01.08; Rem. Supp. 1947 § 45.01.08.]

48.01.090 Severability—1947 c 79. If any provision of this code or the application thereof to any circumstance is held invalid, the remainder of the code, or the application of the provision to other circumstances, is not affected thereby. [1947 c 79 § .01.09; Rem. Supp. 1947 § 45.01.09.]

48.01.100 Existing officers. Continuation by this code of any office existing under any act repealed herein preserves the tenure of the individual holding the office at the effective date of this code. [1947 c 79 § .01.10; Rem. Supp. 1947 § 45.01.10.]

48.01.110 Existing licenses. Every license or certificate of authority in force immediately prior to the effective date of this code and existing under any act herein repealed is valid until its original expiration date, unless earlier terminated in accordance with this code. [1947 c 79 § .01.11; Rem. Supp. 1947 § 45.01.11.]

48.01.120 Existing insurance forms. Every form of insurance document in use at the effective date of this code in accordance with the commissioner's approval pursuant to any act herein repealed, may continue to be so used unless the commissioner otherwise prescribes in accordance with this code. [1947 c 79 § .01.12; Rem. Supp. 1947 § 45.01.12.]

48.01.130 Existing actions, violations. No action or proceeding commenced, and no violation of law existing, under any act herein repealed is affected by the repeal, but all procedure hereafter taken in reference thereto shall conform to this code as far as possible. [1947 c 79 § .01.13; Rem. Supp. 1947 § 45.01.13.]

48.01.140 Headings. The meaning or scope of any provision is not affected by chapter, section, or paragraph headings. [1947 c 79 § .01.14; Rem. Supp. 1947 § 45.01.14.]

48.01.150 Particular provisions prevail. Provisions of this code relating to a particular kind of insurance or a particular type of insurer or to a particular matter prevail over provisions relating to insurance in general or insurers in general or to such matter in general. [1947 c 79 § .01.15; Rem. Supp. 1947 § 45.01.15.]

48.01.160 Repealed acts not revived. Repeal by this code of any act shall not revive any law heretofore repealed or superseded. [1947 c 79 § .01.16; Rem. Supp. 1947 § 45.01.16.]

48.01.170 Effective date—1947 c 79. This code shall become effective on the first day of October, 1947. [1947 c 79 § .01.17; Rem. Supp. 1947 § 45.01.17.]

48.01.180 Adopted children—Insurance coverage. A child of an insured, subscriber, or enrollee shall be considered a dependent child for insurance purposes under this title: (1) Upon being physically placed with the insured, subscriber, or enrollee for the purposes of adoption under the laws of the state in which the insured, subscriber, or enrollee resides; and (2) upon assumption by the insured, subscriber, or enrollee of the financial responsibility for the medical expenses of the child.

Eligibility for coverage of an adopted child is governed by applicable contract, policy, or agreement provisions with respect to dependent children, including any established underwriting guidelines. [1986 c 140 § 1.]

Effective date, application—1986 c 140: "This act shall take effect January 1, 1987, and shall apply to all contracts or agreements issued, renewed, or delivered on or after January 1, 1987." [1986 c 140 § 6.]

Reviser's note: "This act" [1986 c 140] consisted of the enactment of RCW 48.01.180, 48.20.500, 48.21.280, 48.44.420, and 48.46.490.

Severability—1986 c 140: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 140 § 7.]

48.01.190 Immunity from civil liability. (1) Any person who files reports, or furnishes other information, required under Title 48 RCW, required by the commissioner under authority granted by Title 48 RCW, useful to the commissioner in the administration of Title 48 RCW, or furnished to the National Association of Insurance Commissioners at the request of the commissioner or pursuant to Title 48 RCW, shall be immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

(2) The commissioner and the National Association of Insurance Commissioners, and the agents and employees of each, are immune from liability in any civil action or suit arising from the publication of any report or bulletin or dissemination of information related to the official activities of the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

(3) The immunity granted by this section is in addition to any common law or statutory privilege or immunity enjoyed by such person, and nothing in this section is intended to abrogate or modify in any way such common law or statutory privilege or immunity. [1987 c 51 § 1.]

Chapter 48.02 INSURANCE COMMISSIONER

Sections

48.02.010	Insurance commissioner.
48.02.020	Term of office.
48.02.030	Bond.
48.02.050	Seal.
48.02.060	General powers and duties.
48.02.080	Enforcement.
48.02.090	Deputies—Employees.
48.02.100	Commissioner may delegate authority.
48.02.110	Office.
48.02.120	Records.
48.02.130	Certificates—Copies—Evidentiary effect.
48.02.140	Interstate cooperation.
48.02.150	Supplies—"Convention blanks."
48.02.160	Special duties.
48.02.170	Annual report.
48.02.180	Publication of insurance code and related statutes, manuals, etc.—Distribution—Sale.
48.02.190	Operating costs of office—Insurance commissioner's regulatory account—Contributions by insurance organizations, fees.

Commissioner to prepare annuity tables for calculation of reserve fund in cases of death or permanent disability under workers' compensation: RCW 51.44.070.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Salary of insurance commissioner: RCW 43.03.010.

48.02.010 Insurance commissioner. (1) There shall be an insurance commissioner of this state who shall be elected at the time and in the manner that other state officers are elected.

(2) The commissioner in office at the effective date of this code shall continue in office for the remainder of the term for which he was elected and until his successor is duly elected and qualified.

(3) "Commissioner," where used in this code, means the insurance commissioner of this state. [1947 c 79 § .02.01; Rem. Supp. 1947 § 45.02.01.]

48.02.020 Term of office. The term of office of the commissioner shall be four years, commencing on the Wednesday after the second Monday in January after his election. [1947 c 79 § .02.02; Rem. Supp. 1947 § 45.02.02.]

48.02.030 Bond. Before entering upon his duties the commissioner shall execute a bond to the state in the sum of twenty-five thousand dollars, to be approved by the state treasurer and the attorney general, conditioned upon the faithful performance of the duties of his office. [1947 c 79 § .02.03; Rem. Supp. 1947 § 45.02.03.]

48.02.050 Seal. The official seal of the commissioner shall be a vignette of George Washington, with the

words "Insurance Commissioner, State of Washington" surrounding the vignette. [1947 c 79 § .02.05; Rem. Supp. 1947 § 45.02.05.]

48.02.060 General powers and duties. (1) The commissioner shall have the authority expressly conferred upon him by or reasonably implied from the provisions of this code.

(2) The commissioner shall execute his duties and shall enforce the provisions of this code.

(3) The commissioner may:

(a) Make reasonable rules and regulations for effectuating any provision of this code, except those relating to his election, qualifications, or compensation. No such rules and regulations shall be effective prior to their being filed for public inspection in the commissioner's office.

(b) Conduct investigations to determine whether any person has violated any provision of this code.

(c) Conduct examinations, investigations, hearings, in addition to those specifically provided for, useful and proper for the efficient administration of any provision of this code. [1947 c 79 § .02.06; Rem. Supp. 1947 § 45.02.06.]

48.02.080 Enforcement. (1) The commissioner may prosecute an action in any court of competent jurisdiction to enforce any order made by him pursuant to any provision of this code.

(2) If the commissioner has cause to believe that any person has violated any penal provision of this code or of other laws relating to insurance he shall certify the facts of the violation to the public prosecutor of the jurisdiction in which the offense was committed.

(3) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the commissioner, he may:

(a) issue a cease and desist order; and/or

(b) bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof.

(4) The attorney general and the several prosecuting attorneys throughout the state shall prosecute or defend all proceedings brought pursuant to the provisions of this code when requested by the commissioner. [1967 c 150 § 1; 1947 c 79 § .02.08; Rem. Supp. 1947 § 45.02.08.]

48.02.090 Deputies—Employees. (1) The commissioner may appoint a chief deputy commissioner, who shall have power to perform any act or duty conferred upon the commissioner. The chief deputy commissioner shall take and subscribe the same oath of office as the commissioner, which oath shall be endorsed upon the certificate of his appointment and filed in the office of the secretary of state.

(2) The commissioner may appoint additional deputy commissioners for such purposes as he may designate.

(3) The commissioner shall be responsible for the official acts of his deputies, and may revoke at will the appointment of any deputy.

(4) The commissioner may employ examiners, and such actuarial, technical, and administrative assistants and clerks as he may need for proper discharge of his duties.

(5) The commissioner, or any deputy or employee of the commissioner, shall not be interested, directly or indirectly, in any insurer except as a policyholder; except, that as to such matters wherein a conflict of interests does not exist on the part of any such person, the commissioner may employ insurance actuaries or other technicians who are independently practicing their professions even though such persons are similarly employed by insurers.

(6) The commissioner may require any deputy or employee to be bonded as he shall deem proper but not to exceed in amount the sum of twenty-five thousand dollars. The cost of any such bond shall be borne by the state. [1949 c 190 § 1; 1947 c 79 § .02.09; Rem. Supp. 1949 § 45.02.09.]

48.02.100 Commissioner may delegate authority. Any power or duty vested in the commissioner by any provision of this code may be exercised or discharged by any deputy, assistant, examiner, or employee of the commissioner acting in his name and by his authority. [1947 c 79 § .02.10; Rem. Supp. 1947 § 45.02.10.]

48.02.110 Office. The commissioner shall have an office at the state capital, and may maintain such offices elsewhere in this state as he may deem necessary. [1947 c 79 § .02.11; Rem. Supp. 1947 § 45.02.11.]

48.02.120 Records. (1) The commissioner shall preserve in permanent form records of his or her proceedings, hearings, investigations, and examinations, and shall file such records in his or her office.

(2) The records of the commissioner and insurance filings in his or her office shall be open to public inspection, except as otherwise provided by this code.

(3) Actuarial formulas, statistics, and assumptions submitted in support of a rate or form filing by an insurer, health care service contractor, or health maintenance organization or submitted to the commissioner upon his or her request shall be withheld from public inspection in order to preserve trade secrets or prevent unfair competition. [1985 c 264 § 2; 1979 ex.s. c 130 § 1; 1947 c 79 § .02.12; Rem. Supp. 1947 § 45.02.12.]

48.02.130 Certificates—Copies—Evidentiary effect. (1) Any certificate or license issued by the commissioner shall bear the seal of his office.

(2) Copies of records or documents in his office certified to by the commissioner shall be received as evidence in all courts in the same manner and to the same effect as if they were the originals.

(3) When required for evidence in court, the commissioner shall furnish his certificate as to the authority of an insurer or other licensee in this state on any particular date, and the court shall receive the certificate in lieu of the commissioner's testimony. [1947 c 79 § .02.13; Rem. Supp. 1947 § 45.02.13.]

48.02.140 Interstate cooperation. (1) The commissioner shall to the extent he deems useful for the proper discharge of his responsibilities under the provisions of this code:

(a) Consult and cooperate with the public officials having supervision over insurance in other states.

(b) Share jointly with other states in the employment of actuaries, statisticians, and other insurance technicians whose services or the products thereof are made available and are useful to the participating states and to the commissioner.

(c) Share jointly with other states in establishing and maintaining offices and clerical facilities for purposes useful to the participating states and to the commissioner.

(2) All arrangements made jointly with other states under items (b) and (c) of subsection (1) of this section shall be in writing executed on behalf of this state by the commissioner. Any such arrangement, as to participation of this state therein, shall be subject to termination by the commissioner at any time upon reasonable notice.

(3) For the purposes of this code "National Association of Insurance Commissioners" means that voluntary organization of the public officials having supervision of insurance in the respective states, districts, and territories of the United States, whatever other name such organization may hereafter adopt, and in the affairs of which each of such public officials is entitled to participate subject to the constitution and bylaws of such organization. [1947 c 79 § .02.14; Rem. Supp. 1947 § 45.02.14.]

48.02.150 Supplies—"Convention blanks." The commissioner shall purchase at the expense of the state and in the manner provided by law:

(1) Printing, books, reports, furniture, equipment, and supplies as he deems necessary to the proper discharge of his duties under this code.

(2) "Convention form" insurers' annual statement blanks, which he may purchase from any printer manufacturing the forms for the various states. [1947 c 79 § .02.15; Rem. Supp. 1947 § 45.02.15.]

48.02.160 Special duties. The commissioner shall:

(1) Obtain and publish for the use of courts and appraisers throughout the state, tables showing the average expectancy of life and values of annuities and of life and term estates.

(2) Disseminate information concerning the insurance laws of this state.

(3) Provide assistance to members of the public in obtaining information about insurance products and in resolving complaints involving insurers and other licensees. [1988 c 248 § 1; 1947 c 79 § .02.16; Rem. Supp. 1947 § 45.02.16.]

48.02.170 Annual report. The commissioner shall, as soon as accurate preparation enables, prepare a report of his official transactions during the preceding fiscal year,

containing information relative to insurance as the commissioner deems proper. [1987 c 505 § 53; 1977 c 75 § 69; 1947 c 79 § .02.17; Rem. Supp. 1947 § 45.02.17.]

48.02.180 Publication of insurance code and related statutes, manuals, etc.—Distribution—Sale. (1) In addition to such publications as are otherwise authorized under this code, the commissioner may from time to time prepare and publish:

(a) Booklets containing the insurance code, or supplements thereto, and such related statutes as the commissioner deems suitable and useful for inclusion in an appendix of such booklet or supplement.

(b) Manuals and other material relative to examinations for licensing as provided in chapter 48.17 RCW.

(2) The commissioner may furnish copies of the insurance code, supplements thereto, and related statutes referred to in (1)(a) of this section free of charge to public offices and officers in this state concerned therewith, to public officials of other states and jurisdictions having supervision of insurance, to the library of congress, and to officers of the armed forces of the United States of America located at military installations in this state who are concerned with insurance transactions at or involving such military installations.

(3) Except as provided in subsection (2) of this section, the commissioner shall sell copies of the insurance code, supplements thereto, examination manuals, and materials as referred to in subsection (1) of this section, at a reasonable price, fixed by the commissioner, in amount not less than the cost of publication, handling, and distribution thereof. The commissioner shall promptly deposit all funds received by him pursuant to this subsection with the state treasurer to the credit of the general fund. For appropriation purposes, such funds received and deposited by the commissioner shall be treated as a recovery of a previous expenditure. [1981 c 339 § 1; 1977 c 75 § 70; 1959 c 225 § 1.]

48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Contributions by insurance organizations, fees. (1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state and every health care service contractor registered to do business in this state. "Class one" organizations shall consist of all insurers as defined in RCW 48.01.050. "Class two" organizations shall consist of all organizations registered under provisions of chapter 48.44 RCW.

(b) "Receipts" means (i) net direct premiums consisting of direct gross premiums, as defined in RCW 48.18.170, paid for insurance written or renewed upon risks or property resident, situated, or to be performed in this state, less return premiums and premiums on policies not taken, dividends paid or credited to policyholders on direct business, and premiums received from policies or contracts issued in connection with qualified plans as defined in RCW 48.14.021, and (ii) prepayments to health care service contractors as set forth in RCW 48.44.010(3) less experience rating credits, dividends,

prepayments returned to subscribers, and payments for contracts not taken.

(2) The annual cost of operating the office of insurance commissioner shall be determined by legislative appropriation. A pro rata share of the cost shall be charged to all organizations. Each class of organization shall contribute sufficient in fees to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) Fees charged shall be calculated separately for each class of organization. The fee charged each organization shall be that portion of the cost of operating the insurance commissioner's office, for that class of organization, for the ensuing fiscal year that is represented by the organization's portion of the receipts collected or received by all organizations within that class on business in this state during the previous calendar year: *Provided*, That the fee shall not exceed one-eighth of one percent of receipts: *Provided further*, That the minimum fee shall be one thousand dollars.

(4) The commissioner shall annually, on or before June 1, calculate and bill each organization for the amount of its fee. Fees shall be due and payable no later than June 15 of each year: *Provided*, That if the necessary financial records are not available or if the amount of the legislative appropriation is not determined in time to carry out such calculations and bill such fees within the time specified, the commissioner may use the fee factors for the prior year as the basis for the fees and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. The penalties for failure to pay fees when due shall be the same as the penalties for failure to pay taxes pursuant to RCW 48.14.060. The fees required by this section are in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) All moneys collected shall be deposited in the insurance commissioner's regulatory account in the state treasury which is hereby created.

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year shall be carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and shall be used to reduce future fees. [1987 c 505 § 54; 1986 c 296 § 7.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Chapter 48.03 EXAMINATIONS

Sections	
48.03.010	Examination of insurers, bureaus.
48.03.020	Examination of agents, managers, promoters.
48.03.030	Access to records on examination—Correction of accounts.
48.03.040	Examination reports.
48.03.050	Reports withheld.
48.03.060	Examination expense.
48.03.070	Witnesses—Subpoenas—Depositions—Oaths.

48.03.010 Examination of insurers, bureaus. (1) The commissioner shall examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer as often as he deems advisable. He shall so examine each domestic insurer not less frequently than every five years. Examination of an alien insurer may be limited to its insurance transactions in the United States.

(2) As often as he deems advisable and at least once in five years, the commissioner shall fully examine each rating organization and examining bureau licensed in this state. As often as he deems it advisable he may examine each advisory organization and each joint underwriting or joint reinsurance group, association, or organization.

(3) The commissioner shall in like manner examine each insurer or rating organization applying for authority to do business in this state.

(4) In lieu of making his own examination, the commissioner may accept a full report of the last recent examination of a nondomestic insurer or rating or advisory organization, or joint underwriting or joint reinsurance group, association or organization, certified to by the insurance supervisory official of the state of domicile or of entry.

(5) The commissioner may elect to accept and rely on an audit report made by an independent certified public accountant for the insurer in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his report of the examination. [1982 c 181 § 1; 1979 c 139 § 1; 1947 c 79 § .03.01; Rem. Supp. 1947 § 45.03.01.]

Severability—1982 c 181: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 181 § 28.]

48.03.020 Examination of agents, managers, promoters. For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as he deems advisable examine the accounts, records, documents, and transactions of:

(1) Any insurance agent, solicitor, broker or adjuster.

(2) Any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control a stock or mutual insurer.

(3) Any person holding the shares of capital stock or policyholder proxies of a domestic insurer for the purpose of control of its management either as voting trustee or otherwise.

(4) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or an insurance holding corporation, or a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney in fact for a domestic reciprocal insurer. [1947 c 79 § .03.02; Rem. Supp. 1947 § 45.03.02.]

48.03.030 Access to records on examination—Correction of accounts. (1) Every person being examined, its officers, employees, and representatives shall

produce and make freely accessible to the commissioner the accounts, records, documents, and files in his possession or control relating to the subject of the examination, and shall otherwise facilitate the examination.

(2) If the commissioner finds the accounts to be inadequate, or improperly kept or posted, he may employ experts to rewrite, post or balance them at the expense of the person being examined. [1947 c 79 § .03.03; Rem. Supp. 1947 § 45.03.03.]

48.03.040 Examination reports. (1) The commissioner shall make a full written report of each examination made by him containing only facts ascertained from the accounts, records, and documents examined and from the sworn testimony of individuals, and such conclusions and recommendations as may reasonably be warranted from such facts.

(2) The report shall be certified by the commissioner or by his examiner in charge of the examination, and shall be filed in the commissioner's office subject to subsection (3) of this section.

(3) The commissioner shall furnish a copy of the examination report to the person examined not less than ten days prior to the filing of the report for public inspection in the commissioner's office. If such person so requests in writing within such ten-day period, the commissioner shall hold a hearing to consider objections of such person to the report as proposed, and shall not so file the report until after such hearing and until after any modifications in the report deemed necessary by the commissioner have been made. [1965 ex.s. c 70 § 1; 1947 c 79 § .03.04; Rem. Supp. 1947 § 45.03.04.]

48.03.050 Reports withheld. The commissioner may withhold from public inspection any examination or investigation report for so long as he deems it advisable. [1947 c 79 § .03.05; Rem. Supp. 1947 § 45.03.05.]

48.03.060 Examination expense. (1) Examinations within this state of any insurer domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or his examiners and employees shall, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

(2) Every other examination, whatsoever, or any part of the examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, shall be made by the commissioner or by examiners designated by him and shall be at the expense of the person examined; but a domestic insurer shall not be liable for the compensation of examiners employed by the commissioner for such services outside this state.

(3) The person examined and liable therefor shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem

salary and expenses for employees examining insurers domiciled outside the state of Washington shall be established by the commissioner on the basis of the National Association of Insurance Commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the state personnel board and the expense schedule established by the office of financial management, whichever is higher. Domestic title insurer shall pay the examination expense and costs to the commissioner as itemized and billed by him.

The commissioner or his examiners shall not receive or accept any additional emolument on account of any examination. [1981 c 339 § 2; 1979 ex.s. c 35 § 1; 1947 c 79 § .03.06; Rem. Supp. 1947 § 45.03.06.]

48.03.070 Witnesses—Subpoenas—Depositions—Oaths. (1) The commissioner may take depositions, may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation: *Provided*, That the provisions of RCW 34.05.446 shall apply in lieu of the provisions of this section as to subpoenas relative to hearings in rule-making and adjudicative proceedings.

(2) The subpoena shall be effective if served within the state of Washington and shall be served in the same manner as if issued from a court of record.

(3) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(4) Enforcement of subpoenas shall be in accord with RCW 34.05.588. [1989 c 175 § 112; 1967 c 237 § 15; 1963 c 195 § 1; 1949 c 190 § 2; 1947 c 79 § .03.07; Rem. Supp. 1949 § 45.03.07.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 48.04

HEARINGS AND APPEALS

Sections

48.04.010	Hearings—Waiver.
48.04.020	Stay of action.
48.04.030	Place of hearing.
48.04.050	Show cause notice.
48.04.060	Adjourned hearings.
48.04.070	Nonattendance, effect of.
48.04.140	Stay of action on appeal.

48.04.010 Hearings—Waiver. (1) The commissioner may hold a hearing for any purpose within the scope of this code as he may deem necessary. He shall hold a hearing

(a) if required by any provision of this code, or

(b) upon written demand for a hearing made by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if such failure is deemed an act under any provision of this code, or by any report, promulgation, or order of the commissioner other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing.

(2) Any such demand for a hearing shall specify in what respects such person is so aggrieved and the grounds to be relied upon as basis for the relief to be demanded at the hearing.

(3) Unless a person aggrieved by a written order of the commissioner demands a hearing thereon within ninety days after receiving notice of such order, or in the case of a licensee under Title 48 RCW within ninety days after the commissioner has mailed the order to the licensee at the most recent address shown in the commissioner's licensing records for the licensee, the right to such hearing shall conclusively be deemed to have been waived.

(4) The commissioner shall hold such hearing demanded within thirty days after his receipt of the demand, unless postponed by mutual consent. [1988 c 248 § 2; 1967 c 237 § 16; 1963 c 195 § 2; 1947 c 79 § .04.01; Rem. Supp. 1947 § 45.04.01.]

48.04.020 Stay of action. (1) Such demand for a hearing received by the commissioner prior to the effective date of action taken or proposed to be taken by him shall stay such action pending the hearing, except as to action taken or proposed

(a) under an order on hearing, or

(b) under an order pursuant to an order on hearing, or

(c) under an order to make good an impairment of the assets of an insurer, or

(d) under an order of temporary suspension of license issued pursuant to RCW 48.17.540 as now or hereafter amended.

(2) In any case where an automatic stay is not provided for, and if the commissioner after written request therefor fails to grant a stay, the person aggrieved thereby may apply to the superior court for Thurston county for a stay of the commissioner's action. [1982 c 181 § 2; 1949 c 190 § 3; 1947 c 79 § .04.02; Rem. Supp. 1949 § 45.04.02.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.04.030 Place of hearing. The hearing shall be held at the place designated by the commissioner, and at his discretion it may be open to the public. [1947 c 79 § .04.03; Rem. Supp. 1947 § 45.04.03.]

48.04.050 Show cause notice. If any person is entitled to a hearing by any provision of this code before any proposed action is taken, the notice of the proposed action may be in the form of a notice to show cause stating that the proposed action may be taken unless such person shows cause at a hearing to be held as specified in the notice, why the proposed action should not be taken,

and stating the basis of the proposed action. [1947 c 79 § .04.05; Rem. Supp. 1947 § 45.04.05.]

48.04.060 Adjourned hearings. The commissioner may adjourn any hearing from time to time and from place to place without other notice of the adjourned hearing than announcement thereof at the hearing. [1947 c 79 § .04.06; Rem. Supp. 1947 § 45.04.06.]

48.04.070 Nonattendance, effect of. The validity of any hearing held in accordance with the notice thereof shall not be affected by failure of any person to attend or to remain in attendance. [1947 c 79 § .04.07; Rem. Supp. 1947 § 45.04.07.]

48.04.140 Stay of action on appeal. (1) The taking of an appeal shall not stay any action taken or proposed to be taken by the commissioner under the order appealed from unless a stay is granted by the court at a hearing held as part of the proceedings on appeal.

(2) A stay shall not be granted by the court in any case where the granting of a stay would tend to injure the public interest. In granting a stay, the court may require of the person taking the appeal such security or other conditions as it deems proper. [1988 c 248 § 3; 1947 c 79 § .04.14; Rem. Supp. 1947 § 45.04.14.]

Chapter 48.05

INSURERS—GENERAL REQUIREMENTS

Sections

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48.05.010 "Domestic," "foreign," "alien" insurers defined. (1) A "domestic" insurer is one formed under the laws of this state.

(2) A "foreign" insurer is one formed under the laws of the United States, of a state or territory of the United States other than this state, or of the District of Columbia.

(3) An "alien" insurer is one formed under the laws of a nation other than the United States.

(4) For the purposes of this code, "United States," when used to signify place, means only the states of the United States, the government of Puerto Rico and the District of Columbia. [1961 c 194 § 1; 1947 c 79 § .05.01; Rem. Supp. 1947 § 45.05.01.]

"Insurer" defined: RCW 48.01.050.

48.05.030 Certificate of authority required. (1) No person shall act as an insurer and no insurer shall transact insurance in this state other than as authorized by a certificate of authority issued to it by the commissioner and then in force; except, as to such transactions as are expressly otherwise provided for in this code.

(2) Every certificate of authority shall specify the name of the insurer, the location of its principal office, the name and location of the principal office of its attorney in fact if a reciprocal insurer, and the kind or kinds of insurance it is authorized to transact in this state.

(3) The investigation and adjustment of any claim in this state arising under an insurance contract issued by an unauthorized insurer, shall not be deemed to constitute the transacting of insurance in this state. [1947 c 79 § .05.03; Rem. Supp. 1947 § 45.05.03.]

48.05.040 Certificate of authority—Qualifications. To qualify for and hold a certificate of authority an insurer must:

(1) Be a stock, mutual, or reciprocal insurer of the same general type as may be formed as a domestic insurer under the provisions of chapter 48.06 RCW of this code, but this requirement shall not apply as to domestic mutual property insurers which, as of January 1, 1957, were lawfully transacting insurance on the assessment plan; and

(2) Have capital funds as required by this code, based upon the type and domicile of the insurer and the kinds of insurance proposed to be transacted; and

(3) Transact or propose to transact in this state insurances authorized by its charter, and only such insurance as meets the standards and requirements of this code; and

(4) Fully comply with, and qualify according to, the other provisions of this code. [1957 c 193 § 1; 1947 c 79 § .05.04; Rem. Supp. 1947 § 45.05.04.]

48.05.045 Certificate of authority not to be issued to governmentally owned insurer. No certificate of authority shall be issued to or exist with respect to any insurer which is owned and controlled, in whole or in substantial part, by any government or governmental agency. [1957 c 193 § 2.]

48.05.050 "Charter" defined. "Charter" means articles of incorporation, articles of agreement, articles of association of a corporation, or other basic constituent document of a corporation, or subscribers' agreement and attorney in fact agreement of a reciprocal insurer. [1947 c 79 § .05.05; Rem. Supp. 1947 § 45.05.05.]

48.05.060 "Capital funds" defined. "Capital funds" means the excess of the assets of an insurer over its liabilities. Capital stock, if any, shall not be deemed to be a liability for the purposes of this section. [1947 c 79 § .05.06; Rem. Supp. 1947 § 45.05.06.]

48.05.070 Application for certificate of authority. To apply for an original certificate of authority an insurer shall:

(1) File with the commissioner its request therefor showing:

(a) Its name, home office location, type of insurer, organization date, and state or country of its domicile.

(b) The kinds of insurance it proposes to transact.

(c) Additional information as the commissioner may reasonably require.

(2) File with the commissioner:

(a) A copy of its charter as amended, certified, if a foreign or alien insurer, by the proper public officer of the state or country of domicile.

(b) A copy of its bylaws, certified by its proper officer.

(c) A statement of its financial condition, management, and affairs on a form satisfactory to or furnished by the commissioner.

(d) If a foreign or alien insurer, or a domestic reciprocal insurer, an appointment of the commissioner as its attorney to receive service of legal process.

(e) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its proper officer.

(f) If a foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly organized and is authorized to transact the kinds of insurance proposed to be transacted.

(g) If a domestic reciprocal insurer, the declaration required by RCW 48.10.090 of this code.

(h) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with the provisions of this code.

(3) Deposit with the commissioner the fees required by this code to be paid for filing the accompanying documents, and for the certificate of authority, if granted. [1947 c 79 § .05.07; Rem. Supp. 1947 § 45.05.07.]

48.05.080 Foreign insurers—Deposit. (1) Prior to the issuance of a certificate of authority to a foreign insurer, it shall make a deposit of assets with the commissioner for the protection of all its policyholders, or of all of its policyholders and obligees or its policyholders and obligees within the United States, in amount and kind, subject to RCW 48.14.040, the same as is required of a like domestic insurer transacting like kinds of insurance.

(2) In lieu of such deposit or part thereof the commissioner may accept the certificate of the public official having supervision over insurers in any other state to the effect that a like deposit by such insurer or like part thereof in equal or greater amount is held in public custody in such state. [1955 c 86 § 1; 1947 c 79 § .05.08; Rem. Supp. 1947 § 45.05.08.]

Effective date—1955 c 86: "This act shall become effective on January 1, 1956." [1955 c 86 § 18.]

Supervision of transfers—1955 c 86: "All transfers authorized under this act shall be made under the supervision of the state auditor." [1955 c 86 § 19.]

48.05.090 Alien insurers—Assets required—Trust deposit. (1) An alien insurer shall not be authorized to transact insurance in this state unless it maintains within the United States assets in amount not less than its outstanding liabilities arising out of its insurance transactions in the United States, nor unless it maintains a trust deposit in an amount not less than the required reserves under its policies resulting from such transactions (after deducting, in the case of a life insurer, the amount of outstanding policy loans on such policies) plus assets equal to the larger of the following sums:

(a) The largest amount of deposit required under this title to be made in this state by any type of domestic insurer transacting like kinds of insurance; or

(b) Two hundred thousand dollars.

(2) The trust deposit shall be for the security of all policyholders or policyholders and obligees of the insurer

in the United States. It shall not be subject to diminution below the amount currently determined in accordance with subsection (1) of this section so long as the insurer has outstanding any liabilities arising out of its business transacted in the United States.

(3) The trust deposit shall be maintained with public depositaries or trust institutions within the United States approved by the commissioner. [1949 c 190 § 4; 1947 c 79 § .05.09; Rem. Supp. 1949 § 45.05.09.]

48.05.100 Alien insurers—Deposit resolution. An alien insurer shall file with the commissioner a certified copy of the resolution of its governing board by which the trust deposit was established, together with a certified copy of any trust agreement under which the deposit is held. [1947 c 79 § .05.10; Rem. Supp. 1947 § 45.05.10.]

48.05.105 Foreign or alien insurers—Three years active transacting required—Exception. No certificate of authority shall be granted to a foreign or alien applicant that has not actively transacted for three years the classes of insurance for which it seeks to be admitted; except, the foregoing shall not apply to any subsidiary of a seasoned, reputable insurer that has held a certificate of authority in this state for at least three years. [1967 c 150 § 2.]

48.05.110 Issuance of certificate of authority. If the commissioner finds that an insurer has met the requirements for and is fully entitled thereto under this code, he shall issue to it a proper certificate of authority. If the commissioner does not so find, the authority shall be refused within a reasonable length of time following completion by the insurer of the application therefor. [1947 c 79 § .05.11; Rem. Supp. 1947 § 45.05.11.]

48.05.120 Certificate of authority—Duration, renewal, amendment. (1) All certificates of authority shall continue in force until suspended, revoked, or not renewed. A certificate shall be subject to renewal annually on the first day of July upon application of the insurer and payment of the fee therefor. If not so renewed, the certificate shall expire as of the thirtieth day of June next preceding.

(2) The commissioner may amend a certificate of authority at any time in accordance with changes in the insurer's charter or insuring powers. [1957 c 193 § 3; 1955 c 31 § 1; 1947 c 79 § .05.12; Rem. Supp. 1947 § 45.05.12.]

48.05.130 Certificate of authority—Mandatory refusal, revocation, suspension. The commissioner shall refuse to renew or shall revoke or suspend an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer:

(1) Is a foreign or alien insurer and no longer qualifies or meets the requirements for the authority; or, is a domestic mutual or domestic reciprocal insurer, and fails to make good a deficiency of assets as required by the commissioner.

(2) Is a domestic stock insurer and has assets less in amount than its liabilities, including its capital stock as a liability, and has failed to make good such deficiency as required by the commissioner.

(3) Knowingly exceeds its charter powers or its certificate of authority. [1947 c 79 § .05.13; Rem. Supp. 1947 § 45.05.13.]

48.05.140 Certificate of authority—Discretionary refusal, revocation, suspension. The commissioner may refuse, suspend, or revoke an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer:

(1) Fails to comply with any provision of this code other than those for violation of which refusal, suspension, or revocation is mandatory, or fails to comply with any proper order or regulation of the commissioner.

(2) Is found by the commissioner to be in such condition that its further transaction of insurance in this state would be hazardous to policyholders and the people in this state.

(3) Refuses to remove or discharge a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude.

(4) Usually compels claimants under policies either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due.

(5) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another insurer which transacts insurance in this state without having a certificate of authority therefor, except as is permitted by this code.

(6) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(7) Fails to pay any final judgment rendered against it in this state upon any policy, bond, recognizance, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(8) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in insurance company managerial experience as to make a proposed operation hazardous to the insurance-buying public; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, reinsurance or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance.

(9) Does business through agents or brokers in this state or in any other state who are not properly licensed

under applicable laws and duly enacted regulations adopted pursuant thereto. [1973 1st ex.s. c 152 § 1; 1969 ex.s. c 241 § 3; 1967 c 150 § 4; 1947 c 79 § .05.14; Rem. Supp. 1947 § 45.04.14.]

Severability—1973 1st ex.s. c 152: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 152 § 7.]

48.05.150 Notice of intention to refuse, revoke, or suspend. The commissioner shall give an insurer notice of his intention to suspend, revoke, or refuse to renew its certificate of authority not less than ten days before the order of suspension, revocation or refusal is to become effective; except that no advance notice of intention is required where the order results from a domestic insurer's failure to make good a deficiency of assets as required by the commissioner. [1947 c 79 § .05.15; Rem. Supp. 1947 § 45.05.15.]

48.05.160 Period of suspension. The commissioner shall not suspend an insurer's certificate of authority for a period in excess of one year, and he shall state in his order of suspension the period during which it shall be effective. [1947 c 79 § .05.16; Rem. Supp. 1947 § 45.05.16.]

48.05.170 Reauthorization, limitation upon. No insurer whose certificate of authority has been suspended, revoked, or refused shall subsequently be authorized unless the grounds for such suspension, revocation, or refusal no longer exist and the insurer is otherwise fully qualified. [1947 c 79 § .05.17; Rem. Supp. 1947 § 45.05.17.]

48.05.180 Notice of refusal, revocation, suspension—Effect upon agents' authority. Upon the suspension, revocation or refusal of an insurer's certificate of authority, the commissioner shall give notice thereof to the insurer and shall likewise suspend, revoke or refuse the authority of its agents to represent it in this state and give notice thereof to the agents. [1947 c 79 § .05.18; Rem. Supp. 1947 § 45.05.18.]

48.05.185 Fine in addition or in lieu of suspension, revocation, or refusal. After hearing or with the consent of the insurer and in addition to or in lieu of the suspension, revocation, or refusal to renew any certificate of authority the commissioner may levy a fine upon the insurer in an amount not less than two hundred fifty dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the certificate of authority of the insurer if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state

treasurer for the account of the general fund. [1980 c 102 § 1; 1975 1st ex.s. c 266 § 3; 1965 ex.s. c 70 § 3.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.05.190 Name of insurer. (1) Every insurer shall conduct its business in its own legal name.

(2) No insurer shall assume or use a name deceptively similar to that of any other authorized insurer. [1947 c 79 § .05.19; Rem. Supp. 1947 § 45.05.19.]

48.05.200 Commissioner as attorney for service of process—Exception. (1) Each authorized foreign or alien insurer shall appoint the commissioner as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute service upon the insurer. Service of legal process against such insurer can be had only by service upon the commissioner, except actions upon contractor bonds pursuant to RCW 18.27.040, where service may be upon the department of labor and industries.

(2) With the appointment the insurer shall designate by name and address the person to whom the commissioner shall forward legal process so served upon him or her. The insurer may change such person by filing a new designation.

(3) The appointment of the commissioner as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in this state any contract made by the insurer or liabilities or duties arising therefrom. [1985 c 264 § 3; 1947 c 79 § .05.20; Rem. Supp. 1947 § 45.05.20.]

48.05.210 Service of process—Procedure. (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney shall be served upon him either by a person competent to serve a summons, or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(2) The commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the insurer in its most recent such designation filed with the commissioner.

(3) The commissioner shall keep a record of the day and hour of service upon him of all legal process. No proceedings shall be had against the insurer, and the insurer shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [1981 c 339 § 3; 1947 c 79 § .05.21; Rem. Supp. 1947 § 45.05.21.]

48.05.215 Unauthorized foreign or alien insurers—Jurisdiction of state courts—Service of process—Procedure. (1) Any foreign or alien insurer not thereunto authorized by the commissioner, whether it be a surplus lines insurer operating under chapter 48.15

RCW or not, who, by mail or otherwise, solicits insurance business in this state or transacts insurance business in this state as defined by RCW 48.01.060, thereby submits itself to the jurisdiction of the courts of this state in any action, suit or proceeding instituted by or on behalf of an insured, beneficiary or the commissioner arising out of such unauthorized solicitation of insurance business, including, but not limited to, an action for injunctive relief by the commissioner.

(2) In any such action, suit or proceeding instituted by or on behalf of an insured or beneficiary, service of legal process against such unauthorized foreign or alien insurer may be made by service of duplicate copies of legal process on the commissioner by a person competent to serve a summons or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action. The commissioner shall forthwith mail one of the copies of the process, by registered mail with return receipt requested, to the defendant at its last known principal place of business. The defendant insurer shall have forty days from the date of the service on the commissioner within which to plead, answer or otherwise defend the action.

(3) In any such action, suit or proceeding by the commissioner, service of legal process against such unauthorized foreign or alien insurer may be made by personal service of legal process upon any officer of such insurer at its last known principal place of business outside the state of Washington. The summons upon such unauthorized foreign or alien insurer shall contain the same requisites and be served in like manner as personal summons within the state of Washington; except, the insurer shall have forty days from the date of such personal service within which to plead, answer or otherwise defend the action. [1981 c 339 § 4; 1967 c 150 § 3.]

48.05.220 Venue of actions against insurer. Suit upon causes of action arising within this state against an insurer upon an insurance contract shall be brought in the county where the cause of action arose. [1947 c 79 § .05.22; Rem. Supp. 1947 § 45.05.22.]

48.05.250 Annual statement. (1) Each authorized insurer shall annually, before the first day of March, file with the commissioner a true statement of its financial condition, transactions, and affairs as of the thirty-first day of December preceding. The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by this code and by the commissioner. The statement shall be verified by the oaths of at least two of the insurer's officers.

(2) The annual statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.

(3) The commissioner shall suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or during any extension of time

therefor which the commissioner, for good cause, may grant. [1983 c 85 § 1; 1947 c 79 § .05.25; Rem. Supp. 1947 § 45.05.25.]

Advertising of financial condition: RCW 48.30.070.

Assets and liabilities: Chapter 48.12 RCW.

False financial statements: RCW 48.30.030.

48.05.270 Alien insurer—Capital funds, determination. (1) The capital funds of an alien insurer shall be deemed to be the amount by which its assets, deposited and otherwise held as provided in RCW 48.05.090 exceed its liabilities with respect to its business transacted in the United States.

(2) Assets of such insurer held in any state for the special protection of policyholders and obligees in such state shall not constitute assets of the insurer for the purposes of this code. Liabilities of the insurer so secured by such assets, but not exceeding the amount of such assets, may be deducted in computing the insurer's liabilities for the purpose of this section. [1947 c 79 § .05.27; Rem. Supp. 1947 § 45.05.27.]

48.05.280 Records and accounts of insurers. Every insurer shall keep full and adequate accounts and records of its assets, obligations, transactions, and affairs. [1947 c 79 § .05.28; Rem. Supp. 1947 § 45.05.28.]

48.05.290 Withdrawal of insurer—Reinsurance. (1) No insurer shall withdraw from this state until its direct liability to its policyholders and obligees under all its insurance contracts then in force in this state has been assumed by another authorized insurer under an agreement approved by the commissioner. In the case of a life insurer, its liability pursuant to contracts issued in this state in settlement of proceeds under its policies shall likewise be so assumed.

(2) The commissioner may waive this requirement if he finds upon examination that a withdrawing insurer is then fully solvent and that the protection to be given its policyholders in this state will not be impaired by the waiver.

(3) The assuming insurer shall within a reasonable time replace the assumed insurance contracts with its own, or by endorsement thereon acknowledge its liability thereunder. [1947 c 79 § .05.29; Rem. Supp. 1947 § 45.05.29.]

48.05.300 Credit disallowed for reinsurance ceded to an insurer—Exceptions. No credit shall be allowed to any insurer, as an asset or as a deduction from liability for reinsurance ceded to an insurer, other than under a contract of ocean marine insurance except as provided in RCW 48.12.160. [1977 ex.s. c 180 § 1; 1947 c 79 § .05.30; Rem. Supp. 1947 § 45.05.30.]

48.05.310 General agents, managers—Appointment—Powers—Licensing. (1) An insurer appointing any person as its general agent or manager to represent it as such in this state shall file notice of the appointment with the commissioner on forms prescribed and furnished by the commissioner.

(2) Any such general agent or manager shall have such authority, consistent with this code, as may be conferred by the insurer. A general agent resident in this state and licensed, as in this section provided, may exercise the powers conferred by this code upon agents licensed for the kinds of insurance which the general agent is authorized to transact for the insurer so appointing him.

(3) Any such general agent may accept applications for insurance from licensed agents who are not appointed by the insurer of such general agent where the risk involved is placed in a nonstandard or specialty market of an authorized insurer as defined by regulation of the commissioner. Such nonstandard or specialty business shall not be bound by any agent not appointed by the insurer. A general agent may supply such licensed, nonappointed agent with material to write nonstandard or specialty insurance business including, but not limited to, applications for insurance, underwriting criteria, and rates. A general agent shall not provide any licensed, nonappointed agent with indicia of authority to bind an insurance risk and the general agent and nonappointed agent shall provide written disclaimers of binding authority to an applicant or prospective insured in such form as prescribed by the commissioner.

(4) The appointment of a resident general agent shall not be effective unless the person so appointed is licensed as the general agent of such insurer by the commissioner upon application and payment of the fee therefor as provided in RCW 48.14.010.

(5) Every such license shall expire as at close of business on the thirty-first day of March next following the date of issue, and may be renewed for an additional year upon application and payment of the fee therefor.

(6) The commissioner may deny, suspend, or revoke any such license for any cause specified in RCW 48.17-.530 and in the manner provided in RCW 48.17.540. [1982 c 181 § 17; 1947 c 79 § .05.31; Rem. Supp. 1947 § 45.05.31.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.05.320 Reports of fire losses. (1) Each authorized insurer shall promptly report to the director of community development, through the director of fire protection, upon forms as prescribed and furnished by him or her, each fire loss of property in this state reported to it and whether the loss is due to criminal activity or to undetermined causes.

(2) Each such insurer shall likewise report to the director of community development, through the director of fire protection, upon claims paid by it for loss or damage by fire in this state. Copies of all reports required by this section shall be promptly transmitted to the state insurance commissioner. [1986 c 266 § 66; 1985 c 470 § 16; 1947 c 79 § .05.32; Rem. Supp. 1947 § 45.05.32.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.05.330 Insurers—Combination of kinds of insurance authorized—Exceptions. An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combinations of kinds of insurance as defined in chapter 48.11 RCW, except:

(1) A life insurer may grant annuities and may be authorized to transact in addition only disability insurance; except, that the commissioner may, if the insurer otherwise qualifies therefor, continue so to authorize any life insurer which immediately prior to June 13, 1963 was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability insurances and annuity business.

(2) A reciprocal insurer shall not transact life insurance.

(3) A title insurer shall be a stock insurer and shall not transact any other kind of insurance. This provision shall not prohibit the ceding of reinsurance by a title insurer to insurers other than mutual or reciprocal insurers. [1963 c 195 § 6.]

48.05.340 Capital and surplus requirements. (1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as shown below, a foreign or alien insurer, whether stock or mutual, or a domestic insurer hereafter formed shall possess and thereafter maintain unimpaired paid-in capital stock, if a stock insurer, or unimpaired surplus if a mutual insurer, and shall possess when first so authorized additional funds in surplus as follows:

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Life	\$1,000,000	\$1,000,000
Disability	1,000,000	1,000,000
Life and disability	1,200,000	1,200,000
Property	1,000,000	1,000,000
Marine & transportation	1,000,000	1,000,000
General casualty	1,200,000	1,200,000
Vehicle	1,000,000	1,000,000
Surety	1,000,000	1,000,000
Any two of the following kinds of insurance: Property, marine & transportation, general casualty, vehicle, surety, disability	1,500,000	1,500,000
Multiple lines (all insurances except life and title insurance)	1,500,000	1,500,000
Title (in accordance with the provisions of chapter 48.29 RCW)		

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it may operate or propose to operate, whether or not only a portion of such kinds are to be transacted in this state.

(3) An insurer holding a certificate of authority to transact insurance in this state immediately prior to July 1, 1980, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special surplus as required of it under laws in force immediately prior to such effective date; and any proposed domestic insurer which is in process of formation or financing under a solicitation permit which is outstanding immediately prior to July 1, 1980, shall, if otherwise qualified therefor, be authorized to transact any kind or kinds of insurance upon the basis of the capital and surplus requirements of such an insurer under the laws in force immediately prior to such effective date: *Provided*, That any applicable action pending from the period between June 8, 1967, and July 1, 1980, shall be governed by this section as then in effect. [1982 c 181 § 3; 1980 c 135 § 1; 1967 c 150 § 5; 1963 c 195 § 7.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.05.350 General casualty insurer combining disability, fidelity, insurance. An insurer authorized to transact general casualty insurance shall be authorized to transact disability insurance and fidelity insurance without requiring additional financial qualifications. [1963 c 195 § 8.]

48.05.360 Special surplus requirements for certain combinations. An insurer shall not be authorized to transact any one of the following insurances,—vehicle, or general casualty, or marine and transportation, or surety,—with any additional kind of insurance unless it maintains at all times special surplus of not less than one hundred thousand dollars in addition to the paid-in capital stock if a stock insurer or basic surplus if a mutual or reciprocal insurer otherwise required. This section does not apply to combinations transacted by a general casualty insurer pursuant to RCW 48.05.350. [1963 c 195 § 9.]

48.05.370 Fiduciary relationship to insurer of officers, directors or corporation holding controlling interest. Officers and directors of an insurer or a corporation holding a controlling interest in an insurer shall be deemed to stand in a fiduciary relation to the insurer, and shall discharge the duties of their respective positions in good faith, and with that diligence, care and skill which ordinary prudent men would exercise under similar circumstances in like positions. [1969 ex.s. c 241 § 1.]

48.05.380 Reports by property and casualty insurers—Rules. The insurance commissioner shall promulgate rules requiring insurers who are authorized to write property and casualty insurance in the state of Washington to record and report their Washington state loss and expense experiences and other data, as required by RCW 48.05.390. [1986 c 148 § 1; 1985 c 238 § 1.]

Effective date—1985 c 238: "The requirements of RCW 48.05.380 and 48.05.390 shall commence with the year-end report for the reporting period ending December 31, 1986. In addition, the data required under RCW 48.05.390 shall be provided for the years 1975 through 1985 and shall be filed with the commissioner on or before March 1, 1986." [1985 c 238 § 3.]

Severability—1985 c 238: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 238 § 4.]

48.05.390 Reports by various insurers—Contents.

(1) The report required by RCW 48.05.380 shall include the types of insurance written by the insurer for policies pertaining to:

- (a) Medical malpractice for physicians and surgeons, hospitals, other health care professions, and other health care facilities individually;
- (b) Products liability;
- (c) Attorneys' malpractice;
- (d) Architects' and engineers' malpractice;
- (e) Municipal liability; and
- (f) Day care center liability.

(2) The report shall include the following data by the type of insurance for the previous year ending on the thirty-first day of December:

- (a) Direct premiums written;
- (b) Direct premiums earned;
- (c) Net investment income, including net realized capital gain and losses, using appropriate estimates where necessary;
- (d) Incurred claims, development as the sum of the following:
 - (i) Dollar amount of claims closed with payments; plus
 - (ii) Reserves for reported claims at the end of the current year; minus
 - (iii) Reserves for reported claims at the end of the previous year; plus
 - (iv) Reserves for incurred but not reported claims at the end of the current year; minus
 - (v) Reserves for incurred but not reported claims at the end of the previous year; plus
 - (vi) Reserves for loss adjustment expense at the end of the current year; minus
 - (vii) Reserves for loss adjustment expense at the end of the previous year.

(e) Actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, advertising, general office expenses, taxes, licenses and fees, and all other expenses;

- (f) Net underwriting gain or loss;
- (g) Net operation gain or loss, including net investment income;

(h) The number and dollar amount of claims closed with payment, by year incurred and the amount reserved for them;

(i) The number of claims closed without payment and the dollar amount reserved for those claims; and

(j) Other information requested by the insurance commissioner.

(3) The report shall be filed annually with the commissioner, no later than the first day of May. [1988 c 248 § 6; 1986 c 148 § 2; 1985 c 238 § 2.]

Effective date—Severability—1985 c 238: See notes following RCW 48.05.380.

48.05.400 Annual filing and fee to National Association of Insurance Commissioners—Penalty. (1) Each domestic, foreign, and alien insurer that is authorized to transact insurance in this state shall annually, on or before March 1 of each year, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with such additional filings as prescribed by the commissioner for the preceding year. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.

(2) Coincident with the filing of its annual statement convention blank and other filings, each such insurer shall pay a reasonable fee directly to the National Association of Insurance Commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement convention blank.

(3) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (1) of this section shall be considered to be in compliance with this section.

(4) In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, National Association of Insurance Commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissimulation of the data and information collected for the filings required under this section.

(5) The commissioner may suspend, revoke, or refuse to renew the certificate of authority of any insurer failing to file its annual statement or pay the fees when due or within any extension of time which the commissioner, for good cause, may have granted. [1987 c 132 § 1.]

Chapter 48.06

ORGANIZATION OF DOMESTIC INSURERS

Sections

48.06.010	Types of domestic insurers permitted.
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48.06.200	Incorporation, articles of—Contents.

48.06.010 Types of domestic insurers permitted. An insurer formed in this state shall be either

- (1) An incorporated stock insurer, or
- (2) An incorporated mutual insurer, or
- (3) An incorporated specific risks mutual property insurer, or
- (4) An incorporated mutual assessment property insurer only, or
- (5) An incorporated farm mutual assessment property insurer only, or
- (6) A reciprocal insurer, with respective powers, duties, and restrictions as provided in this code. [1947 c 79 § .06.01; Rem. Supp. 1947 § 45.06.01.]

48.06.020 Assessment mutuals prohibited—Exceptions. No insurer shall be formed or be authorized in this state to issue contracts of insurance the performance of which is contingent upon the payment of assessments, assessment premiums, or calls made upon its members. Mutual assessment property insurers and farm mutual assessment property insurers shall be the only exception to this provision. [1947 c 79 § .06.02; Rem. Supp. 1947 § 45.06.02.]

48.06.030 Solicitation permit. (1) No person forming or proposing to form in this state an insurer, or insurance holding corporation, or stock corporation to finance an insurer or insurance production therefor, or corporation to manage an insurer, or corporation to be attorney in fact for a reciprocal insurer, or a syndicate for any of such purposes, shall advertise, or solicit or receive any funds, agreement, stock subscription, or membership on account thereof unless he has applied for and has received from the commissioner a solicitation permit.

(2) Any person violating this section shall be subject to a fine of not more than ten thousand dollars or imprisonment for not more than ten years, or by both fine and imprisonment. [1947 c 79 § .06.03; Rem. Supp. 1947 § 45.06.03.]

48.06.040 Application for solicitation permit. To apply for a solicitation permit the person shall:

- (1) File with the commissioner a request therefor showing,
 - (a) name, type, and purpose of insurer, corporation or syndicate proposed to be formed;

(b) names, addresses, fingerprints, and business records of each person associated or to be associated in the formation of the proposed insurer, corporation, or syndicate;

(c) full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the proposed insurer, corporation, or syndicate, or the formation thereof;

(d) the plan according to which solicitations are to be made;

(e) such additional information as the commissioner may reasonably require.

(2) File with the commissioner,

(a) original and copies in triplicate of proposed articles of incorporation, or syndicate agreement; or, if the proposed insurer is a reciprocal, original and duplicate of the proposed subscribers' agreement and attorney in fact agreement;

(b) original and duplicate copy of any proposed bylaws;

(c) copy of any security proposed to be issued and copy of application or subscription agreement therefor;

(d) copy of any insurance contract proposed to be offered and copy of application therefor;

(e) copy of any prospectus, advertising, or literature proposed to be used;

(f) copy of proposed form of any escrow agreement required.

(3) Deposit with the commissioner the fees required by law to be paid for the application, for filing of the articles of incorporation of an insurer, for filing the subscribers' agreement and attorney in fact agreement if the proposed insurer is a reciprocal, for the solicitation permit, if granted, and for filing articles of incorporation with the secretary of state. [1967 c 150 § 6; 1947 c 79 § .06.04; Rem. Supp. 1947 § 45.06.04.]

48.06.050 Procedure upon application. The commissioner shall expeditiously examine the application for a solicitation permit and make any investigation relative thereto deemed necessary. If the commissioner finds that

(1) the application is complete; and

(2) the documents therewith filed are equitable in terms and proper in form; and

(3) the management of the company, whether by its directors, officers, or by any other means is competent and trustworthy and not so lacking in managerial experience as to make a proposed operation hazardous to the insurance-buying public; and that there is no reason to believe the company is affiliated, directly or indirectly, through ownership, control, reinsurance, or other insurance or business relations, with any other person or persons whose business operations are or have been marked, to the detriment of the policyholders or stockholders or investors or creditors or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance; and

(4) the agreements made or proposed are equitable to present and future shareholders, subscribers, members or policyholders, he shall give notice to the applicant that

he will issue a solicitation permit, stating the terms to be contained therein, upon the filing of the bond required by RCW 48.06.110 of this code.

If the commissioner does not so find, he shall give notice to the applicant that the permit will not be granted, stating the grounds therefor, and shall refund to the applicant all sums so deposited except the application fee. [1967 c 150 § 7; 1947 c 79 § .06.05; Rem. Supp. 1947 § 45.06.05.]

48.06.060 Issuance of permit—Bond. Upon the filing of the bond required by RCW 48.06.110 after notice by the commissioner, the commissioner shall

(1) file the articles of incorporation of the proposed incorporated insurer or other corporation with the secretary of state, and

(2) issue to the applicant a solicitation permit. [1947 c 79 § .06.06; Rem. Supp. 1947 § 45.06.06.]

48.06.070 Duration of permit—Contents. Every solicitation permit issued by the commissioner shall:

(1) Be for a period of not over two years, subject to the right of the commissioner to grant a reasonable extension for good cause.

(2) State the securities for which subscriptions are to be solicited, the number, classes, par value, and selling price thereof, or identify the insurance contract for which applications and advance premiums or deposits are to be solicited.

(3) Limit the portion of funds received on account of stock or syndicate subscriptions, if any are proposed to be taken, which may be used for promotion and organization expenses to such amount as he deems adequate, but in no event to exceed fifteen percent of such funds as and when actually received.

(4) If to be a mutual or reciprocal insurer, limit the portion of funds received on account of applications for insurance which may be used for promotion or organization expenses to a reasonable commission upon such funds, giving consideration to the kind of insurance and policy involved and to the costs incurred by insurers generally in the production of similar business, and provide that no such commission shall be deemed to be earned nor be paid until the insurer has received its certificate of authority and the policies applied for and upon which such commission is to be based, have been actually issued and delivered.

(5) Contain such other information required by this chapter or reasonable conditions relative to accounting and reports or otherwise as the commissioner deems necessary. [1953 c 197 § 1; 1947 c 79 § .06.07; Rem. Supp. 1947 § 45.06.07.]

48.06.080 Permit as inducement. The granting of a solicitation permit is permissive only and shall not constitute an endorsement by the commissioner of any person or thing related to the proposed insurer, corporation, or syndicate and the existence of the permit shall not be advertised or used as an inducement in any solicitation. The substance of this section in bold faced type not less

than ten point shall be printed at the top of each solicitation permit. [1947 c 79 § .06.08; Rem. Supp. 1947 § 45.06.08.]

48.06.090 Solicitors' licenses. Solicitation for sale of securities to members of the public under a solicitation permit shall be made only by individuals licensed therefor pursuant to the provisions of the securities act. [1949 c 190 § 5; 1947 c 79 § .06.09; Rem. Supp. 1949 § 45.06.09.]

48.06.100 Modification, revocation of permit. (1) The commissioner may, for cause, modify a solicitation permit, or may, after a hearing, revoke any solicitation permit for violation of any provision of this code, or of the terms of the permit, or of any proper order of the commissioner, or for misrepresentation.

(2) The commissioner shall revoke a solicitation permit if requested in writing by a majority of the syndicate members, or by a majority of the incorporators and two-thirds of the subscribers to stock or applicants for insurance in the proposed incorporated insurer or corporation, or if he is so requested by a majority of the subscribers of a proposed reciprocal insurer. [1947 c 79 § .06.10; Rem. Supp. 1947 § 45.06.10.]

48.06.110 Bond—Cash deposit. (1) The commissioner shall not issue a solicitation permit until the person applying therefor files with him a corporate surety bond in the penalty of fifty thousand dollars, in favor of the state and for the use and benefit of the state and of subscribers and creditors of the proposed organization.

The bond shall be conditioned upon the payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the proposed organization before completion of organization or in event a certificate of authority is not granted; and upon a full accounting for funds received until the proposed insurer has been granted its certificate of authority, or until the proposed corporation or syndicate has completed its organization as defined in the solicitation permit.

(2) In lieu of filing such bond, the person may deposit with the commissioner fifty thousand dollars in cash or in United States government bonds at par value, to be held in trust upon the same conditions as required for the bond.

(3) The commissioner may waive the requirement for a bond or deposit in lieu thereof if the permit provides that:

(a) The proposed securities are to be distributed solely and finally to those few persons who are the active promoters intimate to the formation of the insurer, or other corporation or syndicate, or

(b) The securities are to be issued in connection with subsequent financing as provided in RCW 48.06.180.

(4) Any bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement or termination of all liabilities against it. [1969 ex.s. c 241 § 2; 1955 c 86 § 2; 1953 c 197 § 2; 1947 c 79 § .06.11; Rem. Supp 1947 § 45.06.11.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.06.120 Escrow of funds. (1) All funds received pursuant to a solicitation permit shall be deposited and held in escrow in a bank or trust company under an agreement approved by the commissioner. No part of any such deposit shall be withdrawn, except:

(a) For the payment of promotion and organization expenses as authorized by the solicitation permit; or

(b) for the purpose of making any deposit with the commissioner required for the issuance of a certificate of authority to an insurer; or

(c) if the proposed organization is not to be an insurer, upon completion of payments on stock or syndicate subscriptions made under the solicitation permit and deposit or appropriation of such funds to the purposes specified in the solicitation permit; or

(d) for making of refunds as provided in RCW 48.06.170.

(2) When the commissioner has issued a certificate of authority to an insurer any such funds remaining in escrow for its account shall be released to the insurer. [1947 c 79 § .06.12; Rem. Supp. 1947 § 45.06.12.]

48.06.130 Liability of organizers—Organization expense. (1) The incorporators of any insurer or other corporation, or the persons proposing to form a reciprocal insurer, or a syndicate, shall be jointly and severally liable for its debts or liabilities until it has secured a certificate of authority, if an insurer, or has completed its organization if a corporation other than an insurer or a syndicate.

(2) Any portion of funds received on account of stock or syndicate subscriptions which is allowed therefor under the solicitation permit, may be applied concurrently toward the payment of promotion and organization expense theretofore incurred. [1947 c 79 § .06.13; Rem. Supp. 1947 § 45.06.13.]

48.06.150 Payment for subscriptions—Forfeiture.

(1) No such proposed stock insurer, corporation, or syndicate shall issue any share of stock or participation agreement except for payment in cash or in securities eligible for investment of funds of insurers. No such shares or agreement shall be issued until all subscriptions received under the solicitation permit have been so fully paid, nor, if an insurer, until a certificate of authority has been issued to it.

(2) Every subscription contract to shares of a stock insurer or other corporation calling for payment in installments, together with all amounts paid thereon may be forfeited at the option of the corporation, upon failure to make good a delinquency in any installment upon not less than forty-five days' notice in writing, and every such contract shall so provide. [1947 c 79 § .06.15; Rem. Supp. 1947 § 45.06.15.]

48.06.160 Insurance applications—Mutual and reciprocal insurers. All applications for insurance obtained in forming a mutual or reciprocal insurer shall provide that:

(1) Issuance of the policy is contingent upon completion of organization of the insurer and issuance to it of a certificate of authority; and

(2) the prepaid premium or deposit will be refunded in full to the applicant if the organization is not completed and certificate of authority issued prior to the solicitation permit's date of expiration; and

(3) the agreement for insurance is not effective until a policy has been issued under it. [1947 c 79 § .06.16; Rem. Supp. 1947 § 45.06.16.]

48.06.170 Procedure on failure to complete organization or to qualify. The commissioner shall withdraw all funds held in escrow and refund to subscribers or applicants all sums paid in on stock or syndicate subscriptions, less that part of such sums paid in on subscriptions as has been allowed and used for promotion and organization expenses, and all sums paid in on insurance applications, and shall dissolve the proposed insurer, corporation or syndicate if

(1) the proposed insurer, corporation or syndicate fails to complete its organization and obtain full payment for subscriptions and applications, and, if an insurer, it fails to secure its certificate of authority, all before expiration of the solicitation permit; or

(2) the commissioner revokes the solicitation permit. [1947 c 79 § .06.17; Rem. Supp. 1947 § 45.06.17.]

48.06.180 Subsequent financing. (1) No domestic insurer, or insurance holding corporation, or stock corporation for financing operations of a mutual insurer, or attorney in fact corporation of a reciprocal insurer, after

(a) it has received a certificate of authority, if an insurer, or

(b) it has completed its initial organization and financing if a corporation other than an insurer, shall solicit or receive funds in exchange for any new issue of its corporate securities, other than through a stock dividend, until it has applied to the commissioner for, and has been granted, a solicitation permit.

(2) The commissioner shall issue such a permit unless he finds that:

(a) The funds proposed to be secured are excessive in amount for the purpose intended, or

(b) the proposed securities or the manner of their distribution are inequitable, or

(c) the issuance of the securities would jeopardize the interests of policyholders or the holders of other securities of the insurer or corporation.

(3) Any such solicitation permit granted by the commissioner shall be for such duration, and shall contain such terms and be issued upon such conditions as the commissioner may reasonably specify or require. [1949 c 190 § 6; 1947 c 79 § .06.18; Rem. Supp. 1949 § 45.06.18.]

48.06.190 Penalty for exhibiting false accounts, etc. Every person who, with intent to deceive, knowingly exhibits any false account, or document, or advertisement,

relative to the affairs of any insurer, or of any corporation or syndicate of the kind enumerated in RCW 48.06.030, formed or proposed to be formed, shall be guilty of a felony. [1947 c 79 § .06.19; Rem. Supp. 1947 § 45.06.19.]

48.06.200 Incorporation, articles of—Contents.

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

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

(3) The incorporators shall execute articles of incorporation in triplicate and acknowledge their signatures thereunto before an officer authorized to take acknowledgments of deeds.

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

(5) The articles of incorporation shall state:

First: The names and addresses of the incorporators.

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

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

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

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

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

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

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

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

Eighth: Other provisions not inconsistent with law as may be deemed proper by the incorporators. [1981 c 302 § 37; 1963 c 60 § 1; 1949 c 190 § 7; 1947 c 79 § .06.20; Rem. Supp. 1949 § 45.06.20.]

Severability—1981 c 302: See note following RCW 19.76.100.

Chapter 48.07

DOMESTIC INSURERS—POWERS

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48.07.040	Annual, special meetings.
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Business corporations: Title 23B RCW.

Dissolution and winding up business corporation: Chapter 23B.14 RCW.

Interlocking ownership, management: RCW 48.30.250.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

48.07.010 Application of code to existing insurers. Existing authorized domestic insurers shall continue to insure only in accordance with the provisions of this code. [1947 c 79 § .07.01; Rem. Supp. 1947 § 45.07.01.]

48.07.020 Principal office. Every domestic insurer shall establish and maintain in this state its principal office and place of business. [1947 c 79 § .07.02; Rem. Supp. 1947 § 45.07.02.]

48.07.030 Application of general corporation laws. The laws of this state relating to private corporations, except where inconsistent with the express provisions of this code, shall govern the corporate powers, duties, and relationships of incorporated domestic insurers and insurance holding corporations formed under the laws of the state of Washington. [1985 c 364 § 1; 1947 c 79 § .07.03; Rem. Supp. 1947 § 45.07.03.]

Severability—1985 c 364: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 364 § 5.]

Provisions as to general business corporations: Title 23B RCW.

48.07.040 Annual, special meetings. Each incorporated domestic insurer shall, in the month of January, February, March, or April, hold the annual meeting of

its shareholders or members for the purpose of receiving reports of its affairs and to elect directors. Each domestic insurance holding corporation shall hold an annual meeting of its shareholders at such time and place as may be stated in or fixed in accordance with its bylaws. Special meetings of the shareholders of an incorporated domestic insurer or domestic insurance holding corporation shall be called and held by such persons and in such a manner as stated in the articles of incorporation or bylaws. [1985 c 364 § 2; 1965 ex.s. c 70 § 4; 1947 c 79 § .07.04; Rem. Supp. 1947 § 45.07.04.]

Severability—1985 c 364: See note following RCW 48.07.030.

48.07.050 Directors—Qualifications—Removal. Not less than three-fourths of the directors of an incorporated domestic insurer shall be United States or Canadian citizens, and a majority of the board of directors of a mutual life insurer shall be residents of this state. The directors of a domestic insurer or domestic insurance holding corporation may be removed with cause by a vote of a majority of its voting capital stock or members (if a mutual insurer) at a valid meeting and said directors may be removed without cause by a vote of sixty-seven percent of its voting capital stock or members (if a mutual insurer) at a valid meeting. [1989 c 24 § 1; 1985 c 364 § 3; 1957 c 193 § 21; 1947 c 79 § .07.05; Rem. Supp. 1947 § 45.07.05.]

Severability—1985 c 364: See note following RCW 48.07.030.

48.07.060 Corrupt practices—Penalty. No person shall buy or sell or barter a vote or proxy, relative to any meeting of shareholders or members of an incorporated domestic insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any such meeting. Violation of this section shall constitute a gross misdemeanor. [1947 c 79 § .07.06; Rem. Supp. 1947 § 45.07.06.]

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

(2) The president and secretary of the insurer shall, under the corporate seal, certify the amendment in triplicate, and file it in the offices of the secretary of state, the commissioner, and the insurer, as required under this code for original articles of incorporation. Thereupon, subject to the requirements of RCW 48.08.010 relative to increase of capital stock of a stock insurer, the amendment shall become effective. [1985 c 364 § 4; 1981 c 302 § 38; 1947 c 79 § .07.07; Rem. Supp. 1947 § 45.07.07.]

Severability—1985 c 364: See note following RCW 48.07.030.

Severability—1981 c 302: See note following RCW 19.76.100.

48.07.080 Guarantee of officers' obligations prohibited. No domestic insurer or its affiliates or subsidiaries shall guarantee the financial obligation of any director or officer of such insurer or affiliate or subsidiary in his personal capacity, and any such guaranty attempted shall be void.

This prohibition shall not apply to obligations of the insurer under surety bonds or insurance contracts issued in the regular course of business. [1947 c 79 § .07.08; Rem. Supp. 1947 § 45.07.08.]

48.07.090 Management, control, and exclusive agency contracts. (1) No incorporated domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the control and management of the insurer, or control of underwriting, investment, loss adjustments, production, or other major function of the insurer, all to the material exclusion of its board of directors, or the controlling or preemptive right to produce substantially all insurance business for the insurer, or, if an officer, director, or otherwise part of the insurer's management, is directly or indirectly to receive any commission, bonus, or compensation based upon the volume of the insurer's business or transactions unless such contract has been filed with and approved by the commissioner. The contract shall be deemed approved unless disapproved by the commissioner within thirty days after date of filing. Any disapproval shall be delivered to the insurer in writing, stating the reasons therefor.

(2) Any such contract hereafter made shall provide that any such manager, producer of its business, or contract holder shall within ninety days after expiration of each calendar year thereunder furnish the insurer's board of directors a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, with specification of the compensation and emoluments received therefrom by the respective directors, officers, and other principal management personnel of the insurer, or manager, or producer, or contract holder with such classification of items and further detail as the insurer's board of directors may reasonably require.

(3) The commissioner shall not approve any contract referred to in subsection (1) which:

(a) Subjects the insurer to excessive charges for expenses or commissions; or

(b) does not contain fair and adequate standards of performance; or

(c) is to extend for an unreasonable length of time; or

(d) provides for commission, bonus, or compensation without reasonable relationship to the insurer's current expense, net growth, and net gain in surplus factors, or without reasonable limitation of the amount of money to be received as such commission, bonus, or compensation with respect to the insurer's business in any one calendar year; or

(e) contains other inequitable provision or provisions which may jeopardize the security of policyholders or the reasonable interests of stockholders.

(4) The commissioner may, after a hearing held thereon, withdraw his approval of any such contract theretofore permitted to become effective, if he finds that any basis of his original approval of, or failure to disapprove, the contract no longer exists, or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds referred to in subsection (3) of this section. [1975 1st ex.s. c 266 § 4; 1953 c 197 § 3; 1947 c 79 § .07.09; Rem. Supp. 1947 § 45.07.09.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.07.100 Vouchers for expenditures. (1) No domestic insurer shall make any disbursement of twenty-five dollars or more, unless evidenced by a voucher correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

(2) If the disbursement is for services and reimbursement, the voucher shall describe the services and itemize the expenditures.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher shall also correctly describe the nature of the matter and of the insurer's interest therein. [1947 c 79 § .07.10; Rem. Supp. 1947 § 45.07.10.]

48.07.110 Depositaries. The funds of a domestic insurer shall not be deposited in any bank or banking institution which has not first been approved as a depositary by the insurer's board of directors or by a committee thereof designated for the purpose. [1947 c 79 § .07.11; Rem. Supp. 1947 § 45.07.11.]

48.07.130 Pecuniary interest of officer or director, restrictions upon. (1) No person having any authority in the investment or disposition of the funds of a domestic insurer and no officer or director of an insurer shall accept, except for the insurer, or be the beneficiary of any fee, brokerage, gift, commission, or other emolument because of any sale of insurance or of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the insurer, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the insurer direct upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the insurer's funds under this code.

(2) This section does not prohibit a life insurer from making a policy loan to such person on a life insurance contract issued by it and in accordance with the terms thereof.

(3) The commissioner may permit additional exceptions to the prohibition contained in subsection (1) of this section to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which the director is interested, for necessary services

performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm.

In addition, the commissioner may permit exceptions to the prohibitions contained in subsection (1) of this section where the payment of a fee, brokerage, gift, commission, or other emolument is fully disclosed to the insurer's officers and directors and is reasonable in relation to the service performed. [1989 c 228 § 1; 1981 c 339 § 5; 1947 c 79 § .07.13; Rem. Supp. 1947 § 45.07.13.]

48.07.140 Compliance with foreign laws. Any domestic insurer doing business in another state, territory or sovereignty may design and issue insurance contracts and transact insurance in such state, territory or sovereignty as required or permitted by the laws thereof, any provision of the insurer's articles of incorporation or bylaws notwithstanding. [1947 c 79 § .07.14; Rem. Supp. 1947 § 45.07.14.]

48.07.150 Solicitations in other states. (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section shall not prohibit advertising through publications and radio broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated, and if such advertising is not specifically directed to residents of such reciprocating state.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. Nor shall it prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state. Nor shall it prohibit renewal or continuance in force, with or without modification, of contracts otherwise lawful and which were not originally executed in violation of this section.

(4) A "reciprocating" state, as used herein, is one under the laws of which a similar prohibition is imposed upon and is enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by him, after a hearing, to have violated this section. [1988 c 248 § 4; 1947 c 79 § .07.15; Rem. Supp. 1947 § 45.07.15.]

48.07.160 Continuing operation in event of national emergency—Declaration of purpose—"Insurer" defined. It is desirable for the general welfare and in particular for the welfare of insurance beneficiaries, policyholders, claimants and others that the business of domestic insurers be continued notwithstanding the event of a national emergency. The purpose of this section and RCW 48.07.170 through 48.07.200 is to facilitate the continued operation of domestic insurers in the event that a national emergency is caused by an attack

on the United States which is so disruptive of normal business and commerce in this state as to make it impossible or impracticable for a domestic insurer to conduct its business in accord with applicable provisions of law, its bylaws, or its charter. When used in this section and RCW 48.07.170 through 48.07.200 the word "insurer" includes a fraternal benefit society. [1963 c 195 § 25.]

48.07.170 Continuing operation in event of national emergency—Emergency bylaws. The board of directors of any domestic insurer may at any time adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws for such insurer, which shall be operative during such a national emergency and which may, notwithstanding any different provisions of the regular bylaws, or of the applicable statutes, or of such insurer's charter, make any provision that may be reasonably necessary for the operation of such insurer during the period of such emergency. [1963 c 195 § 26.]

48.07.180 Continuing operation in event of national emergency—Directors. In the event that the board of directors of a domestic insurer has not adopted emergency bylaws, the following provisions shall become effective upon the occurrence of such a national emergency as above described:

(1) Three directors shall constitute a quorum for the transaction of business at all meetings of the board.

(2) Any vacancy in the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.

(3) If there are no surviving directors, but at least three vice presidents of such insurer survive, the three vice presidents with the longest term of service shall be the directors and shall possess all of the powers of the previous board of directors and such powers as are granted herein or by subsequently enacted legislation. By majority vote, such emergency board of directors may elect other directors. If there are not at least three surviving vice presidents, the commissioner or duly designated person exercising the powers of the commissioner shall appoint three persons as directors who shall include any surviving vice presidents and who shall possess all of the powers of the previous board of directors and such powers as are granted herein or by subsequently enacted legislation, and these persons by majority vote may elect other directors. [1963 c 195 § 27.]

48.07.190 Continuing operation in event of national emergency—Officers. At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national emergency and in the event of the death or incapacity of the president, the secretary, or the treasurer of such insurer, such officers, or any of them, shall be succeeded in the office by the person named or described in a succession list adopted by the board of directors. Such list may be on the basis of named persons or position titles, shall establish the order of priority and may prescribe the conditions under

which the powers of the office shall be exercised. [1963 c 195 § 28.]

48.07.200 Continuing operation in event of national emergency—Principal office and place of business. At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national emergency the principal office and place of business of such insurer shall be at such location as is named or described in the resolution. Such resolution may provide for alternate locations and establish an order of preference. [1963 c 195 § 29.]

48.07.210 Conversion to domestic insurer. (1)(a) Any insurer duly organized under the laws of any other state and admitted to transact insurance business in this state may become a domestic insurer upon complying with all requirements of law for the organization of a domestic insurer in this state and by designating its principal place of business at a location in this state. Such domestic insurer is entitled to a certificate of authority to transact insurance in this state, subject to the conditions set forth in (b) of this subsection, and is subject to the authority and the jurisdiction of this state.

(b) Before being eligible to become a domestic insurer under this section, an admitted insurer shall advise the commissioner, in writing, thirty days in advance of the proposed date of its plan to become a domestic insurer. The commissioner must approve the plan in advance of the proposed date. The commissioner shall not approve any such plan unless, after a hearing, pursuant to such notice as the commissioner may require, the commissioner finds that the plan is consistent with law, and that no reasonable objection to the plan exists. If the commissioner fails to approve the plan, the commissioner shall state his or her reasons for failure to approve the plan in an order issued at the hearing.

(2) After providing thirty days' advance written notice of its plan to the commissioner and upon the written approval of the commissioner in advance of the proposed transfer date, any domestic insurer of this state may transfer its domicile to any other state in which it is admitted to transact the business of insurance. Upon transfer of domicile, the insurer ceases to be a domestic insurer of this state. If otherwise qualified under the laws of this state, the commissioner shall admit the insurer to do business in this state as a foreign insurer. The commissioner shall approve any proposed transfer of domicile unless the commissioner determines after a hearing, pursuant to such notice as the commissioner may require, that the transfer is not in the best interests of the public or the insurer's policyholders in this state. If the commissioner fails to approve a proposed transfer of domicile, the commissioner shall state his or her reasons for failure to approve the transfer in an order issued at the hearing.

(3) When a foreign insurer, admitted to transact business in this state, transfers its corporate domicile to this state or to any other state, the certificate of authority, appointment of statutory agent, and all approved licenses, policy forms, rates, filings, and other

authorizations and approvals in existence at the time the foreign insurer transfers its corporate domicile shall continue in effect.

(4) Any insurer transferring its corporate domicile under this section shall file any amendments to articles of incorporation, bylaws, or other corporate documents that are required to be filed in this state before the insurer may receive approval of its proposed plan by the commissioner. [1988 c 248 § 5.]

Chapter 48.08

DOMESTIC STOCK INSURERS

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Superadded liability of shareholders of domestic stock insurance companies: State Constitution Art. 12 § 11.

48.08.010 Increase of capital stock. (1) Increase of the capital stock of a domestic stock insurer shall be by amendment to its articles of incorporation.

(2) If the increased capital stock is to be distributed as a stock dividend, such increased capital stock may be fully paid in out of any available surplus funds as is provided in RCW 48.08.030, and such payment shall be effected by a transfer on the insurer's books from its surplus account to its capital account.

(3) When the increased capital has been fully paid in, a certificate to such effect shall be made in quadruplicate under oath and the corporate seal by the insurer's president and secretary and filed in the public offices named in RCW 48.07.070. [1953 c 197 § 4; 1947 c 79 § .08.01; Rem. Supp. 1947 § 45.08.01.]

48.08.020 Reduction of capital stock. (1) Reduction of the capital stock of a domestic stock insurer shall be by amendment of its articles of incorporation. No such reduction shall be made which results in capital stock

less in amount than the minimum required by this code for the kinds of insurance thereafter to be transacted by the insurer.

(2) No surplus funds of the insurer resulting from a reduction of its capital stock shall be distributed to stockholders, except as a stock dividend on a subsequent increase of capital stock, or upon dissolution of the insurer, or upon approval of the commissioner of a distribution upon proof satisfactory to him that the distribution will not impair the interests of policyholders or the insurer's solvency.

(3) Upon such reduction of capital stock, the insurer's directors shall call in any outstanding stock certificates required to be changed pursuant thereto, and issue proper certificates in their stead. [1947 c 79 § .08.02; Rem. Supp. 1947 § 45.08.02.]

48.08.030 Dividends to stockholders. (1) No domestic stock insurer shall pay any cash dividend to stockholders except out of that part of its available surplus funds which is derived from any realized net profits on its business.

(2) Such an insurer may pay a stock dividend out of any available surplus funds.

(3) Payment of any dividend to stockholders of a domestic stock insurer shall also be subject to all the limitations and requirements governing the payment of dividends by other private corporations.

(4) No dividend shall be declared or paid which would reduce the insurer's surplus to an amount less than the minimum required for the kinds of insurance thereafter to be transacted.

(5) For the purposes of this chapter "surplus funds" means the excess of the insurer's assets over its liabilities, including its capital stock as a liability.

(6) Available surplus means the excess over the minimum amount of surplus required for the kinds of insurance the insurer is authorized to transact. [1947 c 79 § .08.03; Rem. Supp. 1947 § 45.08.03.]

48.08.040 Illegal dividends, reductions—Penalty against directors. Any director of a domestic stock insurer who votes for or concurs in the declaration or payment of any dividend to stockholders or a reduction of capital stock not authorized by law shall, in addition to any other liability imposed by law, be guilty of a gross misdemeanor. [1947 c 79 § .08.04; Rem. Supp. 1947 § 45.08.04.]

48.08.050 Impairment of capital. (1) If the capital stock of a domestic stock insurer becomes impaired, the commissioner shall at once determine the amount of the deficiency and serve notice upon the insurer to require its stockholders to make good the deficiency within ninety days after service of such notice.

(2) The deficiency shall be made good in cash, or in assets eligible under this code for the investment of the insurer's funds, or by reduction of the insurer's capital stock to an amount not below the minimum required for the kinds of insurance to be thereafter transacted.

(3) If the deficiency is not made good and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(4) If the deficiency is not made good the insurer shall not issue or deliver any policy after the expiration of such ninety-day period. Any officer or director who violates or knowingly permits the violation of this provision shall be subject to a fine of from fifty dollars to one thousand dollars for each violation. [1947 c 79 § .08.05; Rem. Supp. 1947 § 45.08.05.]

48.08.060 Repayment of contributions to surplus. Contributions to the surplus of a domestic stock insurer other than resulting from sale of its capital stock, shall not be subject to repayment except out of surplus in excess of the minimum surplus initially required of such an insurer transacting like kinds of insurance. [1947 c 79 § .08.06; Rem. Supp. 1947 § 45.08.06.]

48.08.070 Participating policies. (1) Any domestic stock insurer may, if its charter so provides, issue policies entitled to participate from time to time in the earnings of the insurer through dividends.

(2) Any classification of its participating policies and of risks assumed thereunder which the insurer may make shall be reasonable. No dividend shall be paid which is inequitable or which unfairly discriminates as between such classifications or as between policies within the same classification.

(3) No such insurer shall issue in this state both participating and nonparticipating policies for the same class of risks; except, that both participating and nonparticipating life insurance policies may be issued if the right or absence of the right to participate is reasonably related to the premium charged.

(4) Dividends to participating life insurance policies issued by such insurer shall be paid only out of its surplus funds as defined in subsection (5) of RCW 48.08-.030. Dividends to participating policies for other kinds of insurance shall be paid only out of that part of such surplus funds which is derived from any realized net profits from the insurer's business.

(5) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy. [1947 c 79 § .08.07; Rem. Supp. 1947 § 45.08.07.]

48.08.080 Mutualization of stock insurers. (1) Any domestic stock insurer may become a domestic mutual insurer pursuant to such plan and procedure as are approved by the commissioner in advance of such mutualization.

(2) The commissioner shall not approve any such plan, procedure, or mutualization unless:

(a) It is equitable to both shareholders and policyholders.

(b) It is approved by vote of the holders of not less than three-fourths of the insurer's capital stock having voting rights, and by vote of not less than two-thirds of

the insurer's policyholders who vote on such plan, pursuant to such notice and procedure as may be approved by the commissioner. Such vote may be registered in person, by proxy, or by mail.

(c) If a life insurer, the right to vote thereon is limited to those policyholders whose policies have face amounts of not less than one thousand dollars and have been in force one year or more.

(d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair value thereof as determined by competent disinterested appraisers.

(e) The plan provides for appraisal and purchase of the shares of any nonconsenting stockholder in accordance with the laws of this state relating to the sale or exchange of all the assets of a private corporation.

(f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective.

(g) The mutualization leaves the insurer with surplus funds reasonably adequate to preserve the security of its policyholders and its ability to continue successfully in business in the states in which it is then authorized, and in the kinds of insurance it is then authorized to transact. [1947 c 79 § .08.08; Rem. Supp. 1947 § 45.08.08.]

48.08.090 Stockholder meetings—Duty to inform stockholders of matters to be presented—Proxies. (1) This section shall apply to all domestic stock insurers except:

(a) A domestic stock insurer having less than one hundred stockholders; except, that if ninety-five percent or more of the insurer's stock is owned or controlled by a parent or affiliated insurer, this section shall not apply to such insurer unless its remaining shares are held by five hundred or more stockholders.

(b) Domestic stock insurers which file with the Securities and Exchange Commission forms of proxies, consents and authorizations pursuant to the Securities and Exchange Act of 1934, as amended.

(2) Every such insurer shall seasonably furnish its stockholders in advance of stockholder meetings, information in writing reasonably adequate to inform them relative to all matters to be presented by the insurer's management for consideration of stockholders at such meeting.

(3) No person shall solicit a proxy, consent, or authorization in respect of any stock of such an insurer unless he furnishes the person so solicited with written information reasonably adequate as to

(a) the material matters in regard to which the powers so solicited are proposed to be used, and

(b) the person or persons on whose behalf the solicitation is made, and the interest of such person or persons in relation to such matters.

(4) No person shall so furnish to another, information which the informer knows or has reason to believe, is false or misleading as to any material fact, or which fails to state any material fact reasonably necessary to prevent any other statement made from being misleading.

(5) The form of all such proxies shall:

(a) Conspicuously state on whose behalf the proxy is solicited;

(b) Provide for dating the proxy;

(c) Impartially identify each matter or group of related matters intended to be acted upon;

(d) Provide means for the principal to instruct the vote of his shares as to approval or disapproval of each matter or group, other than election to office; and

(e) Be legibly printed, with context suitably organized.

Except, that a proxy may confer discretionary authority as to matters as to which choice is not specified pursuant to item (d), above, if the form conspicuously states how it is intended to vote the proxy or authorization in each such case; and may confer discretionary authority as to other matters which may come before the meeting but unknown for a reasonable time prior to the solicitation by the persons on whose behalf the solicitation is made.

(6) No proxy shall confer authority (a) to vote for election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (b) to vote at any annual meeting (or adjournment thereof) other than the annual meeting next following the date on which the proxy statement and form were furnished stockholders.

(7) The commissioner shall have authority to make and promulgate reasonable rules and regulations for the effectuation of this section, and in so doing shall give due consideration to rules and regulations promulgated for similar purposes by the insurance supervisory officials of other states. [1965 ex.s. c 70 § 5.]

Exemption from federal registration: 15 U.S.C. § 78 l(g)(2)(G).

48.08.100 Equity security—Defined. The term "equity security" when used in RCW 48.08.100 through 48.08.160 means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security. [1965 ex.s. c 70 § 11.]

48.08.110 Equity security—Duty to file statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurer, or who is a director or an officer of such insurer, shall file with the commissioner on or before the 30th day of September, 1965, or within ten days after he becomes such beneficial owner, director or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such insurer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the commissioner a statement, in such

form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month. [1965 ex.s. c 70 § 6.]

48.08.120 Equity security—Profits from short term transactions—Remedies—Limitation of actions. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such insurer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such insurer within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the insurer, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer, or by the owner of any security of the insurer in the name and in behalf of the insurer if the insurer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter: *Provided*, That no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section. [1965 ex.s. c 70 § 7.]

Exemption from federal registration: 15 U.S.C. § 78 l(g)(2)(G).

48.08.130 Equity security—Sales, unlawful practices. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such insurer if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation: *Provided*, That no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense. [1965 ex.s. c 70 § 8.]

48.08.140 Equity security—Exemptions—Sales by dealer. The provisions of RCW 48.08.120 shall not apply to any purchase and sale, or sale and purchase, and the provisions of RCW 48.08.130 shall not apply to any sale of an equity security of a domestic stock insurer not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an

exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market. [1965 ex.s. c 70 § 9.]

48.08.150 Equity security—Exemptions—Foreign or domestic arbitrage transactions. The provisions of RCW 48.08.110, 48.08.120 and 48.08.130 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of RCW 48.08.100 through 48.08.160. [1965 ex.s. c 70 § 10.]

48.08.160 Equity security—Exemptions—Securities registered or required to be, or no class held by one hundred or more persons. The provisions of RCW 48.08.110, 48.08.120, and 48.08.130 shall not apply to equity securities of a domestic stock insurer if (1) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (2) such domestic stock insurer shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the insurer would be subject to the provisions of RCW 48.08.110, 48.08.120, and 48.08.130 except for the provisions of this subsection (2). [1965 ex.s. c 70 § 12.]

48.08.170 Equity security—Rules and regulations. The commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by RCW 48.08.100 through 48.08.160, and may for such purpose classify domestic stock insurers, securities, and other persons or matters within his jurisdiction. No provision of RCW 48.08.110, 48.08.120, and 48.08.130 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [1965 ex.s. c 70 § 13.]

48.08.190 Failure to file required information, documents, or reports—Forfeiture. Any person who fails to file information, documents, or reports required to be filed under *this 1969 amendatory act or any rule or regulation thereunder shall forfeit to the state of Washington the sum of one hundred dollars for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under this title, shall be payable to the treasurer of the state of Washington and shall be recoverable in a civil

suit in the name of the state of Washington. [1969 ex.s. c 241 § 18.]

***Reviser's note:** This 1969 amendatory act [1969 ex.s. c 241] is codified as RCW 48.05.140, 48.05.370, 48.06.110, 48.08.190, 48.13.110, 48.13.120, 48.13.125, 48.13.160, 48.14.010, 48.14.020, 48.15.090, 48.17.530, 48.20.052, 48.31.190, 48.34.020, 48.34.100, 48.36.150, 48.48.020, and 48.18.291 through 48.18.297.

Chapter 48.09 MUTUAL INSURERS

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Dividends not to be guaranteed: RCW 48.30.100.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

Policy dividends are payable to real party in interest: RCW 48.18.340.

48.09.010 Initial qualifications. (1) The commissioner shall not issue a certificate of authority to a domestic mutual insurer unless it has fully qualified therefor under this code, and unless it has met the minimum requirements for the kind of insurance it proposes to transact as provided in this chapter.

(2) All applications for insurance submitted by such an insurer as fulfilling qualification requirements shall be bona fide applications from persons resident in this state covering lives, property, or risks resident or located in this state.

(3) All qualifying premiums collected and initial surplus funds of such an insurer shall be in cash. Any deposit made by such an insurer in lieu of applications, premiums, and initial surplus funds, shall be in cash or in securities eligible for the investment of the capital of a domestic stock insurer transacting the same kind of insurance. [1947 c 79 § .09.01; Rem. Supp. 1947 § 45.09.01.]

48.09.090 Additional kinds of insurance. A domestic mutual insurer may be authorized to transact kinds of insurance in addition to that for which it was originally authorized, if it has otherwise complied with the provisions of this code therefor, and while it possesses and maintains surplus funds in aggregate amount not less than the minimum amount of capital and surplus required under this code of a domestic stock insurer authorized to transact like kinds of insurance pursuant to RCW 48.05.340. [1980 c 135 § 2; 1957 c 193 § 5; 1947 c 79 § .09.09; Rem. Supp. 1947 § 45.09.09.]

48.09.100 Minimum surplus. A domestic mutual insurer on the cash premium plan shall at all times have and maintain surplus funds, representing the excess of its assets over its liabilities, in amount not less than the aggregate of

(1) the amount of any surplus funds deposited by it with the commissioner to qualify for its original certificate of authority, and

(2) the amount of any additional surplus required of it pursuant to RCW 48.09.090 for authority to transact additional kinds of insurance. [1963 c 195 § 3; 1947 c 79 § .09.10; Rem. Supp. 1947 § 45.09.10.]

48.09.110 Membership. (1) Each holder of one or more insurance contracts issued by a domestic mutual insurer, other than a contract of reinsurance, is a member of the insurer, with the rights and obligations of such membership, and each insurance contract so issued shall effectively so stipulate.

(2) Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee or fiduciary, may be a member of a mutual insurer. [1947 c 79 § .09.11; Rem. Supp. 1947 § 45.09.11.]

48.09.120 Rights of members. (1) A domestic mutual insurer is owned by and shall be operated in the interest of its members.

(2) Each member is entitled to one vote in the election of directors and on matters coming before corporate meetings of members, subject to such reasonable minimum requirements as to duration of membership and amount of insurance held as may be made in the insurer's bylaws. The person named as the policyholder in any group insurance policy issued by such insurer shall be deemed the member, and shall have but one such vote regardless of the number of individuals insured by such policy.

(3) With respect to the management, records, and affairs of the insurer, a member shall have the same character of rights and relationship as a stockholder has toward a domestic stock insurer. [1947 c 79 § .09.12; Rem. Supp. 1947 § 45.09.12.]

48.09.130 Bylaws. A domestic mutual insurer shall adopt bylaws for the conduct of its affairs. Such bylaws, or any modification thereof, shall forthwith be filed with the commissioner. The commissioner shall disapprove any such bylaws, or as so modified, if he finds after a

hearing thereon, that it is not in compliance with the laws of this state, and he shall forthwith communicate such disapproval to the insurer. No such bylaw, or modification, so disapproved shall be effective during the existence of such disapproval. [1947 c 79 § .09.13; Rem. Supp. 1947 § 45.09.13.]

48.09.140 Notice of annual meeting. (1) Notice of the time and place of the annual meeting of members of a domestic mutual insurer shall be given by imprinting such notice plainly on the policies issued by the insurer.

(2) Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change may be given:

(a) By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting; or

(b) Unless the commissioner otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the twenty-four months immediately following such meeting. [1947 c 79 § .09.14; Rem. Supp. 1947 § 45.09.14.]

48.09.150 Voting—Proxies. (1) A member of a domestic mutual insurer may vote in person or by proxy given another member on any matter coming before a corporate meeting of members.

(2) An officer of the insurer shall not hold or vote the proxy of any member.

(3) No such proxy shall be valid beyond the earlier of the following dates:

(a) The date of expiration set forth in the proxy; or

(b) the date of termination of membership; or

(c) five years from the date of execution of the proxy.

(4) No member's vote upon any proposal to divest the insurer of its business and assets, or the major part thereof, shall be registered or taken except in person or by a proxy newly executed and specific as to the matter to be voted upon. [1947 c 79 § .09.15; Rem. Supp. 1947 § 45.09.15.]

48.09.160 Directors—Disqualification. No individual shall be a director of a domestic mutual insurer by reason of his holding public office. Adjudication as a bankrupt or taking the benefit of any insolvency law or making a general assignment for the benefit of creditors disqualifies an individual from being or acting as a director. [1947 c 79 § .09.16; Rem. Supp. 1947 § 45.09.16.]

48.09.180 Limitation of expenses as to property and casualty insurance. (1) For any calendar year after its first two full calendar years of operation, no domestic mutual insurer on the cash premium plan, other than one issuing nonassessable policies, shall incur any costs or expense in the writing or administration of property, disability, and casualty insurances (other than boiler and machinery or elevator) transacted by it which, exclusive

of losses paid, loss adjustment expenses, investment expenses, dividends, and taxes exceeds the sum of

(a) forty percent of the net premium income during that year after deducting therefrom net earned reinsurance premiums for such year, plus

(b) all of the reinsurance commissions received on reinsurance ceded by it.

(2) The bylaws of every domestic mutual property insurer on the assessment premium plan shall impose a reasonable limitation upon its expenses. [1949 c 190 § 8; 1947 c 79 § .09.18; Rem. Supp. 1949 § 45.09.18.]

48.09.190 Procedure upon violation of limitation. The officers and directors of an insurer violating RCW 48.09.180 shall be jointly and severally liable to the insurer for any excess of expenses incurred. If the insurer fails to exercise reasonable diligence or refuses to enforce such liability, the commissioner may prosecute action thereon for the benefit of the insurer. Such failure or refusal constitutes grounds for revocation of the insurer's certificate of authority. [1947 c 79 § .09.19; Rem. Supp. 1947 § 45.09.19.]

48.09.210 Limitation of action on officer's salary. No action to recover, or on account of, any salary or other compensation due or claimed to be due any officer or director of a domestic mutual insurer, or on any note or agreement relative thereto, shall be brought against such insurer after twelve months after the date on which such salary or compensation, or any installment thereof, first accrued. [1947 c 79 § .09.21; Rem. Supp. 1947 § 45.09.21.]

48.09.220 Contingent liability of members. (1) Each member of a domestic mutual insurer, except as otherwise provided in this chapter, shall have a contingent liability, pro rata and not one for another, for the discharge of its obligations. The contingent liability shall be in such maximum amount as is stated in the insurer's articles of incorporation, but shall be not less than one, nor more than five, additional premiums for the member's policy at the annual premium rate and for a term of one year.

(2) Every policy issued by the insurer shall contain a statement of the contingent liability.

(3) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion of the obligations of the insurer which accrued while the policy was in force. [1949 c 190 § 9; 1947 c 79 § .09.22; Rem. Supp. 1949 § 45.09.22.]

48.09.230 Assessment of members. (1) If at any time the assets of a domestic mutual insurer doing business on the cash premium plan are less than its liabilities and the minimum surplus, if any, required of it by this code as prerequisite for continuance of its certificate of authority, and the deficiency is not cured from other sources, its directors may, if approved by the commissioner, make an assessment only on its members who at

any time within the twelve months immediately preceding the date such assessment was authorized by its directors held policies providing for contingent liability.

(2) Such an assessment shall be for such an amount of money as is required, in the opinion of the commissioner, to render the insurer fully solvent, but not to result in surplus in excess of five percent of the insurer's liabilities as of the date of the assessment.

(3) A member's proportionate part of any such assessment shall be computed by applying to the premium earned, during the period since the deficiency first appeared, on his contingently liable policy or policies the ratio of the total assessment to the total premium earned during such period on all contingently liable policies which are subject to the assessment.

(4) No member shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or losses payable. [1949 c 190 § 10; 1947 c 79 § .09.23; Rem. Supp. 1949 § 45.09.23.]

48.09.240 Contingent liability of members of assessment insurer. The contingent liability of members of a domestic mutual insurer doing business on the assessment premium plan shall be called upon and enforced by its directors as provided in its bylaws. [1947 c 79 § .09.24; Rem. Supp. 1947 § 45.09.24.]

48.09.250 Contingent liability as asset. Any contingent liability of members of a domestic mutual insurer to assessment does not constitute an asset of the insurer in any determination of its financial condition. [1949 c 190 § 11; 1947 c 79 § .09.25; Rem. Supp. 1949 § 45.09.25.]

48.09.260 Liability as lien on policy reserves. As to life insurance, any portion of an assessment of contingent liability upon a policyholder which remains unpaid following notice of such assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the commissioner, be secured by placing a lien on the reserves held by the insurer to the credit of such policyholder. [1949 c 190 § 12; 1947 c 79 § .09.26; Rem. Supp. 1949 § 45.09.26.]

48.09.270 Nonassessable policies. (1) A domestic mutual insurer on the cash premium plan, after it has established a surplus not less in amount than the minimum capital funds required of a domestic stock insurer to transact like kinds of insurance, and for so long as it maintains such surplus, may extinguish the contingent liability of its members to assessment and omit provisions imposing contingent liability in all policies currently issued.

(2) Any deposit made with the commissioner as a prerequisite to the insurer's certificate of authority may be included as part of the surplus required in this section.

(3) When the surplus has been so established and the commissioner has so ascertained, he shall issue to the

insurer, at its request, his certificate authorizing the extinguishment of the contingent liability of its members and the issuance of policies free therefrom.

(4) While it maintains surplus funds in amount not less than the minimum capital required of a domestic stock insurer authorized to transact like kinds of insurance, and subject to the requirements of RCW 48.05-.360 as to special surplus, a foreign or alien mutual insurer on the cash premium plan may, if consistent with its charter and the laws of its domicile, issue nonassessable policies covering subjects located, resident, or to be performed in this state. [1963 c 195 § 4; 1947 c 79 § .09.27; Rem. Supp. 1947 § 45.09.27.]

48.09.280 Qualification on issuance of nonassessable policies. The commissioner shall not authorize a domestic mutual insurer so to extinguish the contingent liability of any of its members or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its members and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which such an insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its members as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state. [1947 c 79 § .09.28; Rem. Supp. 1947 § 45.09.28.]

48.09.290 Revocation of right to issue nonassessable policies. (1) The commissioner shall revoke the authority of a domestic mutual insurer so to extinguish the contingent liability of its members if

(a) at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or

(b) the insurer, by resolution of its directors approved by its members, requests that the authority be revoked.

(2) Upon revocation of such authority for any cause, the insurer shall not thereafter issue any policies without contingent liability, nor renew any policies then in force without written endorsement thereon providing for contingent liability. [1947 c 79 § .09.29; Rem. Supp. 1947 § 45.09.29.]

48.09.300 Dividends. (1) The directors of a domestic mutual insurer on the cash premium plan may from time to time apportion and pay to its members as entitled thereto, dividends only out of that part of its surplus funds which are in excess of its required minimum surplus and which represent net realized savings and net realized earnings from its business.

(2) Any classification of its participating policies and of risks assumed thereunder which the insurer may make shall be reasonable. No dividend shall be paid which is inequitable, or which unfairly discriminates as between such classifications or as between policies within the same classification.

(3) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on

any policy. [1947 c 79 § .09.30; Rem. Supp. 1947 § 45.09.30.]

48.09.310 Nonparticipating policies. (1) If its articles of incorporation so provide, a domestic mutual insurer on the cash premium plan may, while it is authorized to issue policies without contingent liability to assessment, issue policies not entitled to participate in the insurer's savings and earnings.

(2) Such insurer shall not issue in this state both participating and nonparticipating policies for the same class of risks; except, that both participating and nonparticipating life insurance policies may be issued if the right or absence of the right to participate is reasonably related to the premium charged. [1947 c 79 § .09.31; Rem. Supp. 1947 § 45.09.31.]

48.09.320 Borrowed capital. (1) A domestic mutual insurer on the cash premium plan may, with the commissioner's advance approval and without the pledge of any of its assets, borrow money to defray the expenses of its organization or for any purpose required by its business, upon an agreement that such money and such interest thereon as may be agreed upon, but not exceeding six percent per annum, shall be repaid only out of the insurer's earned surplus in excess of its required minimum surplus.

(2) Any money so borrowed shall not form a part of the insurer's legal liabilities or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with interest thereon accrued but unpaid.

(3) The commissioner's approval of such loan, if granted, shall specify the amount to be borrowed, the purpose for which the money is to be used, the terms and form of the loan agreement, the date by which the loan must be completed, and such other related matters as the commissioner shall deem proper. If the money is to be borrowed upon multiple agreements, the agreements shall be serially numbered. No loan agreement or series thereof shall have or be given any preferential rights over any other such loan agreement or series. No commission or promotional expense shall be incurred or be paid on account of any such loan. [1947 c 79 § .09.32; Rem. Supp. 1947 § 45.09.32.]

48.09.330 Repayment of borrowed capital. (1) The insurer may repay any loan received pursuant to RCW 48.09.320, or any part thereof as approved by the commissioner, only out of its funds which represent such loan or realized net earned surplus. No repayment shall be made which reduces the insurer's surplus below the minimum surplus required for the kinds of insurance transacted.

(2) The insurer shall repay any such loan or the largest possible part thereof when the purposes for which such funds were borrowed have been fulfilled and when the insurer's surplus is adequate to so repay without unreasonable impairment of the insurer's operations.

(3) No repayment of such loan shall be made unless approved by the commissioner. The insurer shall notify the commissioner in writing not less than sixty days in advance of its intention to repay such loan or any part thereof, and the commissioner shall forthwith ascertain whether the insurer's financial condition is such that the repayment can properly be made.

(4) Upon dissolution and liquidation of the insurer, after the retirement of all its other outstanding obligations the holders of any such loan agreements then remaining unpaid shall be entitled to payment before any distribution of surplus is made to the insurer's members. [1949 c 190 § 13; 1947 c 79 § .09.33; Rem. Supp. 1949 § 45.09.33.]

48.09.340 Impairment of surplus. (1) If the assets of a domestic mutual insurer on the cash premium plan fall below the amount of its liabilities, plus the amount of any surplus required by this code for the kinds of insurance authorized to be transacted, the commissioner shall at once ascertain the amount of the deficiency and serve notice upon the insurer to cure the deficiency within ninety days after such service of notice.

(2) If the deficiency is not made good in cash or in assets eligible under this code for the investment of the insurer's funds, and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If the deficiency is not made good the insurer shall not issue or deliver any policy after the expiration of such ninety-day period. Any officer or director who violates or knowingly permits the violating of this provision shall be subject to a fine of from fifty dollars to one thousand dollars for each violation. [1949 c 190 § 14; 1947 c 79 § 09.34; Rem. Supp. 1949 § 45.09.34.]

48.09.350 Reorganization of mutual as stock insurer—Reinsurance—Approval. (1) Upon satisfaction of the requirements applicable to the formation of a domestic stock insurer, a domestic mutual insurer may be reorganized as a stock corporation, pursuant to a plan of reorganization as approved by the commissioner.

(2) A domestic mutual insurer may be wholly reinsured in and its assets transferred to and its liabilities assumed by another mutual or stock insurer under such terms and conditions as are approved by the commissioner in advance of such reinsurance.

(3) The commissioner shall not approve any such reorganization plan or reinsurance agreement which does not determine the amount of and make adequate provision for paying to members of such mutual insurer, reasonable compensation for their equities as owners of such insurer, such compensation to be apportioned to members as identified and in the manner prescribed in RCW 48.09.360. The procedure for approval by the commissioner of any such reorganization plan or reinsurance agreement shall be the same as the procedure for approval by the commissioner of a plan of merger or consolidation under RCW 48.31.010.

Approval at a corporate meeting of members by two-thirds of the then members of a domestic mutual insurer who vote on the plan or agreement pursuant to such notice and procedure as was approved by the commissioner shall constitute approval of any such reorganization plan or reinsurance agreement by the insurer's members. [1984 c 23 § 1; 1983 1st ex.s. c 32 § 1; 1947 c 79 § .09.35; Rem. Supp. 1947 § 45.09.35.]

48.09.360 Distribution of assets and ownership equities upon liquidation. (1) Upon the liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness and policy obligations shall be distributed to its members who were such within the thirty-six months prior to the last termination of its certificate of authority.

(2) Upon the reorganization of a domestic mutual insurer as a domestic stock insurer under RCW 48.09.350(1) or upon reinsurance of the whole of the liabilities and transfer of all the assets of a domestic mutual insurer under RCW 48.09.350(2), the ownership equities of members of the domestic mutual insurer shall be distributed to its members who were such on an eligibility date stated in the reorganization plan or reinsurance agreement, or who were such within the thirty-six months prior to such eligibility date. Such eligibility date shall be either the date on which the reorganization plan or reinsurance agreement is adopted by resolution of the board of directors of the domestic mutual insurer, or the date on which the reorganization plan or reinsurance agreement is approved by a vote of the members, or the date which ends a calendar quarter during which either of such actions is taken.

(3) Upon the liquidation of a domestic mutual insurer, the distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the thirty-six months before the last termination of the insurer's certificate of authority, bear to the aggregate of all premiums so earned on the policies of all such members during the same thirty-six months.

(4) Upon the reorganization of a domestic mutual insurer as a domestic stock insurer under RCW 48.09.350(1) or upon reinsurance of the whole of the liabilities and transfer of all the assets of a domestic mutual insurer under RCW 48.09.350(2), the distributive share of each member entitled thereto shall be in the proportion that the aggregate premiums earned by the insurer on the policies in force of that member during the thirty-six months before the eligibility date established under RCW 48.09.360(2) bear to the aggregate of all premiums so earned during the same thirty-six months on all the policies in force of all such members who are entitled to a distributive share.

(5) If a life insurer, the insurer shall make a reasonable classification of its life insurance policies so held by such members entitled to a distributive share and a formula based upon such classification for determining the equitable distributive share of each such member. Such

classification and formula shall be subject to the commissioner's approval. [1984 c 23 § 2; 1947 c 79 § .09.36; Rem. Supp. 1947 § 45.09.36.]

**Chapter 48.10
RECIPROCAL INSURERS**

Sections

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Dividends not to be guaranteed: RCW 48.30.100.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

Policy dividends are payable to real party in interest: RCW 48.18.340.

48.10.010 "Reciprocal insurance" defined. "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons. [1947 c 79 § .10.01; Rem. Supp. 1947 § 45.10.01.]

48.10.020 "Reciprocal insurer" defined. A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves. [1947 c 79 § .10.02; Rem. Supp. 1947 § 45.10.02.]

48.10.030 Scope of chapter. All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocal insurers. [1947 c 79 § .10.03; Rem. Supp. 1947 § 45.10.03.]

48.10.050 Insuring powers of reciprocals. (1) A reciprocal insurer may, upon qualifying therefor as provided by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) A reciprocal insurer may purchase reinsurance upon the risk of any subscriber, and may grant reinsurance as to any kind of insurance which it is authorized to transact direct. [1947 c 79 § .10.05; Rem. Supp. 1947 § 45.10.05.]

48.10.060 Name—Suits. A reciprocal insurer shall:

(1) Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting."

(2) Sue and be sued in its own name. [1947 c 79 § .10.06; Rem. Supp. 1947 § 45.10.06.]

48.10.070 Surplus funds required. (1) A domestic reciprocal insurer hereafter formed, if it has otherwise complied with the provisions of this code, may be authorized to transact insurance if it initially possesses surplus in an amount equal to or exceeding the capital and surplus requirements required under RCW 48.05.340(1) plus special surplus, if any, required under RCW 48.05.360 and thereafter possesses, and maintains surplus funds equal to the paid-in capital stock required under RCW 48.05.340 of a stock insurer transacting like kinds of insurance, and the special surplus, if any, required under RCW 48.05.360.

(2) A domestic reciprocal insurer which under prior laws held authority to transact insurance in this state may continue to be so authorized so long as it otherwise qualifies therefor and maintains surplus funds in amount not less than as required under laws of this state in force at the time such authority to transact insurance in this state was granted.

(3) A domestic reciprocal insurer heretofore formed shall maintain on deposit with the commissioner surplus funds of not less than the sum of one hundred thousand dollars, and to transact kinds of insurance transacted by it in addition to that authorized by its original certificate of authority, shall have and maintain surplus (including the amount of such deposit) in amount not less than the paid-in capital stock required under RCW 48.05.340(1) plus special surplus, if any, required under RCW 48.05.360, of a domestic stock insurer formed after 1967 and transacting the same kinds of insurance. Such additional surplus funds need not be deposited with the commissioner. [1985 c 264 § 4; 1975 1st ex.s. c 266 § 5; 1963 c 195 § 5; 1947 c 79 § .10.07; Rem. Supp. 1947 § 45.10.07.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.10.080 Attorney. (1) "Attorney" as used in this chapter refers to the attorney in fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign persons, firms, or corporations.

(3) The subscribers and the attorney in fact comprise a reciprocal insurer and a single entity for the purposes of chapter 48.14 RCW as to all operations under the insurer's certificate of authority. [1965 ex.s. c 70 § 35; 1947 c 79 § .10.08; Rem. Supp. 1947 § 45.10.08.]

48.10.090 Organization of reciprocal. (1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and in compliance with this code make application to the commissioner for a certificate of authority to transact insurance.

(2) When applying for a certificate of authority, the original subscribers and the proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner a declaration setting forth:

- (a) the name of the insurer;
- (b) the location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;
- (c) the kinds of insurance proposed to be transacted;
- (d) the names and addresses of the original subscribers;
- (e) the designation and appointment of the proposed attorney and a copy of the power of attorney;
- (f) the names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if a firm;
- (g) the powers of the subscribers' advisory committee and the names and terms of office of the members thereof;
- (h) that all moneys paid to the reciprocal, after deducting therefrom any sum payable to the attorney, shall be held in the name of the insurer and for the purposes specified in the subscriber's agreement;
 - (i) a copy of the subscriber's agreement;
 - (j) a statement that each of the original subscribers has in good faith applied for insurance of the kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at the rate theretofore filed with and approved by the commissioner;
 - (k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by RCW 48.10.070 is on hand;
 - (l) a copy of each policy, endorsement, and application form it then proposes to issue or use.

Such declaration shall be acknowledged by each such subscriber and by the attorney in the manner required for the acknowledgment of deeds to real estate. [1947 c 79 § .10.09; Rem. Supp. 1947 § 45.10.09.]

48.10.100 Policies of original subscribers, effective when. Any policy applied for by an original subscriber shall become effective coincidentally with the issuance of a certificate of authority to the reciprocal insurer. [1947 c 79 § .10.10; Rem. Supp. 1947 § 45.10.10.]

48.10.110 Certificate of authority. (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner may refuse, suspend, or revoke the certificate of authority, in addition to other grounds therefor, for failure of its attorney to comply with any provision of this code. [1947 c 79 § .10.11; Rem. Supp. 1947 § 45.10.11.]

48.10.120 Power of attorney. (1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

(a) The powers of the attorney;

(b) that the attorney is empowered to accept service of process on behalf of the insurer and to authorize the commissioner to receive service of process in actions against the insurer upon contracts exchanged;

(c) the services to be performed by the attorney in general;

(d) the maximum amount to be deducted from advance premiums or deposits to be paid to the attorney;

(e) except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one nor more than ten times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) provide for the exercise of any right reserved to the subscribers directly or through their advisory committee;

(d) contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement or any amendment thereof, shall be used or be effective in this state until approved by the commissioner. [1949 c 190 § 15; 1947 c 79 § .10.12; Rem. Supp. 1949 § 45.10.12.]

48.10.130 Modification of subscriber's agreement or power of attorney. Modification of the terms of the subscriber's agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto. [1947 c 79 § .10.13; Rem. Supp. 1947 § 45.10.13.]

48.10.140 Attorney's bond. (1) Concurrently with the filing of the declaration provided for in RCW 48.10-.090, (or, if an existing domestic reciprocal insurer, within ninety days after the effective date of this code) the attorney of a domestic reciprocal shall file with the commissioner a bond running to the state of Washington. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the commissioner's approval.

(2) The bond shall be in the penal sum of twenty-five thousand dollars, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands, and that he will not withdraw or appropriate for his own use from the funds of the insurer any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless thirty days advance notice in writing of intent to cancel is given to both the attorney and the commissioner. [1947 c 79 § .10.14; Rem. Supp. 1947 § 45.10.14.]

48.10.150 Deposit in lieu of bond. In lieu of such bond, the attorney may maintain on deposit with the commissioner a like amount in cash or in value of securities qualified under this code as insurers' investments, and subject to the same conditions as the bond. [1947 c 79 § .10.15; Rem. Supp. 1947 § 45.10.15.]

48.10.160 Actions on bond. Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any one time by one or more subscribers suffering loss through a violation of the conditions thereof or by a receiver or liquidator of the insurer. Amounts so recovered shall be deposited in and become part of the insurer's funds. [1947 c 79 § .10.16; Rem. Supp. 1947 § 45.10.16.]

48.10.170 Service of legal process. (1) A certificate of authority shall not be issued to a domestic reciprocal insurer unless prior thereto the attorney has executed and filed with the commissioner the insurer's irrevocable authorization of the commissioner to receive legal process issued in this state against the insurer upon any cause of action arising within this state.

(2) The provisions of RCW 48.05.210 shall apply to service of such process upon the commissioner.

(3) In lieu of service on the commissioner, legal process may be served upon a domestic reciprocal insurer by serving the insurer's attorney at his principal offices.

(4) Any judgment against the insurer based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear and in an amount not exceeding their respective contingent liabilities. [1947 c 79 § .10.17; Rem. Supp. 1947 § 45.10.17.]

48.10.180 Annual statement. The annual statement of a reciprocal insurer shall be made and filed by the attorney. [1947 c 79 § .10.18; Rem. Supp. 1947 § 45.10.18.]

48.10.190 Attorney's contribution—Repayment. No contribution to a domestic reciprocal insurer's surplus by the attorney shall be retrievable by the attorney except under such terms and in such circumstances as the commissioner approves. [1947 c 79 § .10.19; Rem. Supp. 1947 § 45.10.19.]

48.10.200 Determination of financial condition. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposit delinquent for ninety days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than ninety days shall be allowed as assets.

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for the compensation of the attorney. [1947 c 79 § .10.20; Rem. Supp. 1947 § 45.10.20.]

48.10.220 Who may become subscriber. Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee, or fiduciary may be a subscriber of a reciprocal insurer. [1947 c 79 § .10.22; Rem. Supp. 1947 § 45.10.22.]

48.10.230 Subscribers' advisory committee. (1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than three-fourths of such committee shall be composed of subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

(a) Supervise the finances of the insurer;

(b) supervise the insurer's operations to such extent as to assure their conformity with the subscribers' agreement and power of attorney;

(c) procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer;

(d) have such additional powers and functions as may be conferred by the subscribers' agreement. [1947 c 79 § .10.23; Rem. Supp. 1947 § 45.10.23.]

48.10.250 Assessment liability of subscriber. (1) The liability of each subscriber subject to assessment for the obligations of the reciprocal insurer shall not be joint, but shall be individual and several.

(2) Each subscriber who is subject to assessment shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one nor more than ten times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in RCW 48.10.290.

(3) Each assessable policy issued by the insurer shall plainly set forth a statement of the contingent liability. [1947 c 79 § .10.25; Rem. Supp. 1947 § 45.10.25.]

48.10.260 Action against subscriber requires judgment against insurer. (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for thirty days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in an amount not exceeding his contingent liability, if any. [1947 c 79 § .10.26; Rem. Supp. 1947 § 45.10.26.]

48.10.270 Assessments. (1) Assessments may be levied from time to time upon the subscribers of a domestic reciprocal insurer, other than as to nonassessable policies, by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner; or by the commissioner in liquidation of the insurer.

(2) Each such subscriber's share of a deficiency for which an assessment is made, not exceeding in any event his aggregate contingent liability as computed in accordance with RCW 48.10.290, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or losses payable. [1947 c 79 § .10.27; Rem. Supp. 1947 § 45.10.27.]

48.10.280 Time limit for assessment. Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) While his policy is in force or within one year after its termination, he is notified by either the attorney or the commissioner of his intention to levy such assessment; or

(2) If an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should

not be appointed is issued pursuant to RCW 48.31.190 while his policy is in force or within one year after its termination. [1947 c 79 § .10.28; Rem. Supp. 1947 § 45.10.28.]

48.10.290 Aggregate liability. No one policy or subscriber as to such policy, shall be assessed or be charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year, in excess of the number of times the premium as stated in the policy as computed solely upon premium earned on such policy during that year. [1947 c 79 § .10.29; Rem. Supp. 1947 § 45.10.29.]

48.10.300 Nonassessable policies. (1) Subject to the special surplus requirements of RCW 48.05.360, if a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. No policy shall thereafter be issued or renewed without providing for the contingent assessment liability of subscribers.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state. [1983 c 3 § 148; 1947 c 79 § .10.30; Rem. Supp. 1947 § 45.10.30.]

48.10.310 Return of savings to subscribers. A reciprocal insurer may from time to time return to its subscribers any savings or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks, or policies, or between subscribers. [1947 c 79 § .10.31; Rem. Supp. 1947 § 45.10.31.]

48.10.320 Distribution of assets upon liquidation. Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contribution of the attorney to its surplus made as provided in RCW 48.10.190, and the return of any unused deposits, savings, or credits, shall be distributed to its subscribers who were

such within the twelve months prior to the last termination of its certificate of authority according to such formula as may have been approved by the commissioner. [1947 c 79 § .10.32; Rem. Supp. 1947 § 45.10.32.]

48.10.330 Merger—Conversion to stock or mutual insurer. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of the subscribers who vote upon such merger pursuant to such notice as may be approved by the commissioner and with the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with RCW 48.10.320 and a reasonable length of time within which to exercise such right. [1947 c 79 § .10.33; Rem. Supp. 1947 § 45.10.33.]

48.10.340 Impairment of assets—Procedure. (1) If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities other than any liability on account of funds contributed by the attorney, and to maintain the surplus required for the kinds of insurance it is authorized to transact, its attorney shall forthwith levy an assessment upon subscribers made subject to assessment by the terms of their policies for the amount needed to make up the deficiency.

(2) If the attorney fails to make the assessment within thirty days after the commissioner orders him to do so, or if the deficiency is not fully made up within sixty days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney, but including the reasonable cost of the liquidation. [1947 c 79 § .10.34; Rem. Supp. 1947 § 45.10.34.]

**Chapter 48.11
INSURING POWERS**

Sections	
48.11.020	"Life insurance" defined.
48.11.030	"Disability insurance" defined.
48.11.040	"Property insurance" defined.
48.11.050	"Marine and transportation insurance" defined.
48.11.060	"Vehicle insurance" defined.
48.11.070	"General casualty insurance" defined.
48.11.080	"Surety insurance" defined.

- 48.11.100 "Title insurance" defined.
 48.11.130 Reinsurance powers.
 48.11.140 Limitation of single risk.

Workers' compensation: Title 51 RCW.

48.11.020 "Life insurance" defined. "Life insurance" is insurance on human lives and insurances appertaining thereto or connected therewith. For the purposes of this code the transacting of life insurance includes the granting of annuities and endowment benefits; additional benefits in event of death by accident; additional benefits in event of the total and permanent disability of the insured; and optional modes of settlement of proceeds. [1947 c 79 § .11.02; Rem. Supp. 1947 § 45.11.02.]

48.11.030 "Disability insurance" defined. "Disability insurance" is insurance against bodily injury, disablement or death by accident, against disablement resulting from sickness, and every insurance appertaining thereto. [1947 c 79 § .11.03; Rem. Supp. 1947 § 45.11.03.]

48.11.040 "Property insurance" defined. "Property insurance" is insurance against loss of or damage to real or personal property of every kind and any interest therein, from any or all hazard or cause, and against loss consequential upon such loss or damage. [1947 c 79 § .11.04; Rem. Supp. 1947 § 45.11.04.]

48.11.050 "Marine and transportation insurance" defined. "Marine and transportation insurance" is:

(1) Insurance against loss of or damage to:

(a) Vessels, craft, aircraft, vehicles, goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, securities, choses in action, evidences of debt, valuable papers, bottomry, and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting shipment, or during any delays, storage, transshipment, or reshipment incident thereto, including war risks, marine builder's risks, and all personal property floater risks.

(b) Person or property in connection with or appertaining to a marine, transit or transportation insurance, including liability for loss of or damage to either incident to the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to any person arising out of the ownership, maintenance, or use of automobiles).

(c) Precious stones, jewels, jewelry, precious metals, whether in course of transportation or otherwise.

(d) Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage); piers, wharves, docks and slips, and other aids to navigation and transportation, including dry docks and marine railways, dams and appurtenant facilities for the control of waterways.

(2) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage, or expense incident to ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person. [1947 c 79 § .11.05; Rem. Supp. 1947 § 45.11.05.]

48.11.060 "Vehicle insurance" defined. (1) "Vehicle insurance" is insurance against loss or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, and against any loss or liability resulting from or incident to ownership, maintenance, or use of any such vehicle or aircraft or animal.

(2) Insurance against accidental death or accidental injury to individuals while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance. [1947 c 79 § .11.06; Rem. Supp. 1947 § 45.11.06.]

48.11.070 "General casualty insurance" defined. "General casualty insurance" includes vehicle insurance as defined in RCW 48.11.060, and in addition is insurance:

(1) Against legal liability for the death, injury, or disability of any human being, or for damage to property.

(2) Of medical, hospital, surgical and funeral benefits to persons injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury or disability of human beings.

(3) Of the obligations accepted by, imposed upon, or assumed by employers under law for workers' compensation.

(4) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt of any of the foregoing; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail.

(5) Upon personal effects against loss or damage from any cause.

(6) Against loss or damage to glass, including its lettering, ornamentation and fittings.

(7) Against any liability and loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and to make inspection of and issue certificates of inspection

upon elevators, boilers, machinery, and apparatus of any kind.

(8) Against loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes and containers, or by water entering through leaks or openings in buildings.

(9) Against loss or damage resulting from failure of debtors to pay their obligations to the insured (credit insurance).

(10) Against any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy. [1987 c 185 § 18; 1953 c 197 § 5; 1947 c 79 § .11.07; Rem. Supp. 1947 § 45.11.07.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.11.080 "Surety insurance" defined. "Surety insurance" includes:

(1) Credit insurance as defined in subdivision (9) of RCW 48.11.070.

(2) Bail bond insurance.

(3) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(4) Guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

(5) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidence of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also against loss or damage to such an insured's premises, or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat. [1967 c 150 § 8; 1947 c 79 § .11.08; Rem. Supp. 1947 § 45.11.08.]

48.11.100 "Title insurance" defined. "Title insurance" is insurance of owners of property or others having an interest therein, against loss by encumbrance, or defective titles, or adverse claim to title, and services connected therewith. [1947 c 79 § .11.10; Rem. Supp. 1947 § 45.11.10.]

48.11.130 Reinsurance powers. A domestic mutual assessment insurer shall not have authority to accept reinsurance. Any other domestic insurer may accept reinsurance only of such kinds of insurance as it is authorized to transact direct. [1947 c 79 § .11.13; Rem. Supp. 1947 § 45.11.13.]

48.11.140 Limitation of single risk. (1) No insurer shall retain any fire or surety risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent of its surplus to policyholders, except that:

(a) Domestic mutual insurers may insure up to the applicable limits provided by RCW 48.05.340, if greater.

(b) In the case of fire risks adequately protected by automatic sprinklers or fire risks principally of noncombustible construction and occupancy, an insurer may retain fire risks as to any one subject in an amount not exceeding twenty-five percent of the sum of (i) its unearned premium reserve and (ii) its surplus to policyholders.

(2) For the purposes of this section, a "subject of insurance" as to insurance against fire includes all properties insured by the same insurer which are reasonably subject to loss or damage from the same fire.

(3) Reinsurance in an alien reinsurer not qualified under RCW 48.05.300 may not be deducted in determining risk retained for the purposes of this section.

(4) In the case of surety insurance, the net retention shall be computed after deduction of reinsurances, the amount assumed by any co-surety, the value of any security deposited, pledged, or held subject to the consent of the surety and for the protection of the surety.

(5) This section shall not apply to insurance of marine risks or marine protection and indemnity risks. [1983 c 3 § 149; 1959 c 225 § 2; 1947 c 79 § .11.14; Rem. Supp. 1947 § 45.11.14.]

Chapter 48.12

ASSETS AND LIABILITIES

Sections

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48.12.040	Unearned premium reserve, property, casualty, and surety insurance.
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48.12.010 "Assets" defined. In any determination of the financial condition of any insurer there shall be allowed as assets only such assets as belong wholly and exclusively to the insurer, which are registered, recorded, or held under the insurer's name, and which consist of:

(1) Cash in the possession of the insurer or in transit under its control, and the true balance of any deposit of the insurer in a solvent bank or trust company;

(2) Investments, securities, properties, and loans acquired or held in accordance with this code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stocks and shares unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets if such interest is in the judgment of the commissioner a collectible asset.

(e) Interest due or accrued on a mortgage loan, in amount not exceeding in any event the amount, if any, of the difference between the unpaid principal and the value of the property less delinquent taxes thereon; but if any interest on the loan is in default more than eighteen months, or if any interest on the loan is in default and any taxes or any installment thereof on the property are and have been due and unpaid for more than eighteen months, no allowance shall be made for any interest on the loan.

(f) Rent due or accrued on real property if such rent is not in arrears for more than three months.

(3) Premium notes, policy loans, and other policy assets and liens on policies of life insurance, in amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) The net amount of uncollected and deferred premiums in the case of a life insurer which carries the full annual mean tabular reserve liability;

(5) Premiums in the course of collection, other than for life insurance, not more than ninety days past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or any of its instrumentalities;

(6) Installment premiums other than life insurance premiums, in accordance with regulations prescribed by the commissioner consistent with practice formulated or adopted by the National Association of Insurance Commissioners;

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon and unless otherwise required by regulation prescribed by the commissioner;

(8) Reinsurance recoverable subject to RCW 48.12.160;

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or

from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him;

(11) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars, which cost shall be amortized in full over a period not to exceed ten calendar years; and

(12) Other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the payment of losses and claims, at values to be determined by him. [1977 ex.s. c 180 § 2; 1963 c 195 § 11; 1947 c 79 § .12.01; Rem. Supp. 1947 § 45.12.01.]

48.12.020 Nonallowable assets. In addition to assets impliedly excluded under RCW 48.12.010, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) Goodwill, except in accordance with regulations prescribed by the commissioner, trade names, agency plants and other like intangible assets.

(2) Prepaid or deferred charges for expenses and commissions paid by the insurer.

(3) Advances to officers (other than policy loans or loans made pursuant to RCW 48.07.130), whether secured or not, and advances to employees, agents and other persons on personal security only.

(4) Stock of such insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in such stock through the ownership by such insurer of an interest in another firm, corporation or business unit.

(5) Furniture, furnishings, fixtures, safes, equipment, vehicles, library, stationery, literature, and supplies; except, electronic and mechanical machines authorized by subsection (11) of RCW 48.12.010, or such personal property as the insurer is permitted to hold pursuant to paragraph (e) of subsection (2) of RCW 48.13.160, or which is acquired through foreclosure of chattel mortgages acquired pursuant to RCW 48.13.150, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes.

(6) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code. [1982 c 218 § 1; 1963 c 195 § 12; 1947 c 79 § .12.02; Rem. Supp. 1947 § 45.12.02.]

Severability—1982 c 218: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 218 § 7.]

48.12.030 Liabilities. In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall include:

(1) The amount of its capital stock outstanding, if any; and

(2) The amount, estimated consistent with the provisions of this chapter, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expense of adjustment or settlement thereof; and

(3) With reference to life and disability insurance, and annuity contracts,

(a) the amount of reserves on life insurance policies and annuity contracts in force (including disability benefits for both active and disabled lives, and accidental death benefits, in or supplementary thereto) and disability insurance, valued according to the tables of mortality, tables of morbidity, rates of interest, and methods adopted pursuant to this chapter which are applicable thereto; and

(b) any additional reserves which may be required by the commissioner, consistent with practice formulated or approved by the National Association of Insurance Commissioners, on account of such insurances; and

(4) With reference to insurances other than those specified in subdivision (3) of this section, and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this chapter; and

(5) Taxes, expenses, and other obligations accrued at the date of the statement; and

(6) Any additional reserve set up by the insurer for a specific liability purpose or required by the commissioner consistent with practices adopted or approved by the National Association of Insurance Commissioners. [1973 1st ex.s. c 162 § 1; 1947 c 79 § .12.03; Rem. Supp. 1947 § 45.12.03.]

48.12.040 Unearned premium reserve, property, casualty, and surety insurance. (1) With reference to insurances against loss or damage to property, except as provided in RCW 48.12.050, and with reference to all general casualty insurances, and surety insurances, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserve shall be equal to the unearned portions of the gross premiums in force after deducting authorized reinsurance, as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premiums in force, less authorized reinsurance, to be held as a premium reserve, shall be computed according to the following table:

Term for which policy was written	Reserve for unearned premium
One year, or less	1/2
Two years	First year 3/4 Second year 1/4
Three years	First year 5/6 Second year 1/2 Third year 1/6

Term for which policy was written	Reserve for unearned premium
Four years	First year 7/8 Second year 5/8 Third year 3/8 Fourth year 1/8
Five years	First year 9/10 Second year 7/10 Third year 1/2 Fourth year 3/10 Fifth year 1/10
Over five years	Pro rata

(3) In lieu of computation according to such table, all of such reserves may be computed, at the insurer's option, on a monthly pro rata basis.

(4) After adopting any one of the methods for computing such reserve an insurer shall not change methods without the commissioner's approval. [1973 1st ex.s. c 162 § 2; 1947 c 79 § .12.04; Rem. Supp. 1947 § 45.12.04.]

48.12.050 Unearned premium reserve, marine and transportation insurance. With reference to marine and transportation insurances, premiums on trip risks not terminated shall be deemed unearned and the commissioner may require the insurer to carry a reserve thereon equal to one hundred percent on trip risks written during the month ended as of the date of statement; and computed upon a pro rata basis or, with the commissioner's consent, in accordance with the alternative methods provided in RCW 48.12.040 for all other risks. [1947 c 79 § .12.05; Rem. Supp. 1947 § 45.12.05.]

48.12.060 Reserve—Disability insurance. For all disability insurance policies the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies. [1973 1st ex.s. c 162 § 3; 1947 c 79 § .12.06; Rem. Supp. 1947 § 45.12.06.]

48.12.070 Loss records. An insurer shall maintain a complete and itemized record showing all losses and claims as to which it has received notice, including with regard to property, casualty, surety, and marine and transportation insurances, all notices received of the occurrence of any event which may result in a loss. [1947 c 79 § .12.07; Rem. Supp. 1947 § 45.12.07.]

48.12.080 Increased reserves. (1) If the commissioner determines that an insurer's unearned premium reserves, however computed, are inadequate, he may require the insurer to compute such reserves or any part thereof according to such other method or methods as are prescribed in this chapter.

(2) If the loss experience of an insurer shows that its loss reserves, however estimated, are inadequate, the commissioner shall require the insurer to maintain loss

reserves in such increased amount as is needed to make them adequate. [1947 c 79 § .12.08; Rem. Supp. 1947 § 45.12.08.]

48.12.090 Loss reserves—Liability insurance. The reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employer's liability insurance shall be computed as follows:

(1) For all liability suits being defended under policies written:

(a) Ten years or more prior to the date of determination, one thousand five hundred dollars for each suit;

(b) Five or more and less than ten years prior to the date of determination, one thousand dollars for each suit;

(c) Three or more and less than five years prior to the date of determination, eight hundred fifty dollars for each suit.

In any event the total loss and loss expense reserves for all such liability policies written more than three years prior to the date of determination shall not be less than the aggregate of the estimated unpaid losses and loss expenses under such policies computed on an individual case basis.

(2) For all liability policies written during the three years immediately preceding the date of determination, such reserves shall be the sum of the reserves for each such year, which shall be sixty percent of the earned premiums on liability policies written during such year less all loss and loss expense payments made under such policies written in such year. In any event such reserves for each of such three years shall be not less than the aggregate of the estimated unpaid losses and loss expenses for claims incurred under liability policies written in the corresponding year computed on an individual case basis. [1947 c 79 § .12.09; Rem. Supp. 1947 § 45.12.09.]

48.12.100 Unallocated liability loss expense. (1) All unallocated liability loss expense payments shall be distributed as follows:

(a) If made in a given calendar year subsequent to the first four years in which an insurer has been issuing liability policies, thirty-five percent shall be charged to the policies written that year, forty percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding, ten percent to the policies written in the third year preceding and five percent to the policies written in the fourth year preceding.

(b) If made in each of the first four calendar years in which an insurer issues liability policies, in the first calendar year one hundred percent shall be charged to the policies written in that year; in the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year; in the third calendar year forty percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, and twenty percent to the policies written in the second year preceding; and in the fourth calendar year

thirty-five percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, fifteen percent to the policies written in the second year preceding and ten percent to the policies written in the third year preceding.

(2) A schedule showing such distribution shall be included in the annual statement. [1947 c 79 § .12.10; Rem. Supp. 1947 § 45.12.10.]

48.12.110 Schedule of experience. Any insurer transacting any liability or workers' compensation insurances shall include in its annual statement filed with the commissioner, a schedule of its experience thereunder in such form as the commissioner may prescribe. [1987 c 185 § 19; 1947 c 79 § .12.11; Rem. Supp. 1947 § 45.12.11.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.12.120 Loss reserve—Workers' compensation insurance. The loss reserve for workers' compensation insurance shall be as follows:

(1) For all compensation claims under policies of compensation insurance written more than three years prior to the date as of which the statement is made, the loss reserve shall be the present values at four percent interest of the determined and the estimated future payments.

(2) For all compensation claims under policies of compensation insurance written in the three years immediately preceding the date as of which the statement is made, the loss reserve shall be sixty-five percent of the earned compensation premiums of each of such three years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years; but in any event such reserve shall be not less than the present value at three and one-half percent interest of the determined and the estimated unpaid compensation claims under policies written during each of such years. [1987 c 185 § 20; 1947 c 79 § .12.12; Rem. Supp. 1947 § 45.12.12.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.12.130 Unallocated workers' compensation loss expense. (1) All unallocated workers' compensation loss expense payments shall be distributed as follows:

(a) If made in a given calendar year subsequent to the first three years in which an insurer has been issuing such compensation policies, forty percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding and five percent to the policies written in the third year preceding.

(b) If made in each of the first three calendar years in which an insurer issues compensation policies, in the first calendar year one hundred percent shall be charged to the policies written in that year; in the second calendar year fifty percent shall be charged to the policies written in that year, and fifty percent to the policies

written in the preceding year; in the third calendar year forty-five percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year and ten percent to the policies written in the second year preceding.

(2) A schedule showing such distribution shall be included in the annual statement. [1987 c 185 § 21; 1947 c 79 § .12.13; Rem. Supp. 1947 § 45.12.13.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.12.140 "Loss payments," "loss expense" defined. "Loss payments" and "loss expense payments" as used with reference to liability and workers' compensation insurances shall include all payments to claimants, payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, adjusters and claims field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses and all other payments made on account of claims, whether such payments are allocated to specific claims or are unallocated. [1987 c 185 § 22; 1947 c 79 § .12.14; Rem. Supp. 1947 § 45.12.14.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.12.160 Credit for reinsurance. (1) Any insurance company organized under the laws of this state may take credit as an asset or as a deduction from loss and unearned premium reserves on risks ceded to a reinsurer to the extent reinsured by an insurer or insurers authorized to transact business in this state. The credit on ceded risks reinsured by any insurer which is not authorized to transact business in this state may be taken:

(a) Where the reinsurer maintains sufficient assets in the United States for the protection of policyholders in the United States and operates its business in such manner as to satisfy the commissioner that it maintains a financial condition reasonably comparable to those required of admitted insurers and that it is able to pay losses in the United States; or

(b) In an amount not exceeding:

(i) The amount of deposits by and funds withheld from the assuming insurer pursuant to express provision therefor in the reinsurance contract, as security for the payment of the obligations thereunder, if the deposits or funds are held subject to withdrawal by and under the control of the ceding insurer or if the deposits or funds are placed in trust for these purposes in a bank which is a member of the federal reserve system and withdrawals from the trust cannot be made without the consent of the ceding company; or

(ii) The amount of a clean and irrevocable letter of credit issued by a bank which is a member of the federal reserve system for a term of at least two years if the letter of credit is issued under arrangements satisfactory to the commissioner of insurance as constituting security to the ceding insurer substantially equal to that of a deposit under subparagraph (i) of this subsection.

(2) Any reinsurance ceded by a company organized under the laws of this state or ceded by any company not organized under the laws of this state and transacting business in this state must be payable by the assuming insurer on the basis of liability of the ceding company under the contract or contracts reinsured without diminution because of the insolvency of the ceding company, and any such reinsurance agreement which may be canceled on less than ninety days notice must provide for a run-off of the reinsurance in force at the date of cancellation.

(3) A reinsurance agreement may provide that the liquidator or receiver or statutory successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that during the pendency of such claim any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator or receiver or statutory successor.

The expense thus incurred by the assuming insurer shall be chargeable subject to court approval against the insolvent ceding insurer as a part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

(4) Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer. [1977 ex.s. c 180 § 3; 1947 c 79 § .12.16; Rem. Supp. 1947 § 45.12.16.]

48.12.170 Valuation of bonds. (1) All bonds or other evidences of debt having a fixed term and rate held by any insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(a) If purchased at par, at the par value.

(b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at the earliest date callable at par or maturing at par and so as to yield in the meantime the effective rate of interest at which the purchase was made; or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(c) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

(d) Unless otherwise provided by a valuation established or approved by the National Association of Insurance Commissioners, no such security shall be carried at above call price for the entire issue during any period within which the security may be so called.

(2) Such securities not amply secured or in default as to principal or interest shall be carried at market value.

(3) The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section, and not inconsistent with any such methods then currently formulated or approved by the National Association of Insurance Commissioners. [1947 c 79 § .12.17; Rem. Supp. 1947 § 45.12.17.]

48.12.180 Valuation of stocks. (1) Securities, other than those referred to in RCW 48.12.170, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by him as representing their fair market value, all consistent with any current method for the valuation of any such security formulated or approved by the National Association of Insurance Commissioners.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he may approve.

(3) The stock of a subsidiary of an insurer shall be valued on the basis of the greater of (a) the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer or (b) such other value determined pursuant to rules and cumulative limitations which shall be promulgated by the commissioner to effectuate the purposes of this chapter. [1973 c 151 § 1; 1947 c 79 § .12.18; Rem. Supp. 1947 § 45.12.18.]

48.12.190 Valuation of property. (1) Real property acquired pursuant to a mortgage loan or a contract for a deed, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(2) Other real property held by an insurer shall not be valued at any amount in excess of fair value, less reasonable depreciation based on the estimated life of the improvements.

(3) Personal property acquired pursuant to chattel mortgages made under RCW 48.13.150 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at date of acquisition together with taxes and expenses incurred in connection with such acquisition, or the fair value of such property, whichever amount is the lesser. [1967 ex.s. c 95 § 10; 1947 c 79 § .12.19; Rem. Supp. 1947 § 45.12.19.]

48.12.200 Valuation of purchase money mortgages. Purchase money mortgages shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or ninety percent of the fair value of

such real property, whichever is less. [1947 c 79 § .12-.20; Rem. Supp. 1947 § 45.12.20.]

Chapter 48.13 INVESTMENTS

Sections

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Valuation of investments: RCW 48.12.170 through 48.12.200.

48.13.010 Scope of chapter—Eligible investments.

(1) Investments of domestic insurers shall be eligible to be held as assets only as prescribed in this chapter.

(2) Any particular investment of a domestic insurer held by it on the effective date of this code and which was a legal investment immediately prior thereto, shall be deemed a legal investment hereunder.

(3) The eligibility of an investment shall be determined as of the date of its making or acquisition.

(4) Except as to RCW 48.13.360, this chapter applies only to domestic insurers. [1973 c 151 § 2; 1947 c 79 § .13.01; Rem. Supp. 1947 § 45.13.01.]

48.13.020 General qualifications. (1) No security or other investment shall be eligible for purchase or acquisition under this chapter unless it is interest bearing or interest accruing or dividend or income paying, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit, the interest or income accruing thereon; except,

(a) that an insurer may acquire real property as provided in RCW 48.13.160, and

(b) that this section shall not prevent participation by an insurer in a mortgage loan if the insurer, either individually or jointly with other lenders, holds a senior participation in such mortgage or deed of trust giving it substantially the rights of a first mortgagee as to its interest in that loan.

(2) No security shall be eligible for purchase at a price above its market value except voting stock of a corporation being acquired as a subsidiary.

(3) No provision of this chapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or if acquired pursuant to a lawful and bona fide agreement of bulk reinsurance or consolidation. Any investments so acquired through bulk reinsurance or consolidation, which are not otherwise eligible under this chapter, shall be disposed of pursuant to RCW 48.13.290 if personal property or securities, or pursuant to RCW 48.13.170 if real property. [1983 1st ex.s. c 32 § 2; 1982 c 218 § 2; 1967 ex.s. c 95 § 11; 1947 c 79 § .13.02; Rem. Supp. 1947 § 45.13.02.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.030 Limitation on securities of one entity. An insurer shall not, except with the consent of the commissioner, have at any time any combination of investments in or loans upon the security of the obligations, property, and securities of any one person, institution, or municipal corporation aggregating an amount exceeding four percent of the insurer's assets. This section shall not apply to investments in, or loans upon the security of general obligations of the government of the United States or of any state of the United States, nor to investments in foreign securities pursuant to subsection (1) of RCW 48.13.180, nor include policy loans made pursuant to RCW 48.13.190. [1947 c 79 § .13.03; Rem. Supp. 1947 § 45.13.03.]

48.13.040 Public obligations. An insurer may invest any of its funds in bonds or other evidences of debt, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States or by any state thereof or by any territory or possession of the United States or by the District of Columbia or by any county, city, town, village, municipality or district therein or by any political subdivision thereof or by any civil division or public instrumentality of one or more of the foregoing, if, by statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, (1) from taxes levied or required to be levied upon all taxable property or all taxable income within the jurisdiction of such governmental unit or, (2) from adequate special revenues pledged or otherwise appropriated or by law required to be provided for the purpose of such payment, but not including any obligation payable solely out of special assessments on properties benefited by local improvements unless adequate security is

evidenced by the ratio of assessment to the value of the property or the obligation is additionally secured by an adequate guaranty fund required by law. [1947 c 79 § .13.04; Rem. Supp. 1947 § 45.13.04.]

48.13.050 Corporate obligations. An insurer may invest any of its funds in obligations other than those eligible for investment under RCW 48.13.110 if they are issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, district or territory thereof, and are qualified under any of the following:

(1) Obligations which are secured by adequate collateral security and bear fixed interest if during each of any three, including the last two, of the five fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as defined in RCW 48.13.060, have been not less than one and one-fourth times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of such required collateral shall consist of stock other than stock meeting the requirements of RCW 48.13.080.

(2) Fixed interest bearing obligations, other than those described in subdivision (1) of this section, if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period and if during the last year of such period such net earnings have been not less than one and one-half times its fixed charges for such year.

(3) Adjustment, income or other contingent interest obligations if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during each of the last two years of such period such net earnings have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year. [1947 c 79 § .13.05; Rem. Supp. 1947 § 45.13.05.]

48.13.060 Terms defined. (1) Certain terms used are defined for the purposes of this chapter as follows:

(a) "Obligation" includes bonds, debentures, notes or other evidences of indebtedness.

(b) "Institution" includes corporations, joint stock associations, and business trusts.

(c) "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of such institution.

(d) "Fixed charges" includes interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

(2) If net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, such net earnings shall be determined after provision for income taxes of subsidiaries and after proper allowance for minority stock interest, if any; and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other than those payable by such subsidiaries to the parent corporation or to any other of such subsidiaries, except that if the minority common stock interest in the subsidiary corporation is substantial, the fixed charges and preferred dividends may be apportioned in accordance with regulations prescribed by the commissioner. [1947 c 79 § .13.06; Rem. Supp. 1947 § 45.13.06.]

48.13.070 Securities of merged or reorganized institutions. In applying the earnings test set forth in RCW 48.13.060 to any such institution, whether or not in legal existence during the whole of such five years next preceding the date of investment by the insurer, which has at any time during the five-year period acquired substantially all of the assets of any other institution or institutions by purchase, merger, consolidation or otherwise, or has been reorganized pursuant to the bankruptcy law, the earnings of the predecessor or constituent institutions, or of the institution so reorganized, available for interest and dividends for such portion of the five-year period as may have preceded such acquisition, or such reorganization, may be included in the earnings of such issuing, assuming or guaranteeing institution for such portion of such period as may be determined in accordance with adjusted or pro forma consolidated earnings statements covering such portion of such period and giving effect to all stock or shares outstanding, and all fixed charges existing, immediately after such acquisition, or such reorganization. [1947 c 79 § .13.07; Rem. Supp. 1947 § 45.13.07.]

48.13.080 Preferred or guaranteed stocks. (1) An insurer may invest any of its funds, in an aggregate amount not exceeding ten percent of its assets, if a life insurer, or not exceeding fifteen percent of such assets if other than a life insurer, in preferred or guaranteed stocks or shares, other than common stocks, of solvent institutions existing under the laws of the United States or of any state, district or territory thereof, if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition by the insurer are eligible as investments under this chapter; and if qualified under either of the following:

(a) Preferred stocks or shares shall be deemed qualified if both these requirements are met:

(i) The net earnings of the institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer must have averaged per year not less than one and one-half times the sum of its average annual fixed charges, if any, its

average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to such period; and

(ii) during each of the last two years of such period such net earnings must have been not less than one and one-half times the sum of its fixed charges, contingent interest and preferred dividend requirements for such year. The term "preferred dividend requirements" shall be deemed to mean cumulative or noncumulative dividends whether paid or not.

(b) Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing institution meets the requirements of subdivision (1) of RCW 48.13.050, construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends.

(2) An insurer shall not invest in or loan upon any preferred stock having voting rights, of any one institution, in excess of such proportion of the total issued and outstanding preferred stock of such institution having voting rights, as would, when added to any common shares of such institution, directly or indirectly held by it, exceed fifteen percent of all outstanding shares of such institution having voting rights, nor an amount in excess of the limit provided by RCW 48.13.030. This limitation shall not apply to such shares of a corporation which is the subsidiary of an insurer, and which corporation is engaged exclusively in a kind of business properly incidental to the insurance business of the insurer. [1947 c 79 § .13.08; Rem. Supp. 1947 § 45.13.08.]

48.13.090 Trustees' or receivers' obligations. An insurer may invest any of its funds, in an aggregate amount not exceeding two percent of its assets, in certificates, notes, or other obligations issued by trustees or receivers of institutions existing under the laws of the United States or of any state, district or territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction, if such obligation is adequately secured as to principal and interest. [1947 c 79 § .13.09; Rem. Supp. 1947 § 45.13.09.]

48.13.100 Equipment trust certificates. An insurer may invest any of its funds, in an aggregate amount not exceeding ten percent of its assets, in equipment trust obligations or certificates which are adequately secured, or in other adequately secured instruments evidencing an interest in transportation equipment wholly or in part within the United States and the right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such transportation equipment. [1947 c 79 § .13.10; Rem. Supp. 1947 § 45.13.10.]

48.13.110 Mortgages, deeds of trust, mortgage bonds, notes, contracts. An insurer may invest any of its funds in:

(1)(a) Bonds or evidences of debt which are secured by first mortgages or deeds of trust on improved unencumbered real property located in the United States;

(b) Chattel mortgages in connection therewith pursuant to RCW 48.13.150;

(c) The equity of the seller of any such property in the contract for a deed, covering the entire balance due on a bona fide sale of such property, in amount not to exceed ten thousand dollars or the amount permissible under RCW 48.13.030, whichever is greater, in any one such contract for deed.

(2) Purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to RCW 48.13.160 as amended in *section 7 of this 1969 amendatory act.

(3) Bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration under the terms of an act of congress of the United States of June 27, 1934, entitled the "National Housing Act," as amended.

(4) Bonds or notes secured by mortgage or trust deed guaranteed or insured as to principal in whole or in part by the Administrator of Veterans' Affairs pursuant to the provisions of Title III of an act of congress of the United States of June 22, 1944, entitled the "Service-men's Readjustment Act of 1944," as amended.

(5) Evidences of debt secured by first mortgages or deeds of trust upon leasehold estates, except agricultural leaseholds executed pursuant to RCW 79.01.096, running for a term of not less than fifteen years beyond the maturity of the loan as made or as extended, in improved real property, otherwise unencumbered, and if the mortgagee is entitled to be subrogated to all the rights under the leasehold.

(6) Evidences of debt secured by first mortgages or deeds of trust upon agricultural leasehold estates executed pursuant to RCW 79.01.096, otherwise unencumbered, and if the mortgagee is entitled to be subrogated to all the rights under the leasehold. [1975 1st ex.s. c 154 § 1; 1969 ex.s. c 241 § 4; 1947 c 79 § .13.11; Rem. Supp. 1947 § 45.13.11.]

*Reviser's note: The reference to "section 7 of this 1969 amendatory act" is to section 7, chapter 241, Laws of 1969 ex. sess., which amended RCW 48.13.160.

48.13.120 Investments limited by property value. (1) An investment made pursuant to the provisions of RCW 48.13.110 shall not exceed seventy-five percent of the fair value of the particular property at the time of investment. This restriction shall not apply to purchase money mortgages or like securities received by an insurer upon the sale or exchange of real property acquired pursuant to RCW 48.13.160.

(2) The extent to which a mortgage loan made under subdivision (3) or (4) of RCW 48.13.110 is guaranteed or insured by the Federal Housing Administration or guaranteed by the Administrator of Veterans' Affairs may be deducted before application of the limitations contained in subsection (1) of this section. [1969 ex.s. c 241 § 5; 1967 c 150 § 11; 1955 c 303 § 1; 1949 c 190 § 16; 1947 c 79 § .13.12; Rem. Supp. 1949 § 45.13.12.]

48.13.125 Mortgage loans on one family dwellings—Limitation on amortization. Loans on one family dwellings secured by mortgages or deeds of trust or investments therein shall be amortized within not more than thirty years and two months by payments of installments thereon at regular intervals not less frequent than every three months; except those guaranteed or insured in whole or in part by the Federal Housing Administration, the Administrator of Veterans' Affairs or the Farmers Home Administration. [1969 ex.s. c 241 § 6; 1967 c 150 § 10.]

48.13.130 "Encumbrance" defined. (1) Real property shall not be deemed to be encumbered within the meaning of RCW 48.13.110 by reason of the existence of:

(a) Instruments reserving mineral, oil, timber or similar rights, rights of way, sewer rights, or rights in walls;

(b) Liens for taxes or assessments not delinquent, or liens not delinquent for community recreational facilities, or for the maintenance of community facilities, or for service and maintenance of water rights;

(c) Building restrictions or other restrictive covenants;

(d) Encroachments, if such encroachments are taken into consideration in determining the fair value of the property;

(e) A lease under which rents or profits are reserved to the owner if in any event the security for the loan or investment is a first lien upon the real property; or

(f) With respect to loans secured by mortgage, deed of trust, or other collateral guaranteed or insured in full or in part by the government of the United States, such encumbrances as are allowed as exceptions in title by the administrator or administration of the division of such government so guaranteeing or insuring.

(2) If under any of the exceptions set forth in subsection (1) of this section there is any sum owing but not due or delinquent, the total amount of such sum shall be deducted from the amount which otherwise might be loaned on the property. The value of any mineral, oil, timber or similar right reserved shall not be included in the fair value of the property. [1955 c 303 § 2; 1947 c 79 § .13.13; Rem. Supp. 1947 § 45.13.13.]

48.13.140 Appraisal of property—Insurance—

Limit of loan. (1) The fair value of property shall be determined by appraisal by a competent appraiser at the time of the acquisition of real property or of the making or acquiring of a mortgage loan or investing in a contract for the deed thereon; except, that as to bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration, or guaranteed or insured as to principal in full or in part by the Administrator of Veterans' Affairs, or guaranteed or insured by the Farmers Home Administration, the valuation made by such administration or administrator shall be deemed to have been made by a competent appraiser for the purposes of this subsection.

(2) Buildings and other improvements located on mortgaged premises shall be kept insured for the benefit of the mortgagee against loss or damage from fire in an

amount not less than the unpaid balance of the obligation, or the insurable value of the property, whichever is the lesser.

(3) An insurer shall not make or acquire a loan or loans upon the security of any one parcel of real property in aggregate amount in excess of twenty-five thousand dollars or more than the amount permissible under RCW 48.13.030, whichever is the greater. [1967 ex.s. c 95 § 12; 1955 c 303 § 3; 1947 c 79 § .13.14; Rem. Supp. 1947 § 45.13.14.]

48.13.150 Auxiliary chattel mortgages. (1) In connection with a mortgage loan on the security of real property designed and used primarily for residential purposes only, acquired pursuant to RCW 48.13.110, an insurer may loan or invest an amount not exceeding twenty percent of the amount loaned on or invested in such real property mortgage, on the security of a chattel mortgage for a term of not more than five years representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(2) The term "durable equipment" shall include only mechanical refrigerators, mechanical laundering machines, heating and cooking stoves and ranges, mechanical kitchen aids, vacuum cleaners, and fire extinguishing devices; and in addition in the case of apartment houses and hotels, room furniture and furnishings.

(3) Prior to acquisition of a chattel mortgage, items of property to be included shall be separately appraised by a competent appraiser and the fair market value thereof determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property. [1947 c 79 § .13.15; Rem. Supp. 1947 § 45.13.15.]

48.13.160 Real property owned—Home office building. (1) An insurer may own and invest or have invested in its home office and branch office buildings any of its funds in aggregate amount not to exceed ten percent of its assets unless approved by the commissioner, or if a mutual or reciprocal insurer not to exceed ten percent of its assets nor such amount as would reduce its surplus, exclusive of such investment, below fifty thousand dollars unless approved by the commissioner.

(2) An insurer may own real property acquired in satisfaction or on account of loans, mortgages, liens, judgments, or other debts previously owing to the insurer in the course of its business.

(3) An insurer may invest or have invested in aggregate amount not exceeding three percent of its assets in the following real property, and in the repair, alteration, furnishing, or improvement thereof:

(a) Real property requisite for its accommodation in the convenient transaction of its business if approved by the commissioner.

(b) Real property acquired by gift or devise.

(c) Real property acquired in exchange for real property owned by it. If necessary in order to consummate

such an exchange, the insurer may put up cash in amount not to exceed twenty percent of the fair value of its real property to be so exchanged, in addition to such property.

(d) Real property acquired through a lawful merger or consolidation with it of another insurer and not required for the purposes specified in subsection (1) and in paragraph (a) of subsection (2) of this section.

(e) Upon approval of the commissioner, in real property and equipment incident to real property, requisite or desirable for the protection or enhancement of the value of other real property owned by the insurer.

(4) A domestic life insurer with assets of at least twenty-five million dollars and at least ten million dollars in capital and surplus, and a domestic property and casualty insurer with assets of at least seventy-five million dollars and at least thirty million dollars in capital and surplus, or, if a mutual or reciprocal property or casualty insurer, at least thirty million dollars in surplus, may, in addition to the real property included in subsections (1), (2) and (3) of this section, own such real property other than property to be used for ranch, mining, recreational, amusement, or club purposes, as may be acquired as an investment for the production of income, or as may be acquired to be improved or developed for such investment purpose pursuant to an existing program therefor, subject to the following limitations and conditions:

(a) The cost of each parcel of real property so acquired under this subsection (4), including the estimated cost to the insurer of the improvement or development thereof, when added to the book value of all other real property under this subsection (4), together with the admitted value of all common stock, then held by it, shall not exceed twenty percent of its admitted assets or fifty percent of its surplus over the minimum required surplus, whichever is greater, as of the thirty-first day of December next preceding; and

(b) The cost of each parcel of real property so acquired, including the estimated cost to the insurer of the improvement or development thereof, shall not exceed as of the thirty-first day of December next preceding, four percent of its admitted assets.

(c) Indirect or proportionate interests in real estate held by a domestic life insurer through any subsidiary shall be included in proportion to such insurer's interest in the subsidiary in applying the limits provided in subsection (4). [1981 c 339 § 6; 1973 c 151 § 3; 1969 ex.s. c 241 § 7; 1967 ex.s. c 95 § 13; 1949 c 190 § 17; 1947 c 79 § .13.16; Rem. Supp. 1949 § 45.13.16.]

48.13.170 Disposal of real property—Time limit.

(1) Real property acquired by an insurer pursuant to paragraph (a) of subsection (3) of RCW 48.13.160 shall be disposed of within five years after it has ceased being necessary for the use of the insurer in the transaction of its business. Real property acquired by an insurer pursuant to loans, mortgages, liens, judgments, or other debts, or pursuant to paragraphs (b), (c), (d), and (e) of subsection (3) of RCW 48.13.160 shall be disposed of within five years after date of acquisition. The time for

any such disposal may be extended by the commissioner for a definite additional period or periods upon application and proof that forced sale of the property, otherwise necessary, would be against the best interests of the insurer.

(2) Any such real property held by the insurer without the commissioner's consent beyond the time permitted for its disposal shall not be carried or allowed as an asset. [1967 ex.s. c 95 § 14; 1947 c 79 § .13.17; Rem. Supp. 1947 § 45.13.17.]

48.13.180 Foreign securities. (1) An insurer authorized to transact insurance in a foreign country may invest any of its funds, in aggregate amount not exceeding its deposit and reserve obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to those required pursuant to this chapter for investments in the United States.

(2) An insurer may invest any of its funds, in an aggregate amount not exceeding five percent of its assets, in addition to any amount permitted pursuant to subsection (1) of this section, in obligations of the governments of the Dominion of Canada or of Canadian provinces or municipalities, and in obligations of Canadian corporations, which have not been in default during the five years next preceding date of acquisition, and which are otherwise of equal quality to like United States public or corporate securities as prescribed in this chapter. [1947 c 79 § .13.18; Rem. Supp. 1947 § 45.13.18.]

48.13.190 Policy loans. A life insurer may loan to its policyholder upon the pledge of the policy as collateral security, any sum not exceeding the legal reserve maintained on the policy. [1947 c 79 § .13.19; Rem. Supp. 1947 § 45.13.19.]

48.13.200 Savings and share accounts. An insurer may invest or deposit any of its funds in share or savings accounts of savings and loan associations, or in savings accounts of banks, and in any one such institution only to the extent that such an account is insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation. [1947 c 79 § .13.20; Rem. Supp. 1947 § 45.13.20.]

48.13.210 Insurance stocks. (1) An insurer other than a life insurer may invest a portion of its surplus funds in an aggregate amount not exceeding fifty percent of its surplus over its capital stock and other liabilities, or thirty-five percent of its capital funds, whichever is greater, in the stocks of other insurers organized and existing under the laws of states of the United States. Indirect or proportionate interests in insurance stocks held by an insurer through any intermediate subsidiary or subsidiaries shall be included in applying the limitations provided in subsections (1), (2), and (3) of this section.

(2) A life insurer may invest in such insurance stocks in an aggregate amount not exceeding the smaller of the following amounts: Five percent of its assets; or twenty-

five percent of its surplus over its capital stock and other liabilities, or of surplus over its required minimum surplus if a mutual life insurer.

(3) An insurer shall not purchase or hold as an investment more than five percent of the voting stock of any one other insurer, and subject further to the investment limits of RCW 48.13.030. This limitation shall not apply if such other insurer is the subsidiary of, and substantially all its shares having voting powers are owned by, the insurer.

(4) No such insurance stock shall be eligible as an investment unless it meets the qualifications for stocks of other corporations as set forth in RCW 48.13.220.

(5) The limitations on investment in insurance stocks set forth in this chapter shall not apply to stocks acquired under a plan for merger of the insurers which has been approved by the commissioner or to shares received as stock dividends upon shares already owned. [1979 ex.s. c 199 § 3; 1979 ex.s. c 130 § 4; 1947 c 79 § .13.21; Rem. Supp. 1947 § 45.13.21.]

48.13.220 Common stocks—Investment—Acquisition—Engaging in certain businesses. (1) After satisfying the requirements of RCW 48.13.260, an insurer may invest any of its funds in common shares of stock in solvent United States corporations that qualify as a sound investment; except, that as to life insurers such investments shall further not aggregate an amount in excess of fifty percent of the insurer's surplus over its minimum required surplus.

(2) The insurer shall not invest in or loan upon the security of more than ten percent of the outstanding common shares of any one such corporation, subject further to the aggregate investment limitation of RCW 48.13.030.

(3) The limitations of subsection (2) of this section shall not apply to investment in the securities of any subsidiary corporations of the insurer which are engaged or organized to engage exclusively in one or more of the following businesses:

(a) Acting as an insurance agent for its parent or for any of its parent's insurer subsidiaries or affiliates;

(b) Investing, reinvesting, or trading in securities or acting as a securities broker or dealer for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(c) Rendering management, sales, or other related services to any investment company subject to the Federal Investment Company Act of 1940, as amended;

(d) Rendering investment advice;

(e) Rendering services related to the functions involved in the operation of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims appraisal, and collection services;

(f) Acting as administrator of employee welfare benefit and pension plans for governments, government agencies, corporations, or other organizations or groups;

(g) Ownership and management of assets which the parent could itself own and manage: *Provided*, That the aggregate investment by the insurer and its subsidiaries

acquired pursuant to this paragraph shall not exceed the limitations otherwise applicable to such investments by the parent;

(h) Acting as administrative agent for a government instrumentality which is performing an insurance function or is responsible for a health or welfare program;

(i) Financing of insurance premiums;

(j) Any other business activity reasonably ancillary to an insurance business;

(k) Owning one or more subsidiary (i) insurers to the extent permitted by this chapter, or (ii) businesses specified in paragraphs (a) through (k) of this subsection inclusive, or (iii) other businesses the stock of which is eligible under RCW 48.13.240 or 48.13.250, or any combination of such insurers and businesses.

(4) No acquisition of a majority of the total outstanding common shares of any corporation shall be made pursuant to this section unless a notice of intention of such proposed acquisition shall have been filed with the commissioner not less than ninety days, or such shorter period as may be permitted by the commissioner, in advance of such proposed acquisition, nor shall any such acquisition be made if the commissioner at any time prior to the expiration of the notice period finds that the proposed acquisition is contrary to law, or determines that such proposed acquisition would be contrary to the best interests of the parent insurer's policyholders or of the people of this state. The following shall be the only factors to be considered in making the foregoing determination:

(a) The availability of the funds or assets required for such acquisition;

(b) The fairness of any exchange of stock, assets, cash, or other consideration for the stock or assets to be received;

(c) The impact of the new operation on the parent insurer's surplus and existing insurance business and the risks inherent in the parent insurer's investment portfolio and operations;

(d) The fairness and adequacy of the financing proposed for the subsidiary;

(e) The likelihood of undue concentration of economic power;

(f) Whether the effect of the acquisition may be substantially to lessen competition in any line of commerce in insurance or to tend to create a monopoly therein; and

(g) Whether the acquisition might result in an excessive proliferation of subsidiaries which would tend to unduly dilute management effectiveness or weaken financial strength or otherwise be contrary to the best interests of the parent insurer's policyholders or of the people of this state. At any time after an acquisition, the commissioner may order its disposition if he finds, after notice and hearing, that its continued retention is hazardous or prejudicial to the interests of the parent insurer's policyholders. The contents of each notice of intention of a proposed acquisition filed hereunder and information pertaining thereto shall be kept confidential, shall not be subject to subpoena, and shall not be made public unless after notice and hearing the commissioner

determines that the interests of policyholders, stockholders, or the public will be served by the publication thereof.

(5) A domestic insurance company may, provided that it maintains books and records which separately account for such business, engage directly in any business referred to in paragraphs (d), (e), (h), and (j) of subsection (3) of this section either to the extent necessarily or properly incidental to the insurance business the insurer is authorized to do in this state or to the extent approved by the commissioner and subject to any limitations he may prescribe for the protection of the interests of the policyholders of the insurer after taking into account the effect of such business on the insurer's existing insurance business and its surplus, the proposed allocation of the estimated cost of such business, and the risks inherent in such business as well as the relative advantages to the insurer and its policyholders of conducting such business directly instead of through a subsidiary. [1982 c 218 § 3; 1973 c 151 § 4; 1949 c 190 § 18; 1947 c 79 § .13.22; Rem. Supp. 1949 § 45.13.22.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.230 Collateral loans. An insurer may loan its funds upon the pledge of securities or evidences of debt eligible for investment under this chapter. As at date made, no such loan shall exceed in amount ninety percent of the market value of such collateral pledged, except that loans upon pledges of United States government bonds may be equal to the market value of the bonds pledged. The amount so loaned shall be included in the maximum percentage of funds permitted to be invested in the kinds of securities or evidences of debt pledged or permitted by RCW 48.13.030. [1947 c 79 § .13.23; Rem. Supp. 1947 § 45.13.23.]

48.13.240 Miscellaneous investments. (1) An insurer may loan or invest its funds in an aggregate amount not exceeding the lesser of the following sums: Ten percent of its assets, or fifty percent of its surplus over its capital and other liabilities, or if a mutual or reciprocal insurer fifty percent of its surplus over minimum required surplus, in loans or investments not otherwise eligible for investment and not specifically prohibited by RCW 48.13.270.

(2) No such loan or investment shall be any item described in RCW 48.12.020.

(3) No such investment in or loan upon the security of any one person or entity shall exceed the amount specified in subsection (1) of this section or one percent of the insurer's assets, whichever is the lesser, except that this subsection (3) shall not apply to an investment in the stock of a subsidiary company.

(4) The insurer shall keep a separate record of all investments acquired under this section. [1982 c 218 § 4; 1947 c 79 § .13.24; Rem. Supp. 1947 § 45.13.24.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.250 Special consent investments. Upon advance approval of the commissioner and in compliance

with RCW 48.13.020, an insurer may make any investment or kind of investment or exchange of assets otherwise prohibited or not eligible under any other section of this chapter. The commissioner's order of approval if granted shall specify whether the investment or any part thereof may be credited to required minimum capital or surplus investments, or to investment of reserves. [1947 c 79 § .13.25; Rem. Supp. 1947 § 45.13.25.]

48.13.260 Required investments for capital and reserves. (1) An insurer shall invest and keep invested its funds aggregating in amount, if a stock insurer, not less than one hundred percent of its minimum required capital, or if a mutual or reciprocal insurer, not less than one hundred percent of its required minimum surplus, in cash or investments eligible in accordance with RCW 48.13.040 (public obligations), and in mortgage loans on real property located within this state, pursuant to RCW 48.13.110.

(2) In addition to the investments required by subsection (1) of this section, an insurer shall invest and keep invested its funds aggregating not less than one hundred percent of its reserves required by this code in cash or premiums in course of collection or in investments eligible in accordance with the following sections: RCW 48.13.040 (public obligations), 48.13.050 (corporate obligations), 48.13.080 (preferred or guaranteed stocks), 48.13.090 (trustees' or receivers' obligations), 48.13.100 (equipment trust certificates), 48.13.110 (mortgages, loans and contracts), 48.13.150 (auxiliary chattel mortgages), 48.13.160 (real property, home office building, etc.), 48.13.180 (foreign securities), 48.13.190 (policy loans), 48.13.200 (savings and share accounts), 48.13.220 (common stocks), 48.13.230 (collateral loans), 48.13.250 (special consent investments).

(3) This section shall not apply to title insurers nor to mutual insurers on the assessment premium plan. [1971 ex.s. c 13 § 16; 1947 c 79 § .13.26; Rem. Supp. 1947 § 45.13.26.]

Severability—1971 ex.s. c 13: See RCW 48.31A.900.

48.13.265 Investments secured by real estate—Amount restricted. An insurer shall not invest or have invested at any one time more than sixty-five percent of its assets in investments in real estate, real estate contracts, and notes, bonds and other evidences of debt secured by mortgage on real estate, as described in RCW 48.13.110 and 48.13.160. Any insurer which, on June 13, 1957, has in excess of sixty-five percent of its assets so invested shall not make any further such investments while such excess exists. [1957 c 193 § 8.]

48.13.270 Prohibited investments. An insurer shall not, except with the commissioner's approval in advance, invest in or loan its funds upon the security of, or hold:

(1) Issued shares of its own capital stock, except for the purpose of mutualization in accordance with RCW 48.08.080;

(2) Securities issued by any corporation, except as specifically authorized by this chapter directly or by exception, if a majority of the outstanding stock of such

corporation, or a majority of its stock having voting powers, is or will be after such acquisition, directly or indirectly owned by the insurer, or by any combination of the insurer and the insurer's directors, officers, parent corporation, and subsidiaries;

(3) Securities issued by any corporation if a majority of its stock having voting power is owned directly or indirectly by or for the benefit of any one or more of the insurer's officers and directors;

(4) Any investment or loan ineligible under the provisions of RCW 48.13.030;

(5) Securities issued by any insolvent corporation;

(6) Any investment or security which is found by the commissioner to be designed to evade any prohibition of this code. [1982 c 218 § 5; 1947 c 79 § .13.27; Rem. Supp. 1947 § 45.13.27.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.280 Securities underwriting, agreements to withhold or repurchase, prohibited. No insurer shall

(1) participate in the underwriting of the marketing of securities in advance of their issuance or enter into any transaction for such underwriting for the account of such insurer jointly with any other person; or

(2) enter into any agreement to withhold from sale any of its property, or to repurchase any property sold by it. [1947 c 79 § .13.28; Rem. Supp. 1947 § 45.13.28.]

48.13.290 Disposal of ineligible property or securities. (1) Any ineligible personal property or securities acquired by an insurer may be required to be disposed of within the time not less than six months specified by order of the commissioner, unless before that time it attains the standard of eligibility, if retention of such property or securities would be contrary to the policyholders or public interest in that it tends to substantially lessen competition in the insurance business or threatens impairment of the financial condition of the insurer.

(2) Any personal property or securities acquired by an insurer contrary to RCW 48.13.270 shall be disposed of forthwith or within any period specified by order of the commissioner.

(3) Any property or securities ineligible only because of being excess of the amount permitted under this chapter to be invested in the category to which it belongs shall be ineligible only to the extent of such excess. [1982 c 218 § 6; 1973 c 151 § 5; 1947 c 79 § .13.29; Rem. Supp. 1947 § 45.13.29.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.340 Authorization of investments. No investment, loan, sale or exchange thereof shall, except as to the policy loans of a life insurer, be made by any domestic insurer unless authorized or approved by its board of directors or by a committee charged by the board of directors or the bylaws with the duty of making such investment, loan, sale or exchange. The minutes of any such committee shall be recorded and reports thereof shall be submitted to the board of directors for approval or disapproval. [1949 c 190 § 19; 1947 c 79 § .13.34; Rem. Supp. 1949 § 45.13.34.]

48.13.350 Record of investments. (1) As to each investment or loan of the funds of a domestic insurer a written record in permanent form showing the authorization thereof shall be made and signed by an officer of the insurer or by the chairman of such committee authorizing the investment or loan.

(2) As to each such investment or loan the insurer's records shall contain:

(a) In the case of loans: The name of the borrower; the location and legal description of the property; a physical description, and the appraised value of the security; the amount of the loan, rate of interest and terms of repayment.

(b) In the case of securities: The name of the obligor; a description of the security and the record of earnings; the amount invested, the rate of interest or dividend, the maturity and yield based upon the purchase price.

(c) In the case of real estate: The location and legal description of the property; a physical description and the appraised value; the purchase price and terms.

(d) In the case of all investments:

(i) The amount of expenses and commissions if any incurred on account of any investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents which are part of the insurer's records.

(ii) The name of any officer or director of the insurer having any direct, indirect, or contingent interest in the securities or loan representing the investment, or in the assets of the person in whose behalf the investment or loan is made, and the nature of such interest. [1949 c 190 § 20; 1947 c 79 § .13.35; Rem. Supp. 1949 § 45.13.35.]

48.13.360 Investments of foreign and alien insurers. The investments of a foreign or alien insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as those required under this chapter for similar funds of like domestic insurers. [1947 c 79 § .13.36; Rem. Supp. 1947 § 45.13.36.]

**Chapter 48.14
FEES AND TAXES**

Sections	
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48.14.021	Reduction of tax—Policies connected with pension, etc., plans exempt or qualified under internal revenue code.
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48.14.090	Determining amount of direct premium taxable in this state.
48.14.100	Foreign or alien insurers, continuing liability for taxes.

48.14.010 Fee schedule. (1) The commissioner shall collect in advance the following fees:

(a) For filing charter documents:

- (i) Original charter documents, by-laws or record of organization of insurers, or certified copies thereof, required to be filed \$250.00
- (ii) Amended charter documents, or certified copy thereof, other than amendments of bylaws \$ 10.00
- (iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.

(b) Certificate of authority:

- (i) Issuance \$ 25.00
- (ii) Renewal \$ 25.00

(c) Annual statement of insurer, filing \$ 20.00

(d) Organization or financing of domestic insurers and affiliated corporations:

- (i) Application for solicitation permit, filing \$100.00
- (ii) Issuance of solicitation permit \$ 25.00

(e) Agents' licenses:

- (i) Agent's qualification licenses each year \$ 25.00
- (ii) Filing of appointment of each such agent, each year \$ 10.00
- (iii) Limited license issued pursuant to RCW 48.17.190, each year \$ 10.00

(f) Brokers' licenses:

- (i) Broker's license, each year \$ 50.00
- (ii) Surplus line broker, each year \$100.00

(g) Solicitors' license, each year \$ 10.00

(h) Adjusters' licenses:

- (i) Independent adjuster, each year \$ 25.00
- (ii) Public adjuster, each year \$ 25.00

(i) Resident general agent's license, each year \$ 25.00

(j) Examination for license, each examination:

All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service \$ 10.00

(k) Miscellaneous services:

- (i) Filing other documents \$ 5.00
- (ii) Commissioner's certificate under seal \$ 5.00
- (iii) Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit

of the general fund: *Provided*, That fees for examinations administered by an independent testing service which are approved by the commissioner pursuant to subsection (1)(j) of this section shall be collected directly by such independent testing service and retained by it. [1988 c 248 § 7; 1981 c 111 § 1; 1979 ex.s. c 269 § 1; 1977 ex.s. c 182 § 1; 1969 ex.s. c 241 § 8; 1967 c 150 § 12; 1955 c 303 § 4; 1947 c 79 § .14.01; Rem. Supp. 1947 § 45.14.01.]

Effective date, implementation—1979 ex.s. c 269: "This act shall take effect on April 1, 1980. The insurance commissioner is authorized to immediately take such steps as are necessary to insure that this 1979 act is implemented on its effective date." [1979 ex.s. c 269 § 10.]

48.14.020 Premium taxes. (1) Subject to other provisions of this chapter, each authorized insurer except title insurers shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in subsection (2) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer during the preceding calendar year other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

(2) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless of the length of term for which such policies are written, such tax shall be in the amount of two percent of the gross amount of such premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-first day of December next preceding, less the unused or unabsorbed portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in part payment of any renewal premiums or premium deposits on one-year policies expiring during such year.

(3) Each authorized insurer shall with respect to all ocean marine and foreign trade insurance contracts written within this state during the preceding calendar year, on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax of ninety-five one-hundredths of one percent on its gross underwriting profit. Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such ocean marine and foreign trade insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year

under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amounts refunded, or paid as participation dividends, by such insurers to the holders of such contracts.

(4) The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their agents, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or their agents.

(5) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums. [1986 c 296 § 1; 1983 2nd ex.s. c 3 § 7; 1982 2nd ex.s. c 10 § 1; 1982 1st ex.s. c 35 § 15; 1979 ex.s. c 233 § 2; 1969 ex.s. c 241 § 9; 1947 c 79 § .14.02; Rem. Supp. 1947 § 45.14.02.]

Severability—1986 c 296: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 296 § 11.]

Application—1986 c 296 § 1: "[The 1986 c 296 amendment of] RCW 48.14.020 applies to the payment of taxes due beginning July 1, 1986, and thereafter." [1986 c 296 § 12.]

Effective date—1986 c 296: "Section 7 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1986." [1986 c 296 § 13.] "Section 7 of this act" is the enactment of RCW 48.02.190, which took effect April 4, 1986.

Construction—**Severability**—**Effective dates**—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Payment of additional premium tax—1982 2nd ex.s. c 10: "The additional premium tax payments required by the amendment of RCW 48.14.020 by section 1 of this act shall be paid to the state treasurer through the insurance commissioner's office on March 1, 1983. Thereafter the prepayment schedule provided by RCW 48.14.025 shall apply." [1982 2nd ex.s. c 10 § 2.]

Severability—**Effective dates**—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1979 ex.s. c 233: "This 1979 amendatory act shall become effective beginning upon and after January 1, 1980." [1979 ex.s. c 233 § 4.]

Intent—1979 ex.s. c 233: "It is the intent of the legislature to eliminate existing tax discrimination between qualified and nonqualified pension plans which are effectuated by annuity contracts, by excluding the consideration paid for such contracts from premiums subject to the premium tax." [1979 ex.s. c 233 § 1.]

Severability—1979 ex.s. c 233: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 233 § 3.]

Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c): RCW 48.32.145.

Portion of state taxes on fire insurance premiums to be deposited in firemen's pension fund: RCW 41.16.050.
volunteer firefighters' relief and pension fund: RCW 41.24.030.

48.14.021 Reduction of tax—**Policies connected with pension, etc., plans exempt or qualified under internal revenue code.** As to premiums received from policies or contracts issued in connection with a pension, annuity

or profit-sharing plan exempt or qualified under sections 401, 403(b), 404, 408(b), or 501(a) of the United States internal revenue code, the rate of tax specified in RCW 48.14.020 shall be reduced twelve and one-half percent with respect to the tax payable in 1964, twenty-five percent with respect to the tax payable in 1965, thirty-seven and one-half percent with respect to the tax payable in 1966, fifty percent with respect to the tax payable in 1967, sixty-two and one-half percent with respect to the tax payable in 1968, seventy-five percent with respect to the tax payable in 1969, eighty-seven and one-half percent with respect to the tax payable in 1970, and one hundred percent with respect to the tax payable in 1971 and annually thereafter. [1975-'76 2nd ex.s. c 119 § 1; 1974 ex.s. c 132 § 1; 1963 c 166 § 1.]

48.14.022 Taxes—Exemptions and deductions. (1) The taxes imposed in RCW 48.14.020 do not apply to premiums collected or received for policies of insurance issued under RCW 48.41.010 through 48.41.210.

(2) In computing tax due under RCW 48.14.020, there may be deducted from taxable premiums the amount of any assessment against the taxpayer under RCW 48.41.010 through 48.41.210. Any portion of the deduction allowed in this section which cannot be deducted in a tax year without reducing taxable premiums below zero may be carried forward and deducted in successive years until the deduction is exhausted. [1987 c 431 § 23.]

Severability—1987 c 431: See RCW 48.41.910.

Business and occupation tax deductions: RCW 82.04.4329.

48.14.025 Prepayment of tax obligations under RCW 48.14.020. (1) Every insurer with a tax obligation under RCW 48.14.020 shall make prepayment of the tax obligations under RCW 48.14.020 for the current calendar year's business, if the sum of the tax obligations under RCW 48.14.020 for the preceding calendar year's business is four hundred dollars or more.

(2) The commissioner shall credit the prepayment toward the appropriate tax obligations of the insurer for the current calendar year under RCW 48.14.020.

(3) The minimum amounts of the prepayments shall be percentages of the insurer's preceding calendar year's tax obligation recomputed using the rate in effect for the current year and shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

(a) On or before June 15, forty-five percent;

(b) On or before September 15, twenty-five percent; and

(c) On or before December 15, twenty-five percent.

For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the insurer's prepayment obligations.

(4) The effect of transferring policies of insurance from one insurer to another insurer is to transfer the tax prepayment obligation with respect to the policies.

(5) On or before June 1 of each year, the commissioner shall notify each insurer required to make prepayments in that year of the amount of each prepayment and shall provide remittance forms to be used by the insurer. However, an insurer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the insurer to receive, the notice or forms. [1986 c 296 § 2; 1982 c 181 § 4; 1981 c 6 § 1.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Severability—1982 c 181: See note following RCW 48.03.010.

48.14.027 Exemption for state health care premiums before July 1, 1990. The taxes imposed in RCW 48.14.020 do not apply to premiums collected or received before July 1, 1990, for medical and dental coverage purchased under chapter 41.05 RCW. [1988 c 107 § 32.]

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

48.14.030 Tax statement. The insurer shall file with the commissioner as part of its annual statement a statement of premiums so collected or received according to such form as shall be prescribed and furnished by the commissioner. In every such statement the reporting of premiums for tax purposes shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement. [1947 c 79 § .14.03; Rem. Supp. 1947 § 45.14.03.]

48.14.040 Retaliatory provision. (1) If pursuant to the laws of any other state or country, any taxes, licenses, fees, deposits, or other obligations or prohibitions, in the aggregate, or additional to or at a net rate in excess of any such taxes, licenses, fees, deposits or other obligations or prohibitions imposed by the laws of this state upon like foreign or alien insurers and their agents and solicitors, are imposed on insurers of this state and their agents doing business in such other state or country, a like rate, obligation or prohibition may be imposed by the commissioner, as to any item or combination of items involved, upon all insurers of such other state or country and their agents doing business in this state, so long as such laws remain in force or are so applied.

(2) For the purposes of this section, an alien insurer may be deemed to be domiciled in the state wherein it has established its principal office or agency in the United States. If no such office or agency has been established, the domicile of the alien insurer shall be deemed to be the country under the laws of which it is formed. [1988 c 248 § 8; 1949 c 190 § 21, part; 1947 c 79 § .14.04; Rem. Supp. 1949 § 45.14.04.]

48.14.050 "Ocean marine and foreign trade insurances" defined. For the purposes of this code other than as to chapter 48.19 RCW "ocean marine and foreign trade insurances" shall include only:

(1) Insurances upon vessels, crafts, hulls and of interests therein or with relation thereto;

(2) Insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;

(3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition;

(4) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation coastwise, including transportation by land, water or air from point of origin to final destination, in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto. [1947 c 79 § .14.05; Rem. Supp. 1947 § 45.14.05.]

48.14.060 Failure to pay tax—Penalty. (1) Any insurer failing to file its tax statement and to pay the specified tax or prepayment of tax on premiums by the last day of the month in which the tax becomes due shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not paid within forty-five days after the due date, the insurer shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not paid within sixty days of the due date, the insurer shall be assessed a total penalty of twenty percent of the amount of the tax. In such event the tax may be collected by distraint, and the penalty recovered by any action instituted by the commissioner in any court of competent jurisdiction. The amount of any such penalty collected shall be paid to the state treasurer and credited to the general fund.

(2) At his discretion the commissioner may revoke the certificate of authority of any such delinquent insurer, such certificate of authority not to be reissued until all taxes, prepayments of tax, and penalties incurred by the insurer have been fully paid and the insurer has otherwise qualified for the certificate of authority. [1981 c 6 § 2; 1947 c 79 § .14.06; Rem. Supp. 1947 § 45.14.06.]

48.14.070 Refunds. In event any person has paid to the commissioner any tax, license fee or other charge in error or in excess of that which he is lawfully obligated to pay, the commissioner shall upon written request made to him make a refund thereof. A person may only request a refund of taxes within six years from the date the taxes were paid. A person may only request a refund of fees or charges other than taxes within thirteen months of the date the fees or charges were paid. Refunds may be made either by crediting the amount toward payment of charges due or to become due from such person, or by making a cash refund. To facilitate such cash refunds the commissioner may establish a revolving fund out of funds appropriated by the legislature for his use. [1979 ex.s. c 130 § 2; 1947 c 79 § .14.07; Rem. Supp. 1947 § 45.14.07.]

48.14.080 Premium tax in lieu of other forms. As to insurers other than title insurers, the taxes imposed by this title shall be in lieu of all other taxes, except taxes

on real and tangible personal property and excise taxes on the sale, purchase or use of such property. [1949 c 190 § 21, part; Rem. Supp. 1949 § 45.14.08.]

48.14.090 Determining amount of direct premium taxable in this state. In determining the amount of direct premium taxable in this state, all such premiums written, procured, or received in this state shall be deemed written upon risks or property resident, situated, or to be performed in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. [1963 c 195 § 14.]

48.14.100 Foreign or alien insurers, continuing liability for taxes. Any foreign or alien insurer authorized to do business in this state which hereafter either withdraws from the state or has its certificate of authority suspended or revoked shall continue to pay premium taxes pursuant to this chapter as to policies upon risks or property resident, situated, or to be performed in this state, which policies were issued during the time the insurer was authorized in this state. [1963 c 195 § 15.]

**Chapter 48.15
UNAUTHORIZED INSURERS**

Sections

48.15.020	Solicitation by unauthorized insurer prohibited.
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48.15.060	Validity of contracts.
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48.15.150	Legal process against surplus line insurer.
48.15.160	Exemptions from surplus line requirements.
48.15.170	Records of insureds—Inspection.

48.15.020 Solicitation by unauthorized insurer prohibited. (1) An insurer not thereunto authorized by the commissioner shall not solicit insurance business in this state, nor transact insurance business in this state except as provided in this chapter.

(2) No person shall, in this state, represent an unauthorized insurer except as provided in this chapter. This provision shall not apply to any adjuster or attorney at law representing such an insurer from time to time in this state in his professional capacity.

(3) Each violation of this section shall constitute a separate offense punishable by a fine of not more than twenty-five thousand dollars, and the commissioner, at the commissioner's discretion, may order replacement of policies improperly placed with an unauthorized insurer with policies issued by an authorized insurer. Violations may result in suspension or revocation of a license.

[1983 1st ex.s. c 32 § 3; 1980 c 102 § 2; 1947 c 79 § .15.02; Rem. Supp. 1947 § 45.15.02.]

48.15.030 Validity of contracts illegally effectuated.

A contract of insurance effectuated by an unauthorized insurer in violation of the provisions of this code shall be voidable except at the instance of the insurer. [1947 c 79 § .15.03; Rem. Supp. 1947 § 45.15.03.]

48.15.040 "Surplus line" coverage. If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated as "surplus lines," may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker.

(2) The insurance must not be procurable, after diligent effort has been made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state.

(3) Coverage shall not be procured from an unauthorized insurer for the purpose of securing a lower premium rate than would be accepted by any authorized insurer nor to secure any other competitive advantage.

(4) The commissioner may by regulation establish the degree of effort required to comply with subsections (2) and (3) of this section.

(5) At the time of the procuring of any such insurance an affidavit setting forth the facts referred to in subsections (2) and (3) of this section must be executed by the surplus line broker. Such affidavit shall be filed with the commissioner within thirty days after the insurance is procured. [1983 1st ex.s. c 32 § 4; 1947 c 79 § .15.04; Rem. Supp. 1947 § 45.15.04.]

48.15.050 Endorsement of contract. Every insurance contract procured and delivered as a surplus line coverage pursuant to this chapter shall have stamped upon it and be initialed by or bear the name of the surplus line broker who procured it, the following:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, enacted in 1947." [1947 c 79 § .15.05; Rem. Supp. 1947 § 45.15.05.]

48.15.060 Validity of contracts. Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this chapter shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers. [1947 c 79 § .15.06; Rem. Supp. 1947 § 45.15.06.]

48.15.070 Surplus line brokers—Licensing. Any individual while a resident of this state, or any firm or any corporation that has in its employ a qualified individual who is a resident of this state and who is authorized to exercise the powers of the firm or corporation, deemed by the commissioner to be competent and trustworthy, and while maintaining an office at a designated

location in this state, may be licensed as a surplus line broker in accordance with this section.

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner.

(2) The license fee shall be one hundred dollars for each license year during any part of which the license is in force. The annual renewal date shall be determined by the commissioner. The commissioner shall adopt a rule providing for the proration, on a quarterly basis, of the license fee. The proration shall be applicable only: (a) To applicants who apply for a license after the expiration of the first quarter of any license year, or (b) to licensees whose licenses would exist for less than nine months as a result of the adoption of the annual renewal date.

(3) Prior to issuance of license the applicant shall file with the commissioner a bond in favor of the state of Washington in the penal sum of twenty thousand dollars, with authorized corporate sureties approved by the commissioner, conditioned that he will conduct business under the license in accordance with the provisions of this chapter and that he will promptly remit the taxes provided by RCW 48.15.120. The licensee shall maintain such bond in force for as long as the license remains in effect.

(4) Every applicant for a surplus line broker's license or for the renewal of a surplus line broker's license shall file with the application or request for renewal a bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of one hundred thousand dollars and shall be the bonding requirement for new licensees. The licensee shall maintain such bond in force while so licensed. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the amount stated in the bond. The bond shall be contingent on the accounting by the surplus line broker to any person requesting such broker to obtain insurance, for moneys or premiums collected in connection therewith. A bond issued in accordance with RCW 48.17.250 or with this subsection will satisfy the requirements of both RCW 48.17.250 and this subsection if the limit of liability is not less than the greater of the requirement of RCW 48.17.250 or the requirement of this subsection.

(5) Any bond issued pursuant to subsection (3) or (4) of this section shall remain in force until the surety is released from liability by the commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon thirty days' advance notice in writing filed with the commissioner.

(6) For the purposes of this section, a "qualified individual" is a natural person who has met all the requirements that must be met by an individual surplus line broker. [1983 1st ex.s. c 32 § 24; 1982 c 181 § 5; 1981 c 199 § 1; 1980 c 102 § 3; 1979 ex.s. c 130 § 3; 1977 ex.s. c 182 § 2; 1959 c 225 § 4; 1947 c 79 § .15.07; Rem. Supp. 1947 § 45.15.07.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.15.080 Broker may accept business. A licensed surplus line broker may accept and place surplus line business for any insurance agent or broker licensed in this state for the kind of insurance involved, and may compensate such agent or broker therefor. [1947 c 79 § .15.08; Rem. Supp. 1947 § 45.15.08.]

48.15.085 Liability of insurer assuming direct risk. (1) If pursuant to the surplus lines provisions of this chapter an insurer has assumed direct risk under a coverage and the premium therefor has been paid to the broker who placed such insurance, the insurer shall be liable to the insured for unearned premiums payable upon cancellation of the insurance, whether or not the broker is indebted to the insurer for such premium or otherwise. This provision shall not affect rights as between the insurer and the broker.

(2) Each such insurer shall be deemed to have subjected itself to this section by acceptance of such direct risk. [1959 c 225 § 5.]

48.15.090 Solvent insurer required. (1) A surplus line broker shall not knowingly place surplus line insurance with insurers unsound financially. The broker shall ascertain the financial condition of the unauthorized insurer, and maintain written evidence thereof, before placing insurance therewith. The broker shall not so insure with any insurer having less capital and surplus or combined capital funds than the minimum amounts required for an admitted multiple line insurer in accordance with RCW 48.05.340 as now or hereafter amended, and in the case of an alien insurer, there must be on file with the commissioner a copy of a trust agreement, certified by the trustee, evidencing a subsisting trust deposit of not less than one-half of a like amount by such insurer with a bank or trust company in the United States, and which deposit is held for the protection of United States policyholders. Such trust account shall consist of cash or other assets acceptable to the commissioner and shall have an expiration date which at no time shall be less than five years hence. The commissioner may, by rule and regulation, prescribe the terms under which the foregoing financial requirements may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(2) For any violation of this section the broker may be fined not less than one hundred dollars or more than five thousand dollars, his surplus line broker's license may be revoked, suspended, or nonrenewed. [1980 c 102 § 4; 1975 1st ex.s. c 266 § 6; 1969 ex.s. c 241 § 10; 1955 c 303 § 5; 1947 c 79 § .15.09; Rem. Supp. 1947 § 45.15.09.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.15.100 Record of surplus line broker. (1) Each licensed surplus line broker shall keep a full and true record of each surplus line contract procured by him including a copy of the daily report, if any, showing such of the following items as may be applicable:

- (a) Amount of the insurance;
- (b) Gross premiums charged;
- (c) Return premium paid, if any;
- (d) Rate of premium charged upon the several items of property;
- (e) Effective date of the contract, and the terms thereof;
- (f) Name and address of the insurer;
- (g) Name and address of the insured;
- (h) Brief general description of property insured and where located;
- (i) Other information as may be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years next following the date of completion of such transaction. [1955 c 303 § 6; 1947 c 79 § .15.10; Rem. Supp. 1947 § 45.15.10.]

48.15.110 Broker's annual statement. (1) Each surplus line broker shall on or before the first day of March of each year file with the commissioner a verified statement of all surplus line insurance transacted by him during the preceding calendar year.

(2) The statement shall be on forms as prescribed and furnished by the commissioner and shall show:

- (a) Aggregate of net premiums;
- (b) Additional information as required by the commissioner. [1955 c 303 § 7; 1947 c 79 § .15.11; Rem. Supp. 1947 § 45.15.11.]

48.15.120 Premium tax—Surplus lines. (1) On or before the first day of March of each year each surplus line broker shall remit to the state treasurer through the commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by him during the preceding calendar year as shown by his annual statement filed with the commissioner, and at the same rate as is applicable to the premiums of authorized foreign insurers under this code. Such tax when collected shall be credited to the general fund.

(2) If a surplus line policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state. [1947 c 79 § .15.12; Rem. Supp. 1947 § 45.15.12.]

48.15.130 Penalty for default. If any surplus line broker fails to file his annual statement, or fails to remit the tax provided by RCW 48.15.120, by the last day of the month in which the tax becomes due, the surplus line broker shall pay the penalties provided in RCW 48.14-.060. The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction. Any fine collected by the commissioner shall be paid to the state treasurer and credited to the general fund.

[1983 1st ex.s. c 32 § 5; 1980 c 102 § 5; 1947 c 79 § .15.13; Rem. Supp. 1947 § 45.15.13.]

48.15.140 Revocation, suspension, or failure to renew broker's license. (1) The commissioner may revoke, suspend, or refuse to renew any surplus line broker's license:

(a) If the surplus line broker fails to file his annual statement or to remit the tax as required by this chapter; or

(b) If the surplus line broker fails to maintain an office in this state, or to keep the records, or to allow the commissioner to examine his records as required by this chapter; or

(c) For any of the causes for which a broker's license may be revoked under chapter 48.17 RCW.

(2) The commissioner may suspend or revoke any such license whenever he deems suspension or revocation to be for the best interests of the people of this state.

(3) The procedures provided by this code for the suspension or revocation of general brokers' licenses shall be applicable to suspension or revocation of a surplus line broker's license.

(4) No broker whose license has been so revoked shall again be so licensed within one year thereafter, nor until any fines or delinquent taxes owing by him have been paid. [1980 c 102 § 6; 1947 c 79 § .15.14; Rem. Supp. 1947 § 45.15.14.]

48.15.150 Legal process against surplus line insurer.

(1) An unauthorized insurer shall be sued, upon any cause of action arising in this state under any contract issued by it as a surplus line contract, pursuant to this chapter, in the superior court of the county in which the cause of action arose.

(2) Service of legal process against the insurer may be made in any such action by service upon the commissioner of duplicate copies of such legal process either by a person competent to serve a summons or by registered mail or certified mail with return receipt requested. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action. The commissioner shall forthwith mail the documents of process served, or a true copy thereof, to the insurer at its principal place of business last known to the commissioner, or to the person designated by the insurer for that purpose in the most recent document filed with the commissioner, on forms prescribed by the commissioner, by prepaid registered or certified mail with return receipt requested. The insurer shall have forty days from the date of service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer.

(3) An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision designating the commissioner as the person upon whom service of process may be made. [1979 ex.s. c 199 § 4;

1963 c 195 § 16; 1955 c 303 § 8; 1947 c 79 § .15.15; Rem. Supp. 1947 § 45.15.15.]

48.15.160 Exemptions from surplus line requirements. (1) The provisions of this chapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Agents and brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this chapter and shall meet the requirements imposed upon a surplus line broker pursuant to RCW 48.15.090 and any regulations adopted thereunder. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The agent or broker shall furnish to the commissioner at the commissioner's request and on forms as designated and furnished by him or her a report of all such coverages so placed in a designated calendar year. [1987 c 185 § 23; 1985 c 264 § 5; 1949 c 190 § 22; 1947 c 79 § .15.16; Rem. Supp. 1949 § 45.15.16.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.15.170 Records of insureds—Inspection. Every person for whom insurance has been placed with an unauthorized insurer pursuant to or in violation of this chapter shall, upon the commissioner's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person shall be liable to a fine of not more than five hundred dollars. [1947 c 79 § .15.17; Rem. Supp. 1947 § 45.15.17.]

Chapter 48.16

DEPOSITS OF INSURERS

Sections

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48.16.030	Securities eligible for deposit.
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48.16.010 Deposits of insurers—In general. The commissioner shall accept deposits of securities or funds by insurers as follows:

(1) Deposits in amount as required to be made as prerequisite to a certificate of authority to transact insurance in this state.

(2) Deposits of domestic or alien insurers in amount as required to be made by the laws of other states as prerequisite for authority to transact insurance in such other states.

(3) Deposits in amounts as result from application of the retaliatory provision, RCW 48.14.040.

(4) Deposits in other additional amounts permitted to be made by this code. [1955 c 86 § 3; 1947 c 79 § .16.01; Rem. Supp. 1947 § 45.16.01.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.020 Deposits to be held in trust. Each such deposit shall be held by the commissioner in trust for the protection of all policyholders in the United States of the insurer making it; except that deposits of alien insurers shall be so held for the security of such insurer's obligations arising out of its insurance transactions in the United States, and except as to deposits the purpose of which may be further limited pursuant to the retaliatory provision, RCW 48.14.040. [1955 c 86 § 4; 1947 c 79 § .16.02; Rem. Supp. 1947 § 45.16.02.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.030 Securities eligible for deposit. All such deposits shall consist of cash funds or public obligations as specified in RCW 48.13.040; except, that with respect to deposits held on account of registered policies heretofore issued, the commissioner may accept deposit of such other kinds of securities as are expressly required to be deposited by the terms of such policies. [1955 c 86 § 5; 1947 c 79 § .16.03; Rem. Supp. 1947 § 45.16.03.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.050 Commissioner's receipt—Records. (1) The commissioner shall deliver to the insurer a receipt for all funds and securities so deposited by it.

(2) The commissioner or the designated depository shall keep a record in permanent form of all funds and securities so deposited. [1955 c 86 § 6; 1947 c 79 § .16.05; Rem. Supp. 1947 § 45.16.05.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.060 Transfer of securities. (1) No transfer of any funds or security so held on deposit, whether voluntary or by operation of law, shall be valid unless approved in writing by the commissioner.

(2) A statement of each such transfer shall be entered on the records of the commissioner or designated depository, showing the name of the insurer from whose deposit such transfer is made, the name of the transferee, and the par value of the securities so transferred. [1955 c 86 § 7; 1947 c 79 § .16.06; Rem. Supp. 1947 § 45.16.06.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.070 Depositories—Designation. The commissioner may designate any solvent trust company or other solvent financial institution having trust powers domiciled in this state, as the commissioner's depository to receive and hold any deposit of securities. Any deposit so held shall be at the expense of the insurer. Any solvent financial institution domiciled in this state, the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, may be designated as the commissioner's depository to receive and hold any deposit of funds. All funds deposited shall be fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. [1985 c 264 § 6; 1955 c 86 § 8; 1947 c 79 § .16.07; Rem. Supp. 1947 § 45.16.07.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.080 Liability for safekeeping. The state of Washington shall be responsible for the safekeeping and return of all funds and securities deposited pursuant to this chapter with the commissioner or in any such depository so designated by him. [1955 c 86 § 9; 1947 c 79 § .16.08; Rem. Supp. 1947 § 45.16.08.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.090 Dividends and substitutions. While solvent and complying with this code an insurer shall be entitled:

(1) To collect and receive interest and dividends accruing on the securities so held on deposit for its account, and

(2) From time to time exchange and substitute for any of such securities, other securities eligible for deposit and of at least equal value. [1947 c 79 § .16.09; Rem. Supp. 1947 § 45.16.09.]

48.16.100 Release of deposits—Generally. (1) Any such required deposit shall be released in these instances only:

(a) Upon extinguishment of all liabilities of the insurer for the security of which the deposit is held, by insurance contract or otherwise.

(b) If any such deposit or portion thereof is no longer required under this code.

(c) If the deposit has been made pursuant to the retaliatory provision, RCW 48.14.040, it shall be released in whole or in part when no longer so required.

(d) Upon proper order of a court of competent jurisdiction the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the insurer for whose account the deposit is held.

(2) No such release shall be made except on application to and written order of the commissioner made upon proof satisfactory to him of the existence of one of such grounds therefor. The commissioner shall have no personal liability for any such release of any deposit or part thereof so made by him in good faith.

(3) All releases of deposits or any part thereof shall be made to the person then entitled thereto upon proof of title satisfactory to the commissioner.

(4) Deposits held on account of title insurers are subject further to the provisions of chapter 48.29 RCW. [1947 c 79 § .16.10; Rem. Supp. 1947 § 45.16.10.]

48.16.110 Release of existing deposits. Any part of any deposit of an insurer held by the commissioner which is in amount in excess of the deposit required or permitted to be made by such insurer under this code, shall, upon written order of the commissioner, be released; except, that no deposit held on account of any registered policies heretofore issued by the insurer shall be released except in accordance with the conditions under which such deposit was made. [1955 c 86 § 10; 1947 c 79 § .16.11; Rem. Supp. 1947 § 45.16.11.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.120 Voluntary excess deposits. An insurer may deposit and maintain on deposit with the commissioner funds and eligible securities in amount exceeding its required deposit under this code by not more than one hundred thousand dollars, for the purpose of absorbing fluctuations in the value of securities held in its required deposit, and to facilitate the exchange and substitution of such required securities. During the solvency of the insurer any such excess deposit or any part thereof shall be released to it upon its request. During the insolvency of the insurer such excess deposit shall be released only as provided in RCW 48.16.100. [1955 c 86 § 11; 1947 c 79 § .16.12; Rem. Supp. 1947 § 45.16.12.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.130 Immunity from levy. No judgment creditor or other claimant of an insurer shall levy upon any deposit held pursuant to this chapter, or upon any part thereof. [1947 c 79 § .16.13; Rem. Supp. 1947 § 45.16.13.]

Chapter 48.17

AGENTS, BROKERS, SOLICITORS, AND ADJUSTERS

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48.17.010 "Agent" defined. "Agent" means any person appointed by an insurer to solicit applications for insurance on its behalf. If authorized so to do, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated. [1985 c 264 § 7; 1981 c 339 § 9; 1947 c 79 § .17.01; Rem. Supp. 1947 § 45.17.01.]

48.17.020 "Broker" defined. "Broker" means any person who, on behalf of the insured, for compensation as an independent contractor, for commission, or fee, and not being an agent of the insurer, solicits, negotiates, or procures insurance or reinsurance or the renewal or continuance thereof, or in any manner aids therein, for insureds or prospective insureds other than himself. [1947 c 79 § .17.02; Rem. Supp. 1947 § 45.17.02.]

48.17.030 "Solicitor" defined. "Solicitor" means an individual authorized by an agent or broker to solicit applications for insurance as a representative of such agent or broker and to collect premiums in connection therewith. An individual employed by, and devoting full time to clerical work with incidental taking of insurance applications and receiving premiums in the office of the agent or broker is not deemed to be a solicitor if his compensation is not related to the volume of such applications, insurances, or premiums. [1947 c 79 § .17.03; Rem. Supp. 1947 § 45.17.03.]

48.17.040 Service representatives. Individuals other than an officer, manager, or general agent of the insurer, employed on salary by an insurer or general agent to work with and assist agents in soliciting, negotiating, and effectuating insurance in such insurer or in the insurers represented by the general agent, are deemed to be service representatives and are not required to be licensed. [1947 c 79 § .17.04; Rem. Supp. 1947 § 45.17.04.]

48.17.050 "Adjuster" defined. (1) "Adjuster" means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to his principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. An attorney at law who adjusts insurance losses from time to time incidental to the practice of his profession, or an adjuster of marine losses, or a salaried employee of an insurer or of a general agent, is not deemed to be an "adjuster" for the purposes of this chapter.

(2) "Independent adjuster" means such an adjuster representing the interests of the insurer.

(3) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy. [1947 c 79 § .17.05; Rem. Supp. 1947 § 45.17.05.]

48.17.055 "Insurance education provider" defined. "Insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution created by Washington statutes, or vocational school licensed under Title 28C RCW or independent contractor to which the commissioner has granted authority to conduct and certify completion of a course satisfying the insurance education requirements of RCW 48.17.150. [1989 c 323 § 2.]

Effective date—1989 c 323: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 323 § 8.]

48.17.060 License required—Exceptions—Penalty. (1) No person shall in this state act as or hold himself out to be an agent, broker, solicitor, or adjuster unless then licensed therefor by this state.

(2) No agent, solicitor, or broker shall solicit or take applications for, procure, or place for others any kind of insurance for which he is not then licensed.

(3) This section shall not apply with respect to any person securing and forwarding information required for the purposes of group credit life and credit disability insurance in connection with an extension of credit and such other credit life or disability insurance lines as the commissioner shall determine, and where no commission or other compensation is payable on account of the securing and forwarding of such information: *Provided*, That the reimbursement of a creditor's actual expenses for securing and forwarding information required for the purposes of such group insurance shall not be considered a commission or other compensation if such reimbursement does not exceed three dollars per certificate issued, or in the case of a monthly premium plan extending beyond twelve months, not to exceed three dollars per loan transaction revision per year.

(4) Any person violating this section shall be liable to a fine of not to exceed five hundred dollars and imprisonment for not to exceed six months for each instance of such violation. [1975 1st ex.s. c 266 § 7; 1955 c 303 § 9; 1947 c 79 § .17.06; Rem. Supp. 1947 § 45.17.06.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.17.065 Application of chapter to health care service contractors and health maintenance organizations. The provisions of this chapter shall apply to agents of health care service contractors and health maintenance organizations. [1983 c 202 § 7.]

48.17.070 General qualifications for license. For the protection of the people of this state the commissioner shall not issue or renew any such license except in compliance with this chapter, nor to, nor to be exercised by,

any person found by him to be untrustworthy, or incompetent, or who has not established to the satisfaction of the commissioner that he is qualified therefor in accordance with this chapter. [1947 c 79 § .17.07; Rem. Supp. 1947 § 45.17.07.]

48.17.090 Application for license. (1) Application for any such license shall be made to the commissioner upon forms as prescribed and furnished by him. As a part of or in connection with any such application the applicant shall furnish information concerning his identity, including his fingerprints, personal history, experience, business record, purposes, and other pertinent facts, as the commissioner may reasonably require.

(2) Any person wilfully misrepresenting any fact required to be disclosed in any such application shall be liable to penalties as provided by this code.

(3) If in the process of verifying fingerprints, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of such fees or charges shall be paid to the commissioner's office by the applicant and shall be considered the recovery of a previous expenditure. [1982 c 181 § 6; 1981 c 339 § 10; 1967 c 150 § 15; 1947 c 79 § .17.09; Rem. Supp. 1947 § 45.17.09.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.100 One filing of personal data sufficient. (1) The filing of personal data by an individual in connection with one application for an agent's license shall be sufficient, regardless of the number of insurers to be represented by the agent or the number of subsequent applications by the same applicant.

(2) The commissioner may, for his information from time to time require any licensed agent, or solicitor, or broker, or adjuster, to supply him with the information called for in an application for license. [1947 c 79 § .17.10; Rem. Supp. 1947 § 45.17.10.]

48.17.110 Examination of applicants. (1) Each applicant for license as agent, broker, solicitor, or adjuster shall prior to the issuance of any such license, personally take and pass to the satisfaction of the examining authority, an examination given as a test of his qualifications and competence, but this requirement shall not apply to:

(a) Applicants for limited licenses under RCW 48.17.190, at the discretion of the commissioner.

(b) Applicants who within the two year period next preceding date of application have been licensed in this state under a license requiring qualifications similar to qualifications required by the license applied for or who have successfully completed a course of study recognized as a mark of distinction by the insurance industry and who are deemed by the commissioner to be fully qualified and competent.

(c) Applicants for license as nonresident agent or as nonresident broker or as nonresident adjuster who are duly licensed in their state of residence and who are

deemed by the commissioner to be fully qualified and competent for a similar license in this state.

(d) Applicants for an agent's or solicitor's license covering the same kinds of insurance as an agent's or solicitor's license then held by them.

(e) Applicants for an adjuster's license who for a period of one year, a portion of which was in the year next preceding the date of application, have been a full time salaried employee of an insurer or of a general agent to adjust, investigate, or report claims arising under insurance contracts.

(2) Any person licensed as an insurance broker by this state prior to June 8, 1967, who is otherwise qualified to be a licensed insurance broker, shall be entitled to renew his broker's license by payment of the applicable fee for such of the broker's licenses authorized by RCW 48.17.240, as he shall elect, without taking any additional examination, except as provided in subsection (3).

(3) The commissioner may at any time require any licensed agent, broker, solicitor, or adjuster to take and successfully pass an examination testing his competence and qualifications as a condition to the continuance or renewal of his license, if the licensee has been guilty of violation of this code, or has so conducted his affairs under his license as to cause the commissioner reasonably to desire further evidence of his qualifications. [1977 ex.s. c 182 § 3; 1967 c 150 § 16; 1965 ex.s. c 70 § 19; 1963 c 195 § 17; 1955 c 303 § 10; 1949 c 190 § 23; 1947 c 79 § .17.11; Rem. Supp. 1949 § 45.17.11.]

48.17.120 Scope of examinations. (1) Each such examination shall be of sufficient scope and difficulty to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for, and of the duties and responsibilities of, and laws of this state applicable to, such a licensee, and so as reasonably to assure that a passing score indicates that the applicant is qualified from the standpoint of knowledge and education.

(2) Examination as to ocean marine and related coverages may be waived by the commissioner as to any applicant deemed by the commissioner to be qualified by past experience to deal in such insurances.

(3) The commissioner shall prepare, or approve, and make available to insurers, general agents, brokers, agents, and applicants a printed manual specifying in general terms the subjects which may be covered in any examination for a particular license. [1989 c 323 § 6; 1981 c 111 § 2; 1967 c 150 § 17; 1955 c 303 § 11; 1947 c 79 § .17.12; Rem. Supp. 1947 § 45.17.12.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.125 Examination questions—Confidentiality—Penalties. It is unlawful for any unauthorized person to remove, reproduce, duplicate, or distribute in any form, any question(s) used by the state of Washington to determine the qualifications and competence of insurance agents, brokers, solicitors, or adjusters required by Title 48 RCW to be licensed. This section shall not prohibit an insurance education provider from

creating and using sample test questions in courses approved pursuant to RCW 48.17.150.

Any person violating this section shall be subject to penalties as provided by RCW 48.01.080 and 48.17.560. [1989 c 323 § 1.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.130 Examinations—Form, time of, fee. (1)

The answers of the applicant to any such examination shall be written by the applicant under the examining authority's supervision, and any such written examination may be supplemented by oral examination at the discretion of the examining authority.

(2) Examinations shall be given at such times and places within this state as the examining authority deems necessary reasonably to serve the convenience of both the examining authority and applicants.

(3) The examining authority may require a waiting period of reasonable duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

(4) For each examination taken, the commissioner shall collect in advance the fee provided in RCW 48.14.010. In the event the commissioner contracts with an independent testing service for examination development and administration, the examination fee may be collected directly by such testing service. [1981 c 111 § 3; 1967 c 150 § 18; 1947 c 79 § .17.13; Rem. Supp. 1947 § 45.17.13.]

48.17.135 Insurance advisory examining board. (1)

There is hereby created an insurance advisory examining board, hereafter referred to as the examining board or the board.

(2) The examining board shall consist of seven members, the commissioner who shall serve ex officio as a member and shall act as chairman, and six members appointed by the commissioner. Appointments shall be made within thirty days after June 8, 1967.

(3) The insurance commissioner as chairman shall keep a record of all proceedings of the board, send out notices of meetings of the board, draft rules and regulations of the board, and perform such other duties as may be required.

(4) The members of the board appointed by the commissioner shall have been licensed insurance agents or brokers of this state for at least five years prior to their appointments, three of whom shall have been engaged in the life or disability fields and the remaining three in other insurance fields. Consistent with the representation on the board, it may function as two separate committees, at which meetings the commissioner shall also preside.

(5) The first terms for members of the examining board appointed by the commissioner shall be as follows: Two members for one year; two members for two years; two members for three years. Thereafter, the terms shall be for three years and until their successors are appointed and qualified.

(6) The examining board, or any committee of the board, shall meet at the call of the commissioner. A

majority of the members of the board or of a committee shall constitute a quorum for the transaction of business by the board or a committee of the board.

(7) The board shall have the advisory power:

(a) To recommend general policy concerning the scope, contents, procedure and conduct of examinations to be given for respective licenses as agent, broker and solicitor.

(b) To recommend the questions comprising each particular such examination and from time to time to change such questions as the board deems advisable, and where examinations are composed by the board results of these examinations shall be evaluated by the board.

(c) To review other state insurance examination papers and the grading thereof.

(d) To recommend the scope and contents of material furnished agent, broker or solicitor examination applicants by the commissioner under RCW 48.17.120 for the purpose of preparing for any such examination.

(e) To recommend rules and regulations for the procedure to be followed in the conduct of such examinations, including, but not limited to, application for examination, frequency and place of examinations, minimum waiting period before reexamination, monitoring, and the safeguarding of examination questions and papers. The board shall file copies of all such rules and regulations, and of all amendments or modifications thereof, with the commissioner and with the code reviser for public inspection and information.

(f) To make such recommendations to the commissioner in regard to the administration of the examination requirement as the board from time to time deems appropriate.

(8) Members may be removed by the commissioner for any cause which unreasonably interferes with the proper discharge of the responsibilities of the board or any member thereof. Any vacancy shall be filled by the commissioner within ninety days after it occurs by appointment for the remainder of the unexpired term.

(9) Appointed members of the examining board shall be reimbursed for their travel expenses incurred in the actual performance of their duties in accordance with RCW 43.03.050 and 43.03.060.

(10) The powers and recommendations of the examining board shall be advisory only. [1984 c 287 § 96; 1975-'76 2nd ex.s. c 34 § 142; 1967 c 150 § 14.]

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

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

48.17.150 Agent's and broker's qualifications—Continuing education requirements. (1) To qualify for an agent's or broker's license an applicant must otherwise comply with this code therefor and must

(a) be eighteen years of age or over, if an individual;

(b) be a bona fide resident of and actually reside in this state, or if a corporation, be other than an insurer and maintain a lawfully established place of business in this state, except as provided in RCW 48.17.330;

(c) be empowered to be an agent or broker, as the case may be, under its members' agreement, if a firm, or by its articles of incorporation, if a corporation;

(d) complete such minimum educational requirements for the issuance of an agent's license for the kinds of insurance specified in RCW 48.17.210 as may be required by regulation issued by the commissioner;

(e) successfully pass any examination as required under RCW 48.17.110;

(f) be a trustworthy person;

(g) if for an agent's license, be appointed as its agent by one or more authorized insurers, subject to issuance of the license; and

(h) if for broker's license, have had at least two years experience either as an agent, solicitor, adjuster, general agent, broker, or as an employee of insurers or representatives of insurers, and special education or training of sufficient duration and extent reasonably to satisfy the commissioner that he possesses the competence necessary to fulfill the responsibilities of broker.

(2) The commissioner shall by regulation establish minimum continuing education requirements for the renewal or reissuance of a license to an agent or a broker: *Provided*, That the commissioner shall require that continuing education courses will be made available on a state-wide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses. The continuing education requirements shall be appropriate to the license for the kinds of insurance specified in RCW 48.17.210: *Provided further*, That the continuing education requirements may be waived by the commissioner for good cause shown.

(3) If the commissioner finds that the applicant is so qualified and that the license fee has been paid, he shall issue the license. Otherwise, the commissioner shall refuse to issue the license. [1988 c 248 § 9; 1979 ex.s. c 269 § 7; 1971 ex.s. c 292 § 47; 1967 c 150 § 19; 1961 c 194 § 4; 1947 c 79 § .17.15; Rem. Supp. 1947 § 45.17.15.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

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

48.17.160 Appointment of agents—Revocation—Expiration—Renewal. (1) Each insurer on appointing an agent in this state shall file written notice thereof with the commissioner on forms as prescribed and furnished by the commissioner, and shall pay the filing fee therefor as provided in RCW 48.14.010. The commissioner shall return the appointment of agent form to the insurer for distribution to the agent. The commissioner may adopt regulations establishing alternative appointment procedures for individuals within licensed firms or corporations who are empowered to exercise the authority conferred by the firm or corporate license.

(2) Each appointment shall be effective until the agent's license expires or is revoked, the appointment has

expired, or written notice of termination of the appointment is filed with the commissioner, whichever occurs first.

(3) When the appointment is revoked by the insurer, written notice of such revocation shall be given to the agent and a copy of the notice of revocation shall be mailed to the commissioner.

(4) Revocation of an appointment by the insurer shall be deemed to be effective as of the date designated in the notice as being the effective date if the notice is actually received by the agent prior to such designated date; otherwise, as of the earlier of the following dates:

(a) The date such notice of revocation was received by the agent.

(b) The date such notice, if mailed to the agent at his last address of record with the insurer, in due course should have been received by the agent.

(5) Appointments shall be for one year and shall expire if not timely renewed. Each insurer shall annually pay the renewal fee set forth for each agent holding an appointment on the annual renewal date assigned the agents of the insurer by the commissioner. The commissioner, by rule, shall determine renewal dates. If a staggered system is used, fees shall be prorated in the conversion to a staggered system. [1979 ex.s. c 269 § 2; 1967 c 150 § 20; 1959 c 225 § 6; 1955 c 303 § 13; 1947 c 79 § .17.16; Rem. Supp. 1947 § 45.17.16.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.170 Form and content of licenses. Agents', solicitors', adjusters' and brokers' licenses shall be in the form and contain the essential information prescribed by the commissioner. [1979 ex.s. c 269 § 3; 1947 c 79 § .17.17; Rem. Supp. 1947 § 45.17.17.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.180 Licenses to firms and corporations. (1) A firm or corporation shall not be licensed as an agent, adjuster, or broker unless each individual empowered to exercise the authority conferred by the corporate or firm license is also licensed. A nonresident of this state shall not be so designated or empowered. Exercise or attempted exercise of the powers of the firm or corporation by an unlicensed person, with the knowledge or consent of the firm or corporation, shall constitute cause for the revocation or suspension of the license.

(2) Licenses shall be issued in a trade name only upon proof satisfactory to the commissioner that the trade name has been lawfully registered. [1979 ex.s. c 269 § 4; 1947 c 79 § .17.18; Rem. Supp. 1947 § 45.17.18.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

Title insurance agents, separate licenses for individuals not required: RCW 48.29.170.

48.17.190 Limited licenses. The commissioner may issue limited licenses to the following:

(1) Persons selling transportation tickets of a common carrier of persons or property who shall act as such

agents only as to transportation ticket policies of disability insurance or baggage insurance on personal effects.

(2) Compensated master policyholders of credit life and credit accident and health insurance, retail dealers compensated by any such master policyholders, or the authorized representative(s) of either.

(3) Persons selling special or unique policies of insurance covering goods sold or leased from a primary business or activity other than the transaction of insurance or covering collateral securing loans from a primary business or activity other than the transaction of insurance if, in the commissioner's discretion, such limited license would safeguard and promote the public interest. [1979 c 138 § 1; 1967 c 150 § 21; 1947 c 79 § .17.19; Rem. Supp. 1947 § 45.17.19.]

48.17.200 One license required by agent. An agent is required to have but one license regardless of the number of appointments by insurers the agent may have. [1979 ex.s. c 269 § 5; 1955 c 303 § 14; 1947 c 79 § .17.20; Rem. Supp. 1947 § 45.17.20.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.210 Minimum license combinations. Except as provided in RCW 48.17.190, an agent's license shall not be issued unless it includes, and the applicant is qualified for, one or more of the following kinds of insurance:

- (1) Casualty.
- (2) Disability.
- (3) Life.
- (4) Marine and transportation.
- (5) Property.
- (6) Surety.
- (7) Vehicle. [1947 c 79 § .17.21; Rem. Supp. 1947 § 45.17.21.]

48.17.230 Agent placing rejected business. A licensed agent appointed by an insurer as to life or disability insurances may, if with the knowledge and consent of such insurer, place any portion of a life or disability risk which has been rejected by such insurer, with other authorized insurers without being licensed as to such other insurers. Any agent so placing rejected business becomes the agent for the company issuing the insurance with respect to that business just as if it had appointed such person as its agent. [1988 c 248 § 10; 1947 c 79 § .17.23; Rem. Supp. 1947 § 45.17.23.]

48.17.240 Scope of broker's license. A broker's license may be issued to cover the following lines of insurance:

- (a) All lines of insurance; or
- (b) All lines except life, which shall be designated as a casualty–property broker's license; or
- (c) Life and disability only. [1967 c 150 § 22; 1947 c 79 § .17.24; Rem. Supp. 1947 § 45.17.24.]

48.17.250 Broker's bond. (1) Every applicant for a broker's license or for the renewal of a broker's license

existing on the effective date of this code shall file with the application or request for renewal and shall thereafter maintain in force while so licensed a bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of twenty thousand dollars. If the applicant is a firm or corporation, the bond shall be in the amount of twenty thousand dollars plus five thousand dollars for the second and five thousand dollars for each additional individual empowered and designated in the license to exercise the powers conferred thereby. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond shall be contingent on the accounting by the broker to any person requesting the broker to obtain insurance, for moneys or premiums collected in connection therewith.

(2) Any such bond shall remain in force until the surety is released from liability by the commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon thirty days advance notice in writing filed with the commissioner. [1979 ex.s. c 269 § 8; 1977 ex.s. c 182 § 4; 1947 c 79 § .17.25; Rem. Supp. 1947 § 45.17.25.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.260 Broker's authority—Commissions. (1) A broker, as such, is not an agent or other representative of an insurer, and does not have power, by his own acts, to bind the insurer upon any risk or with reference to any insurance contract.

(2) An insurer or agent shall have the right to pay to a broker licensed under this code, or under the laws of any other state or province, and such broker shall have the right to receive from the insurer or agent, the customary commissions upon insurances placed in the insurer by the broker. [1949 c 190 § 24; 1947 c 79 § .17.26; Rem. Supp. 1949 § 45.17.26.]

48.17.270 Agent–broker combinations. A licensed agent may be licensed as a broker and be a broker as to insurers for which he is not then appointed as agent. A licensed broker may be licensed as and be an agent as to insurers appointing him as agent. The sole relationship between a broker and an insurer as to which he is appointed as an agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent. [1981 c 339 § 13; 1947 c 79 § .17.27; Rem. Supp. 1947 § 45.17.27.]

48.17.280 Solicitor's qualifications. The commissioner shall license as a solicitor an individual only who meets the following requirements:

- (1) Is a resident of this state.
- (2) Intends to and does make the soliciting and handling of insurance business under his license his principal vocation.
- (3) Is to represent and be employed by but one licensed agent or broker.

(4) Has passed any examination as required under this chapter.

(5) Is otherwise qualified under this code. [1947 c 79 § .17.28; Rem. Supp. 1947 § 45.17.28.]

48.17.290 Solicitor's license—Application. The commissioner shall issue a solicitor's license only upon application by the applicant and the request of the agent or broker to be represented, upon such forms as the commissioner shall prescribe and furnish. [1947 c 79 § .17.29; Rem. Supp. 1947 § 45.17.29.]

48.17.300 Solicitor's license fee—Custody—Cancellation. (1) The fee for issuance or renewal of a solicitor's license shall be paid by the agent or broker by whom the solicitor is employed.

(2) The solicitor's license shall be delivered to and shall remain in the possession of the employing agent or broker. Upon termination of such employment, the license shall likewise terminate and shall be returned to the commissioner for cancellation. [1947 c 79 § .17.30; Rem. Supp. 1947 § 45.17.30.]

48.17.310 Limitations upon solicitors. (1) A solicitor's license shall not cover any kind of insurance for which the agent or broker by whom he is employed is not then licensed.

(2) A solicitor shall not have power to bind an insurer upon or with reference to any risk or insurance contract, or to countersign insurance contracts.

(3) Any individual while licensed as a solicitor shall not be licensed as an agent or broker. [1947 c 79 § .17.31; Rem. Supp. 1947 § 45.17.31.]

48.17.320 Responsibility of employing agent or broker. All business transacted by a solicitor under his license shall be in the name of the agent or broker by whom he is employed and the agent or broker shall be responsible for all acts or omissions of the solicitor within the scope of such employment. [1947 c 79 § .17.32; Rem. Supp. 1947 § 45.17.32.]

48.17.330 Nonresident agents and brokers—Reciprocity. (1) The commissioner may license as an agent or as a broker, a person who is otherwise qualified therefor under this code but who is not a resident of or domiciled in this state, if by the laws of the state or province of his residence or domicile a similar privilege is extended to residents of or corporations domiciled in this state.

(2) Any such licensee shall be subject to the same obligations and limitations, and to the commissioner's supervision as though resident or domiciled in this state, subject to RCW 48.14.040.

(3) No such person shall be so licensed unless he files the power of attorney provided for in RCW 48.17.340, and, if a corporation, it must have complied with the laws of this state governing the admission of foreign corporations. [1973 1st ex.s. c 107 § 1; 1955 c 303 § 28; 1947 c 79 § .17.33; Rem. Supp. 1947 § 45.17.33.]

Severability—1973 1st ex.s. c 107: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 107 § 5.]

48.17.340 Service of process against nonresident agent or broker. (1) Each licensed nonresident agent or broker shall appoint the commissioner as his attorney to receive service of legal process issued against the agent or broker in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute effective legal service upon the agent or broker.

(2) The appointment shall be irrevocable for as long as there could be any cause of action against the agent or broker arising out of his insurance transactions in this state.

(3) Duplicate copies of such legal process against such agent or broker shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(4) Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant agent or broker at his last address of record with the commissioner.

(5) The commissioner shall keep a record of the day and hour of service upon him of all such legal process. No proceedings shall be had against the defendant agent or broker, and such defendant shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [1981 c 339 § 14; 1947 c 79 § .17.34; Rem. Supp. 1947 § 45.17.34.]

48.17.380 Adjusters—Qualifications for license. The commissioner shall license as an adjuster only an individual, firm, or corporation which has otherwise complied with this code therefor and the individual or responsible officer of the firm or corporation has furnished evidence satisfactory to the commissioner that he is qualified as follows:

(1) Is eighteen or more years of age.

(2) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state.

(3) Is a trustworthy person.

(4) Has had experience or special education or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster.

(5) Has successfully passed any examination as required under this chapter.

(6) If for a public adjuster's license, has filed the bond required by RCW 48.17.430. [1981 c 339 § 15; 1971 ex.s. c 292 § 48; 1947 c 79 § .17.38; Rem. Supp. 1947 § 45.17.38.]

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

48.17.390 Adjusters—Separate licenses. The commissioner may license an individual, firm, or corporation as an independent adjuster or as a public adjuster, and separate licenses shall be required for each type of adjuster. An individual, firm, or corporation may be concurrently licensed under separate licenses as an independent adjuster and as a public adjuster. The full license fee shall be paid for each such license. [1981 c 339 § 16; 1947 c 79 § .17.39; Rem. Supp. 1947 § 45.17.39.]

48.17.410 Authority of adjuster. An adjuster shall have authority under his license only to investigate or report to his principal upon claims as limited under RCW 48.17.050 on behalf only of the insurers if licensed as an independent adjuster, or on behalf only of insureds if licensed as a public adjuster. An adjuster licensed concurrently as both an independent and a public adjuster shall not represent both the insurer and the insured in the same transaction. [1947 c 79 § .17.41; Rem. Supp. 1947 § 45.17.41.]

48.17.420 Agent may adjust—Nonresident adjusters. (1) On behalf of and as authorized by an insurer for which he is licensed as agent, an agent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.

(2) No license by this state shall be required of a nonresident independent adjuster, for the adjustment in this state of a single loss, or of losses arising out of a catastrophe common to all such losses. [1947 c 79 § .17.42; Rem. Supp. 1947 § 45.17.42.]

48.17.430 Public adjuster's bond. (1) Prior to the issuance of a license as public adjuster, the applicant therefor shall file with the commissioner and shall thereafter maintain in force while so licensed a surety bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of five thousand dollars. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the payment of five thousand dollars. The bond shall be contingent on the accounting by the adjuster to any insured whose claim he is handling, for moneys or any settlement received in connection therewith.

(2) Any such bond shall remain in force until the surety is released from liability by the commissioner, or until canceled by the surety. Without prejudice to any liability accrued prior to cancellation, the surety may cancel a bond upon thirty days advance notice in writing filed with the commissioner.

(3) Such bond shall be required of any adjuster acting as a public adjuster as of the effective date of this code, or thereafter under any unexpired license heretofore issued. [1977 ex.s. c 182 § 5; 1947 c 79 § .17.43; Rem. Supp. 1947 § 45.17.43.]

48.17.440 Report of losses. (1) Every adjuster who investigates any fire loss claim under any insurance contract covering property located in this state, shall promptly report to the commissioner any facts or circumstances found and from which he believes fraud has been committed or attempted.

(2) Upon completing the adjustment of any fire loss requiring claim payments aggregating one hundred dollars or more, for damage to or destruction of property located in this state, under any policy or policies issued by an unauthorized insurer, an adjuster shall promptly report the details thereof to the commissioner, upon forms prescribed and furnished by him. Such report shall state the names of the insurers and insured involved, amount of insurance on the property carried in each insurer, the amount of the claim and the amount paid by each insurer on account thereof, the circumstances of the loss, and other information as the commissioner requests.

(3) Upon the commissioner's request each adjuster shall in similar manner report to the commissioner relative to losses and claims investigated or adjusted, and arising under other insurance contracts issued by unauthorized insurers. [1947 c 79 § .17.44; Rem. Supp. 1947 § 45.17.44.]

48.17.450 Place of business. (1) Every licensed agent, broker, and adjuster, other than an agent licensed for life or disability insurances only, shall have and maintain in this state, or, if a nonresident agent or nonresident broker, in the state of his domicile, a place of business accessible to the public. Such place of business shall be that wherein the agent principally conducts transactions under his licenses. The address of his place of business shall appear on all licenses of the licensee, and the licensee shall promptly notify the commissioner of any change thereof. If the licensee maintains more than one place of business in this state, he shall obtain a duplicate of his license or licenses for each additional such place, and shall pay the full fee therefor.

(2) Any notice from the commissioner to a person licensed under this chapter which directly affects the person's license shall be sent by mail to the person's last address shown in the commissioner's licensing records. A licensee shall notify the commissioner of any change of address. [1988 c 248 § 11; 1953 c 197 § 6; 1947 c 79 § .17.45; Rem. Supp. 1947 § 45.17.45.]

48.17.460 Display of license. (1) The license or licenses of each agent, other than licenses as to life or disability insurances only, or of each broker or adjuster shall be displayed in a conspicuous place in that part of his place of business which is customarily open to the public.

(2) The license of a solicitor shall be so displayed in the place of business of the agent or broker by whom he is employed. [1947 c 79 § .17.46; Rem. Supp. 1947 § 45.17.46.]

48.17.470 Records of agents, brokers, adjusters. (1) Every agent, or broker, or adjuster shall keep at his address as shown on his license, a record of all transactions consummated under his license. This record shall be in organized form and shall include:

- (a) If an agent or broker,
 - (i) a record of each insurance contract procured, issued, or countersigned, together with the names of the insurers and insureds, the amount of premium paid or to be paid, and a statement of the subject of the insurance;
 - (ii) the names of any other licensees from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid.
 - (b) If an adjuster, a record of each investigation or adjustment undertaken or consummated, and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of such investigation or adjustment.
 - (c) Such other and additional information as shall be customary, or as may reasonably be required by the commissioner.
- (2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years immediately after the date of the completion of such transaction.
- (3) This section shall not apply as to life or disability insurances. [1947 c 79 § .17.47; Rem. Supp. 1947 § 45.17.47.]

48.17.475 Licensee to reply promptly to inquiry by commissioner. Every insurance agent, broker, adjuster, or other person licensed under this chapter shall promptly reply in writing to an inquiry of the commissioner relative to the business of insurance. [1967 c 150 § 13.]

48.17.480 Reporting and accounting for premiums. (1) An agent or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and such amount shall likewise be shown in the contract and in the records of the agent. Each wilful violation of this provision shall constitute a misdemeanor.

(2) All funds representing premiums or return premiums received by an agent, solicitor or broker, shall be so received in his or her fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, or agent as entitled thereto.

(3) Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds.

(4) Any agent, solicitor, broker, adjuster or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her

own use, shall be guilty of larceny by embezzlement, and shall be punished as provided in the criminal statutes of this state. [1988 c 248 § 12; 1947 c 79 § .17.48; Rem. Supp. 1947 § 45.17.48.]

48.17.490 Sharing commissions. (1) No agent, general agent, solicitor, or broker shall compensate or offer to compensate in any manner any person other than an agent, general agent, solicitor, or broker, licensed in this or any other state or province, for procuring or in any manner helping to procure applications for or to place insurance in this state. This provision shall not prohibit the payment of compensation not contingent upon volume of business transacted, in the form of salaries to the regular employees of such agent, general agent, solicitor or broker, or the payment for services furnished by an unlicensed person who does not participate in the transaction of insurance in any way requiring licensing as an agent, solicitor, broker, or adjuster and who is not compensated on any basis dependent upon a sale of insurance being made.

(2) No such licensee shall be promised or allowed any compensation on account of the procuring of applications for or the placing of kinds of insurance which he himself is not then licensed to procure or place.

(3) The commissioner shall suspend or revoke the licenses of all licensees participating in any violation of this section. [1988 c 248 § 13; 1947 c 79 § .17.49; Rem. Supp. 1947 § 45.17.49.]

48.17.500 Expiration and renewal of licenses. (1) All agents' licenses issued by the commissioner shall be valid for the time period established by the commissioner unless:

- (a) Suspended or revoked; or
 - (b) The licensee ceases to hold a valid appointment by an insurer.
- (2) All brokers', solicitors', and adjusters' licenses shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(3) The commissioner, by rule, shall determine renewal dates for licenses of all agents, brokers, solicitors, and adjusters. If a staggered system is used, fees shall be prorated in the conversion to a staggered system.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any agent's, broker's, solicitor's, or adjuster's license as provided in this code, any such license may be renewed into another like period by filing with the commissioner on or before the expiration date a written request, by or on behalf of the licensee, for such renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010. An agent or broker shall make and file renewal requests on behalf of his solicitors.

If the request and fee for renewal of an agent's, broker's, solicitor's, or adjuster's license is filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a

renewal license or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed order of such refusal to the licensee. Any request for renewal not so filed until after date of expiration may be considered by the commissioner as an application for a new license.

(5) As to all licenses, if request for renewal of an agent's license or appointment or broker's, solicitor's, or adjuster's license or payment of the fee is not received by the commissioner prior to the expiration date as required under subsection (4) of this section, the insurer or applicant for renewal shall pay to the commissioner and the commissioner shall collect, in addition to the regular fee, a surcharge as follows: For the first thirty days or part thereof of delinquency the surcharge shall be fifty percent of the fee; for all delinquencies extending more than thirty days, the surcharge shall be one hundred percent of the fee. This subsection shall not be deemed to exempt any person from any penalty provided by law for transacting business without a valid and subsisting license or appointment, or affect the commissioner's right, at his discretion, to consider such delinquent application as one for a new license or appointment. [1979 ex.s. c 269 § 6; 1977 ex.s. c 182 § 6; 1965 ex.s. c 70 § 20; 1957 c 193 § 9; 1953 c 197 § 7; 1947 c 79 § .17.50; Rem. Supp. 1947 § 45.17.50.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.510 Temporary licenses. (1) The commissioner may issue an agent's or broker's temporary license in the following circumstances:

(a) To the surviving spouse or next of kin or to the administrator or executor, or the employee of the administrator or executor, of a licensed agent or broker becoming deceased.

(b) To the spouse, next of kin, employee, or legal guardian of a licensed agent or broker becoming disabled because of sickness, insanity, or injury.

(c) To a surviving member of a firm or surviving officer or employee of a corporation licensed as agent or broker upon the death of an individual designated in the firm or corporation's license to exercise powers thereunder.

(2) An individual to be eligible for any such temporary license must be qualified as for a permanent license except as to experience, training, or the taking of any examination.

(3) Any fee paid to the commissioner for issuance of a temporary license as specified in RCW 48.14.010 shall be credited toward the fee required for a permanent license which is issued to replace the temporary license prior to the expiration of such temporary license. [1982 c 181 § 7; 1955 c 303 § 15; 1953 c 197 § 8; 1947 c 79 § .17.51; Rem. Supp. 1947 § 45.17.51.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.520 Temporary licenses—Duration—Limitations. (1) No such temporary license shall be effective for more than ninety days in any twelve month period, subject to extension for an additional period of

not more than ninety days at the commissioner's discretion and for good cause shown. The commissioner may refuse so to license again any person who has previously been so licensed.

(2) An individual requesting temporary agent's license on account of death or disability of an agent, shall not be so licensed for any insurer as to which such agent was not licensed at the time of death or commencement of disability. [1985 c 264 § 8; 1953 c 197 § 9; 1947 c 79 § .17.52; Rem. Supp. 1947 § 47.17.52.]

48.17.530 Refusal, suspension, revocation of licenses.

(1) The commissioner may suspend, revoke, or refuse to issue or renew any license which is issued or may be issued under this chapter or any surplus line broker's license for any cause specified in any other provision of this code, or for any of the following causes:

(a) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.

(b) If the licensee or applicant wilfully violates or knowingly participates in the violation of any provision of this code or any proper order or regulation of the commissioner.

(c) If the licensee or applicant has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required under this chapter.

(d) If the licensee or applicant has misappropriated or converted to his own use or has illegally withheld moneys required to be held in a fiduciary capacity.

(e) If the licensee or applicant has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction.

(f) If the licensee or applicant has been guilty of "twisting," as defined in RCW 48.30.180, or of rebating, as defined in chapter 48.30 RCW.

(g) If the licensee or applicant has been convicted, by final judgment, of a felony.

(h) If the licensee or applicant has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public.

(i) If the licensee has dealt with, or attempted to deal with, insurances, or to exercise powers relative to insurance outside the scope of his licenses.

(2) If any natural person named under a firm or corporate license, or application therefor, commits or has committed any act or fails or has failed to perform any duty which is a ground for the commissioner to revoke, suspend or refuse to issue or renew the license or application for license, the commissioner may revoke, suspend, refuse to renew, or refuse to issue:

(a) The license, or application therefor, of the corporation or firm; or

(b) The right of the natural person to act thereunder; or

(c) Any other license held or applied for by the natural person; or

(d) He may take all such steps.

(3) Any conduct of an applicant or licensee which constitutes ground for disciplinary action under this code shall be deemed such ground notwithstanding that such conduct took place in another state.

(4) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request. [1973 1st ex.s. c 152 § 2; 1969 ex.s. c 241 § 11; 1967 c 150 § 23; 1947 c 79 § .17.53; Rem. Supp. 1947 § 45.17.53.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.17.540 Procedure to suspend, revoke, or refuse—Effect of conviction of felony. (1) The commissioner may revoke or refuse to renew any license issued under this chapter, or any surplus line broker's license, immediately and without hearing, upon sentencing of the licensee for conviction of a felony by final judgment of any court of competent jurisdiction, if the facts giving rise to such conviction demonstrate the licensee to be untrustworthy to maintain any such license.

(2) The commissioner may suspend, revoke, or refuse to renew any such license:

(a) By order given to the licensee not less than fifteen days prior to the effective date thereof, subject to the right of the licensee to have a hearing as provided in RCW 48.04.010; or

(b) By an order on hearing made as provided in chapter 34.05 RCW, the Administrative Procedure Act, effective not less than ten days after the date of the service of the order, subject to the right of the licensee to appeal to the superior court.

(3) The commissioner may temporarily suspend such license by an order served upon the licensee not less than three days prior to the effective date thereof, provided the order contains a notice of revocation and includes a finding that the public safety or welfare imperatively requires emergency action. Such suspension shall continue only until proceedings for revocation are concluded. The commissioner also may temporarily suspend such license in cases where proceedings for revocation are pending if he or she finds that the public safety or welfare imperatively requires emergency action. [1989 c 175 § 113; 1988 c 248 § 14; 1982 c 181 § 8; 1973 1st ex.s. c 107 § 2; 1967 c 150 § 24; 1947 c 79 § .17.54; Rem. Supp. 1947 § 45.17.54.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1982 c 181: See note following RCW 48.03.010.

Severability—1973 1st ex.s. c 107: See note following RCW 48.17.330.

48.17.550 Duration of suspension. Every order suspending any such license shall specify the period during which suspension will be effective, and which period shall in no event exceed twelve months. [1947 c 79 § .17.55; Rem. Supp. 1947 § 45.17.55.]

48.17.560 Fines may be imposed. After hearing or upon stipulation by the licensee or insurance education provider, and in addition to or in lieu of the suspension,

revocation, or refusal to renew any such license or insurance education provider approval, the commissioner may levy a fine upon the licensee or insurance education provider. (1) For each offense the fine shall be an amount not more than one thousand dollars. (2) The order levying such fine shall specify that the fine shall be fully paid not less than fifteen nor more than thirty days from the date of the order. (3) Upon failure to pay any such fine when due, the commissioner shall revoke the licenses of the licensee or the approval(s) of the insurance education provider, if not already revoked. The fine shall be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1989 c 323 § 3; 1975 1st ex.s. c 266 § 8; 1967 c 150 § 25; 1947 c 79 § .17.56; Rem. Supp. 1947 § 45.17.56.]

Effective date—1989 c 323: See note following RCW 48.17.055.

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.17.563 Insurance education providers—Commissioner's approval. (1) The commissioner may require insurance education providers to furnish specific information regarding their curricula, faculty, methods of monitoring attendance, and other matters reasonably related to providing insurance education under this chapter. The commissioner may grant approvals to such providers who demonstrate the ability to conduct and certify completion of one or more courses satisfying the insurance education requirements of RCW 48.17.150.

(2) In granting approvals for courses required by RCW 48.17.150(1)(d):

(a) The commissioner may require the availability of a licensed agent with appropriate experience on the premises whenever instruction is being offered; and

(b) The commissioner shall not deny approval to any provider on the grounds that the proposed method of education employs nontraditional teaching techniques, such as substituting taped lectures for live instruction, offering instruction without fixed schedules, or providing education at individual learning rates. [1989 c 323 § 7.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.565 Insurance education providers—Violations—Costs awarded. If an investigation of any provider culminates in a finding by the commissioner or by any court of competent jurisdiction, that the provider has failed to comply with or has violated any statute or regulation pertaining to insurance education, the provider shall pay the expenses reasonably attributable and allocable to such investigation.

(1) The commissioner shall calculate such expenses and render a bill therefor by registered mail to the provider. Within thirty days after receipt of such bill, the provider shall pay the full amount to the commissioner. The commissioner shall transmit such payment to the state treasurer. The state treasurer shall credit the payment to the office of the insurance commissioner regulatory account, treating such payment as recovery of a prior expenditure.

(2) In any action brought under this section, if the insurance commissioner prevails, the court may award to the office of the insurance commissioner all costs of the action, including a reasonable attorneys' fee to be fixed by the court. [1989 c 323 § 4.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.568 Insurance education providers—Bond. In addition to the regulatory requirements imposed pursuant to RCW 48.17.150, the commissioner may require each insurance education provider to post a bond, cash deposit, or irrevocable letter of credit. Every insurance education provider, other than an insurer, health care service contractor, health maintenance organization, or educational institution established by Washington statutes, is subject to the requirement.

(1) The provider shall file with each request for course approval and shall maintain in force while so approved, the bond, cash deposit, or irrevocable letter of credit in favor of the state of Washington, according to criteria which the commissioner shall establish by regulation. The amount of such bond, cash deposit, or irrevocable letter of credit, shall not exceed five thousand dollars for the provider's first approved course and one thousand dollars for each additional approved course.

(2) Proceeds from the bond, cash deposit, or irrevocable letter of credit shall inure to the commissioner for payment of investigation expenses or for payment of any fine ordered per Washington statutes or regulations governing insurance education: *Provided*, That recoverable investigation expenses or fines shall not be limited to the amount of such required bond, cash deposit, or irrevocable letter of credit. [1989 c 323 § 5.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.590 Procedures for cancelling written agreements between companies and agents. (1) If an insurer intends to cancel a written agreement with an agent, or intends to refuse any class of renewal business from the agent, the insurer shall give the agent not less than one hundred twenty days' advance written notice of such intent. Every insurer canceling a written agreement subject to this section shall permit, for not less than one year after having given notice of its intent to terminate the agency agreement, insureds to process their renewals through the agent, as long as he or she retains an agent's license for the kind of insurance involved, as to any of the policies which have not been replaced with other insurers as expirations occur. An agent with a canceled agreement subject to this section shall remain an agent of the canceling insurer as to actions associated with any such policies just as if he or she were appointed by such insurer as its agent. This subsection shall not apply to: (a) Agents or policies of a company or group of companies if the business is owned by the company or group of companies and the cancellation of any such contractual agreement does not result in the cancellation or nonrenewal of any policies of insurance; (b) life, disability, surety, ocean marine and foreign trade, and title insurance policies; or (c) agents whose licenses are then or

become subject to an outstanding order of the commissioner issued pursuant to RCW 48.17.540.

(2) No insurer shall cancel or refuse to renew the policy of the insured because of the termination of the agent's contract.

(3) No insurer may cancel or amend a written agreement with an agent, or refuse to accept business from such agent, if the cancellation, amendment, or refusal is arbitrary, capricious, discriminatory under RCW 48.30-.300, or based in whole or part upon the sex, race, creed, color, religion, national origin, or place of residency of the agent, his or her applicants, or policyholders.

(4) Any insurer or agent accepting brokerage business who rejects the business of a broker shall provide upon request of the broker the reasons in writing for the rejection.

(5) No insurer may cancel its agreement with an appointed agent with respect to insurance or refuse to accept insurance business from such agent unless it complies with the provisions of this section. [1986 c 286 § 1.]

48.17.600 Separation of premium funds. (1) All funds representing premiums or return premiums received by an agent, solicitor or broker in his or her fiduciary capacity shall be accounted for and maintained in a separate account from all other business and personal funds.

(2) An agent, solicitor or broker shall not commingle or otherwise combine premiums with any other moneys, except as provided in subsection (3) of this section.

(3) An agent, solicitor or broker may commingle with premium funds any additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in his or her business of receiving and transmitting premium or return premium funds.

(4) Each willful violation of this section shall constitute a misdemeanor.

(5) This section shall not apply to agents for title insurance companies or insurance brokers whose average daily balance for premiums received on behalf of insureds in the state of Washington equals or exceeds one million dollars. [1988 c 248 § 15; 1986 c 69 § 1.]

Effective date—1986 c 69: "This act shall take effect on January 1, 1987." [1986 c 69 § 2.]

Chapter 48.18

THE INSURANCE CONTRACT

Sections

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Exemptions of proceeds of insurance on exempt property: RCW 6.15.030.

False claims or proof: RCW 48.30.230.

Misrepresentation in application: RCW 48.30.210.

48.18.010 Scope of chapter. The applicable provisions of this chapter shall apply to insurances other than ocean marine and foreign trade insurances. This chapter

shall not apply to life or disability insurance policies not issued for delivery in this state nor delivered in this state. [1947 c 79 § .18.01; Rem. Supp. 1947 § 45.18.01.]

48.18.020 Power to contract. (1) Any person eighteen years or older shall be considered of full legal age and may contract for or with respect to insurance. Any person seventeen years or younger shall be considered a minor for purposes of Title 48 RCW.

(2) A minor not less than fifteen years of age as at nearest birthday may, notwithstanding such minority, contract for life or disability insurance on his own life or body, for his own benefit or for the benefit of his father, mother, spouse, child, brother, sister, or grandparent, and may exercise all rights and powers with respect to or under the contract as though of full legal age, and may surrender his interest therein and give a valid discharge for any benefit accruing or money payable thereunder. The minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract, or any exercise of a right or privilege thereunder, except, that such minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by promissory note or otherwise any premium on any such insurance contract. [1973 1st ex.s. c 163 § 2; 1970 ex.s. c 17 § 4; 1947 c 79 § .18.02; Rem. Supp. 1947 § 45.18.02.]

48.18.030 Insurable interest—Personal insurances.

(1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives, or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement or injury of the individual insured, the individual insured or his executor or administrator, as the case may be, may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" as used in this section and in RCW 48.18.060 includes only interests as follows:

(a) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection; and

(b) In the case of other persons, a lawful and substantial economic interest in having the life, health or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the individual insured.

(c) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a close corporation or of an interest in such shares, has an insurable interest in the life of each individual party

to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

(d) A guardian, trustee or other fiduciary has an insurable interest in the life of any person for whose benefit the fiduciary holds property, and in the life of any other individual in whose life such person has an insurable interest. [1973 1st ex.s. c 89 § 3; 1947 c 79 § .18.03; Rem. Supp. 1947 § 45.18.03.]

Use of trust funds by fiduciaries for life insurance: RCW 11.110.120.

48.18.040 Insurable interest—Property insurances.

(1) No contract of insurance on property or of any interest therein or arising therefrom shall be enforceable except for the benefit of persons having an insurable interest in the things insured.

(2) "Insurable interest" as used in this section means any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage. [1947 c 79 § .18.04; Rem. Supp. 1947 § 45.18.04.]

48.18.050 Named insured—Interest insured. When the name of a person intended to be insured is specified in the policy, such insurance can be applied only to his own proper interest. This section shall not apply to life and disability insurances. [1947 c 79 § .18.05; Rem. Supp. 1947 § 45.18.05.]

48.18.060 Application—When required. No life or disability insurance contract upon an individual, except a contract of group life insurance or of group or blanket disability insurance as defined in this code, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, in writing applies therefor or consents thereto, except in the following cases:

(1) A spouse may effectuate such insurance upon the other spouse.

(2) Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may effectuate insurance upon the life of the minor. [1947 c 79 § .18.06; Rem. Supp. 1947 § 45.18.06.]

48.18.070 Alteration of application. (1) Any application for insurance in writing by the applicant shall be altered solely by the applicant or by his written consent, except that insertions may be made by the insurer for administrative purposes only in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant. Violation of this provision shall be a misdemeanor.

(2) Any insurer issuing an insurance contract upon such an application unlawfully altered by its officer, employee, or agent shall not have available in any action arising out of such contract, any defense which is based upon the fact of such alteration, or as to any item in the application which was so altered. [1947 c 79 § .18.07; Rem. Supp. 1947 § 45.18.07.]

48.18.080 Application as evidence. (1) No application for the issuance of any insurance policy or contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of the application was attached to or otherwise made a part of the policy when issued and delivered. This provision shall not apply to policies or contracts of industrial life insurance.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within fifteen days after receipt of such request at its home office or at any of its branch offices, deliver or mail to the person making such request, a copy of such application. If such copy is not so delivered or mailed, the insurer shall be precluded from introducing the application as evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. [1947 c 79 § .18.08; Rem. Supp. 1947 § 45.18.08.]

48.18.090 Warranties and misrepresentations, effect of. (1) Except as provided in subsection (2) of this section, no oral or written misrepresentation or warranty made in the negotiation of an insurance contract, by the insured or in his behalf, shall be deemed material or defeat or avoid the contract or prevent it attaching, unless the misrepresentation or warranty is made with the intent to deceive.

(2) In any application for life or disability insurance made in writing by the insured, all statements therein made by the insured shall, in the absence of fraud, be deemed representations and not warranties. The falsity of any such statement shall not bar the right to recovery under the contract unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer. [1947 c 79 § .18.09; Rem. Supp. 1947 § 45.18.09.]

48.18.100 Forms of policies—Filing, certification, and approval. (1) No insurance policy form other than surety bond forms, or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form shall be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section shall not apply to policies, riders or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

(2) Every such filing containing a certification, in a form approved by the commissioner, by either the chief executive officer of the insurer or by an actuary who is a member of the American Academy of Actuaries, attesting that the filing complies with Title 48 RCW and Title 284 of the Washington Administrative Code, may be used by such insurer immediately after filing with the commissioner. The commissioner may order an insurer to cease using a certified form upon the grounds set

forth in RCW 48.18.110. This subsection shall not apply to certain types of policy forms designated by the commissioner by rule.

(3) Every filing that does not contain a certification pursuant to subsection (2) of this section shall be made not less than thirty days in advance of any such issuance, delivery, or use. At the expiration of such thirty days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial thirty-day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may withdraw any such approval at any time for cause. By approval of any such form for immediate use, the commissioner may waive any unexpired portion of such initial thirty-day waiting period.

(4) The commissioner's order disapproving any such form or withdrawing a previous approval shall state the grounds therefor.

(5) No such form shall knowingly be so issued or delivered as to which the commissioner's approval does not then exist.

(6) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper, any insurance document or form or type thereof as specified in such order, to which in his opinion this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(7) Every member or subscriber to a rating organization shall adhere to the form filings made on its behalf by the organization. Deviations from such organization are permitted only when filed with the commissioner in accordance with this chapter. [1989 c 25 § 1; 1982 c 181 § 16; 1947 c 79 § .18.10; Rem. Supp. 1947 § 45.18.10.]

Effective date—1989 c 25: "This act shall take effect on September 1, 1989." [1989 c 25 § 10.]

Severability—1982 c 181: See note following RCW 48.03.010.
Format of disability policies: RCW 48.20.012.

48.18.110 Grounds for disapproval. (1) The commissioner shall disapprove any such form of policy, application, rider, or endorsement, or withdraw any previous approval thereof, only:

(a) If it is in any respect in violation of or does not comply with this code or any applicable order or regulation of the commissioner issued pursuant to the code; or

(b) If it does not comply with any controlling filing theretofore made and approved; or

(c) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(d) If it has any title, heading, or other indication of its provisions which is misleading; or

(e) If purchase of insurance thereunder is being solicited by deceptive advertising.

(2) In addition to the grounds for disapproval of any such form as provided in subsection (1) of this section, the commissioner may disapprove any form of disability insurance policy if the benefits provided therein are unreasonable in relation to the premium charged. [1985 c 264 § 9; 1982 c 181 § 9; 1947 c 79 § .18.11; Rem. Supp. 1947 § 45.18.11.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.18.120 Standard forms. (1) The commissioner shall, after hearing, from time to time promulgate such rules and regulations as may be necessary to define and effect reasonable uniformity in all basic contracts of fire insurance which are commonly known as the standard form fire policies and may be so referred to in this code, and the usual supplemental coverages, riders, or endorsements thereon or thereto, to the end that such definitions shall be applied in the construction of the various sections of this code wherein such terms are used and that there be a reasonable concurrency of contract where two or more insurers insure the same subject and risk. All such forms heretofore approved by the commissioner and for use as of immediately prior to the effective date of this code, may continue to be so used until the further order of the commissioner made pursuant to this subsection or pursuant to any other provision of this code.

(2) The commissioner may from time to time, after hearing, promulgate such rules and regulations as he deems necessary to establish reasonable minimum standard conditions and terminology for basic benefits to be provided by disability insurance contracts which are subject to chapters 48.20 and 48.21 RCW, for the purpose of expediting his approval of such contracts pursuant to this code. No such promulgation shall be inconsistent with standard provisions as required pursuant to RCW 48.18.130, nor contain requirements inconsistent with requirements relative to the same benefit provision as formulated or approved by the National Association of Insurance Commissioners. [1957 c 193 § 10; 1947 c 79 § .18.12; Rem. Supp. 1947 § 45.18.12.]

48.18.125 Loss payable and mortgagee clauses for property and automobile physical damage insurances—

Requirement to use adopted forms. The commissioner is hereby authorized, and shall within a reasonable time following July 30, 1967, adopt standard forms for loss payable and mortgagee clauses for property and automobile physical damage insurances, pursuant to the procedures set forth in RCW 48.18.120(1). Following the adoption of such forms, no insurer authorized to do business in the state shall use any form other than those so adopted. [1967 ex.s. c 12 § 1.]

48.18.130 Standard provisions. (1) Insurance contracts shall contain such standard provisions as are required by the applicable chapters of this code pertaining

to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular standard provision in a particular insurance contract form if

(a) he finds such provision unnecessary for the protection of the insured, and inconsistent with the purposes of the contract, and

(b) the contract is otherwise approved by him.

(2) No insurance contract shall contain any provision inconsistent with or contradictory to any such standard provision used or required to be used, but the commissioner may, except as to the standard provisions of individual disability insurance contracts as required under chapter 48.20 RCW, approve any provision which is in his opinion more favorable to the insured than the standard provision or optional standard provision otherwise required. No endorsement, rider, or other documents attached to such contract shall vary, extend, or in any respect conflict with any such standard provision, or with any modification thereof so approved by the commissioner as being more favorable to the insured.

(3) In lieu of the standard provisions required by this code for contracts for particular kinds of insurance, substantially similar standard provisions required by the law of a foreign or alien insurer's domicile may be used when approved by the commissioner. [1947 c 79 § .18.13; Rem. Supp. 1947 § 45.18.13.]

Standard provisions

disability: Chapter 48.20 RCW.

group and blanket disability: Chapter 48.21 RCW.

group life and annuities: Chapter 48.24 RCW.

industrial life: Chapter 48.25 RCW.

life insurance and annuities: Chapter 48.23 RCW.

48.18.140 Contents of policies in general. (1) The written instrument, in which a contract of insurance is set forth, is the policy.

(2) A policy shall specify:

(a) The names of the parties to the contract. The insurer's name shall be clearly shown in the policy.

(b) The subject of the insurance.

(c) The risk insured against.

(d) The time at which the insurance thereunder takes effect and the period during which the insurance is to continue.

(e) A statement of the premium, and if other than life, disability, or title insurance, the premium rate where applicable.

(f) The conditions pertaining to the insurance.

(3) If under the contract the exact amount of premiums is determinable only at termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid shall be specified in the policy.

(4) This section shall not apply to surety insurance contracts. [1989 c 25 § 2; 1957 c 193 § 11; 1947 c 79 § .18.14; Rem. Supp. 1947 § 45.18.14.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.18.150 Additional contents. A policy may contain additional provisions, which are not inconsistent with this code, and which are

(1) required to be so inserted by the laws of the insurer's state of domicile; or

(2) necessary, on account of the manner in which the insurer is constituted or operated, to state the rights and obligations of the parties to the contract. [1947 c 79 § .18.15; Rem. Supp. 1947 § 45.18.15.]

48.18.160 Charter or bylaw provisions. No policy shall contain any provision purporting to make any portion of the charter, bylaws, or other constituent document of the insurer a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid. [1947 c 79 § .18.16; Rem. Supp. 1947 § 45.18.16.]

48.18.170 "Premium" defined. "Premium" as used in this code means all sums charged, received, or deposited as consideration for an insurance contract or the continuance thereof. Any assessment, or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge made by the insurer in consideration for an insurance contract is deemed part of the premium. [1947 c 79 § .18.17; Rem. Supp. 1947 § 45.18.17.]

48.18.180 Stated premium must include all charges.

(1) The premium stated in the policy shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof.

(2) No insurer or its officer, employee, agent, solicitor, or other representative shall charge or receive any fee, compensation, or consideration for insurance which is not included in the premium specified in the policy.

(3) Each violation of this section is a gross misdemeanor. [1947 c 79 § .18.18; Rem. Supp. 1947 § 45.18.18.]

48.18.190 Policy must contain entire contract. No agreement in conflict with, modifying, or extending any contract of insurance shall be valid unless in writing and made a part of the policy. [1947 c 79 § .18.19; Rem. Supp. 1947 § 45.18.19.]

48.18.200 Limiting actions, jurisdiction. (1) No insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state, shall contain any condition, stipulation, or agreement

(a) requiring it to be construed according to the laws of any other state or country except as necessary to meet the requirements of the motor vehicle financial responsibility laws of such other state or country; or

(b) depriving the courts of this state of the jurisdiction of action against the insurer; or

(c) limiting right of action against the insurer to a period of less than one year from the time when the cause of action accrues in connection with all insurances

other than property and marine and transportation insurances. In contracts of property insurance, or of marine and transportation insurance, such limitation shall not be to a period of less than one year from the date of the loss.

(2) Any such condition, stipulation, or agreement in violation of this section shall be void, but such voiding shall not affect the validity of the other provisions of the contract. [1947 c 79 § .18.20; Rem. Supp. 1947 § 45.18.20.]

48.18.210 Execution of policies. (1) Every insurance contract shall be executed in the name of and on behalf of the insurer by its officer, employee, or representative duly authorized by the insurer.

(2) A facsimile signature of any such executing officer, employee or representative may be used in lieu of an original signature.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of any individual not authorized so to execute as of the date of the policy, if the policy is countersigned with the original signature of an individual then so authorized to countersign. [1947 c 79 § .18.21; Rem. Supp. 1947 § 45.18.21.]

48.18.220 Receipt of premium to bind coverage—Contents of receipt. Where an agent or other representative of an insurer receipts premium money at the time that agent or representative purports to bind coverage, the receipt shall state: (a) that it is a binder, (b) a brief description of the coverage bound, and (c) the identity of the insurer in which the coverage is bound. This section does not apply as to life and disability insurances. [1967 ex.s. c 12 § 2.]

48.18.230 Binders—Duration. (1) A "binder" is used to bind insurance temporarily pending the issuance of the policy. No binder shall be valid beyond the issuance of the policy as to which it was given, or beyond ninety days from its effective date, whichever period is the shorter.

(2) If the policy has not been issued a binder may be extended or renewed beyond such ninety days upon the commissioner's written approval, or in accordance with such rules and regulations relative thereto as the commissioner may promulgate. [1947 c 79 § .18.23; Rem. Supp. 1947 § 45.18.23.]

48.18.240 Binders—Agent's liability. The commissioner may suspend or revoke the license of any agent issuing or purporting to issue any binder as to any insurer named therein as to which he is not then authorized so to bind. [1947 c 79 § .18.24; Rem. Supp. 1947 § 45.18.24.]

48.18.250 Underwriters' and combination policies. (1) Two or more authorized insurers may jointly issue,

and shall be jointly and severally liable on, an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department and such policies shall plainly show the true name of the insurer.

(2) Two or more authorized insurers may, with the commissioner's approval, issue a combination policy which shall contain provisions substantially as follows:

(a) That the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy.

(b) That service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(3) This section shall not apply to co-surety obligations. [1947 c 79 § .18.25; Rem. Supp. 1947 § 45.18.25.]

48.18.260 Delivery of policy. (1) Subject to the insurer's requirements as to payment of premium, every policy shall be delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft, and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle or aircraft is insured, a duplicate of such policy, or memorandum thereof setting forth the type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy, shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a conspicuous statement of such fact shall be printed, written, or stamped on the face of such duplicate policy or memorandum. [1947 c 79 § .18.26; Rem. Supp. 1947 § 45.18.26.]

Vehicle seller must furnish buyer itemized statement of insurance and other charges: RCW 46.70.130.

48.18.280 Renewal of policy. Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable, may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor for a specific additional period or periods by a certificate or by endorsement of the policy, and without requiring the issuance of a new policy. [1947 c 79 § .18.28; Rem. Supp. 1947 § 45.18.28.]

48.18.289 Cancellation, nonrenewal, renewal offer—Notice to agent. Whenever a notice of cancellation or nonrenewal or an offer to renew is furnished to an insured in accord with any provision of this chapter, a copy of such notice or offer shall be provided at the

same time to the agent on the account or to the broker of record for the insured. [1988 c 249 § 1; 1987 c 14 § 1.]

Effective date—1988 c 249: "This act shall take effect September 1, 1988." [1988 c 249 § 4.]

48.18.290 Cancellation by insurer. (1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy which does not contain a clearly stated expiration date, may be effected as to any interest only upon compliance with the following:

(a) Written notice of such cancellation, accompanied by the actual reason therefor, must be actually delivered or mailed to the named insured not less than forty-five days prior to the effective date of the cancellation except for cancellation of insurance policies for nonpayment of premiums, which notice shall be not less than ten days prior to such date and except for cancellation of fire insurance policies under chapter 48.53 RCW, which notice shall not be less than five days prior to such date;

(b) Like notice must also be so delivered or mailed to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder.

(2) The mailing of any such notice shall be effected by depositing it in a sealed envelope, directed to the addressee at his or her last address as known to the insurer or as shown by the insurer's records, with proper prepaid postage affixed, in a letter depository of the United States post office. The insurer shall retain in its records any such item so mailed, together with its envelope, which was returned by the post office upon failure to find, or deliver the mailing to, the addressee.

(3) The affidavit of the individual making or supervising such a mailing, shall constitute prima facie evidence of such facts of the mailing as are therein affirmed.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in amount as computed on the pro rata basis, must be actually paid to the insured or other person entitled thereto as shown by the policy or by any endorsement thereon, or be mailed to the insured or such person as soon as possible, and no later than forty-five days after the date of notice of cancellation to the insured for homeowners', dwelling fire, and private passenger auto. Any such payment may be made by cash, or by check, bank draft, or money order.

(5) This section shall not apply to contracts of life or disability insurance without provision for cancellation prior to the date to which premiums have been paid, or to contracts of insurance procured under the provisions of chapter 48.15 RCW. [1988 c 249 § 2; 1986 c 287 § 1; 1985 c 264 § 17; 1982 c 110 § 7; 1980 c 102 § 7; 1979 ex.s. c 199 § 5; 1975-'76 2nd ex.s. c 119 § 2; 1947 c 79 § .18.29; Rem. Supp. 1947 § 45.18.29.]

Effective date—1988 c 249: See note following RCW 48.18.289.

Application—1985 c 264 §§ 17-22: "Sections 17 through 22 of this act apply to all new or renewal policies issued or renewed after May 10, 1985. Sections 17 through 22 of this act shall not apply to or

affect the validity of any notice of cancellation mailed or delivered prior to May 10, 1985. Sections 17 through 22 of this act shall not be construed to affect cancellation of a renewal policy, if notice of cancellation is mailed or delivered within forty-five days after May 10, 1985. Sections 17 through 22 of this act shall not be construed to require notice, other than that already required, of intention not to renew any policy which expires less than forty-five days after May 10, 1985." [1985 c 264 § 24.]

48.18.2901 Renewal required—Exceptions. (1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.290 unless one of the following situations exists:

(a) The insurer gives the named insured at least forty-five days' notice in writing as provided for in RCW 48.18.290, that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth therein the actual reason for refusing to renew; or

(b) At least twenty days prior to its expiration date, the insurer has communicated, either directly or through its agent, its willingness to renew in writing to the named insured and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, and the insured fails to discharge when due his or her obligation in connection with the payment of such premium or portion thereof; or

(c) The insured has procured equivalent coverage prior to the expiration of the policy period; or

(d) The contract is evidenced by a written binder containing a clearly stated expiration date which has expired according to its terms.

(2) Any insurer failing to include in the notice required by subsection (1)(b) of this section the amount of any increased premium resulting from a change of rates and an explanation of any change in the contract provisions shall renew the policy if so required by that subsection according to the rates and contract provisions applicable to the expiring policy: *Provided*, That renewal based on the rates and contract provisions applicable to the expiring policy shall not prevent the insurer from making changes in the rates and/or contract provisions of the policy once during the term of its renewal after at least twenty days' advance notice of such change has been given to the named insured.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal, or with respect to cancellation of fire policies under chapter 48.53 RCW.

(4) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of insurance previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term: *Provided, however*, That any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295 be considered as if written for a policy period or term of six months: *Provided, further*, That any policy

written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295, be considered as if written for successive policy periods or terms of one year. [1988 c 249 § 3; 1986 c 287 § 2; 1985 c 264 § 20.]

Effective date—1988 c 249: See note following RCW 48.18.289.

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

48.18.291 Cancellation of private automobile insurance by insurer—Notice—Requirements. (1) No contract of insurance predicated wholly or in part upon the use of a private passenger automobile shall be terminated by cancellation by the insurer until at least twenty days after mailing written notice of cancellation to the named insured at the latest address filed with the insurer by or on behalf of the named insured, accompanied by the reason therefor: *Provided*, That where cancellation is for nonpayment of premium, or is within the first thirty days after the contract has been in effect, at least ten days notice of cancellation, accompanied by the reason therefor, shall be given: *Provided however*, That in case of a contract evidenced by a written binder which has been delivered to the insured, if such binder contains a clearly stated expiration date, no additional notice of cancellation or nonrenewal shall be required.

(2) (a) No notice of cancellation by the insurer as to a contract of insurance to which subsection (1) applies shall be valid if sent more than sixty days after the contract has been in effect unless:

(i) The named insured fails to discharge when due any of his or her obligations in connection with the payment of premium for the policy or any installment thereof, whether payable directly to the insurer or to its agent or indirectly under any premium finance plan or extension of credit.

(ii) The driver's license of the named insured, or of any other operator who customarily operates an automobile insured under the policy, has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty days immediately preceding the effective date of the renewal policy.

(b) Modification by the insurer of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars shall not be deemed a cancellation of the coverage or of the policy.

(3) The substance of subsections (1) and (2)(a) of this section must be set forth in each contract of insurance subject to the provisions of subsection (1) above, and may be in the form of an attached endorsement.

(4) No notice of cancellation of a policy which can be canceled only pursuant to subsection (2) shall be effective unless the reason therefor accompanies or is included in the notice of cancellation. [1985 c 264 § 18; 1979 ex.s. c 199 § 6; 1969 ex.s. c 241 § 19.]

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

Construction—1969 ex.s. c 241: "Sections 19 through 25 of this 1969 amendatory act shall become operative September 1, 1969, and

shall apply to policies written or renewed, or which have a renewal anniversary thereafter. Sections 19 through 25 of this 1969 amendatory act shall not apply to or affect the validity of any notice of cancellation mailed or delivered prior to the operative date of this amendatory act. Sections 19 through 25 of this 1969 amendatory act shall not be construed to affect cancellation of a renewal policy, if notice of cancellation is mailed or delivered within sixty days after the operative date of sections 19 through 25 of this amendatory act. Sections 19 through 25 of this 1969 amendatory act shall not be construed to require notice of intention not to renew any policy which expires less than thirty days after the operative date of sections 19 through 25 of this 1969 amendatory act." [1969 ex.s. c 241 § 25.]

48.18.292 Refusal to renew private automobile insurance by insurer—Change in amount of premium or deductibles. (1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.291 unless one of the following situations exists:

(a) The insurer gives the named insured at least twenty days' notice in writing as provided for in RCW 48.18.291(1), that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth therein the actual reason for refusing to renew; or

(b) At least twenty days prior to its expiration date, the insurer has communicated its willingness to renew in writing to the named insured, and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, including the amount by which the premium or deductibles have changed from the previous policy period, and the date by which such payment must be made, and the insured fails to discharge when due his obligation in connection with the payment of such premium or portion thereof; or

(c) The insured's agent or broker has procured other coverage acceptable to the insured prior to the expiration of the policy period.

(2) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(3) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of insurance previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term: *Provided, however*, That any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.291 through 48.18.297 be considered as if written for a policy period or term of six months: *Provided, further*, That any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.291 through 48.18.297, be considered as if written for successive policy periods or terms of one year.

(4) On and after January 1, 1980, no policy of insurance subject to RCW 48.18.291 shall be issued for a policy period or term of less than six months.

(5) No insurer shall refuse to renew the liability and/or collision coverage of an automobile insurance policy on the basis that an insured covered by the policy

of the insurer has submitted one or more claims under the comprehensive, road service, or towing coverage of the policy. Nothing in this subsection shall prohibit the nonrenewal of comprehensive, road service, or towing coverage on the basis of one or more claims submitted by an insured. [1985 c 264 § 19; 1981 c 339 § 17; 1979 ex.s. c 199 § 7; 1973 1st ex.s. c 152 § 3; 1969 ex.s. c 241 § 20.]

Application—1985 c 264 §§ 17–22: See note following RCW 48.18.290.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

Construction—1969 ex.s. c 241: See note following RCW 48.18.291.

48.18.293 Nonliability of commissioner, agents, insurer for information giving reasons for cancellation or refusal to renew—Proof of mailing of notice. (1) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, his agents, or members of his staff, or against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew, for any statement made by any of them in any written notice of cancellation or refusal to renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith.

(2) Proof of mailing of notice of cancellation or refusal to renew or of reasons for cancellation, to the named insured, at the latest address filed with the insurer by or on behalf of the named insured shall be sufficient proof of notice. [1969 ex.s. c 241 § 21.]

Construction—1969 ex.s. c 241: See note following RCW 48.18.291.

48.18.295 RCW 48.18.290 through 48.18.297 not to prevent cancellation or nonrenewal, when. Nothing in RCW 48.18.290 through 48.18.297 shall be construed to prevent the cancellation or nonrenewal of any such insurance where:

(1) Such cancellation or nonrenewal is ordered by the commissioner under a statutory delinquency proceeding commenced under the provisions of chapter 48.31 RCW, or

(2) Permission for such cancellation or nonrenewal has been given by the commissioner on a showing that the continuation of such coverage can reasonably be expected to create a condition in the company hazardous to its policyholder, or to its creditors, or to its members, subscribers, or stockholders, or to the public. [1985 c 264 § 21; 1969 ex.s. c 241 § 22; 1967 ex.s. c 95 § 2.]

Application—1985 c 264 §§ 17–22: See note following RCW 48.18.290.

Construction—1969 ex.s. c 241: See note following RCW 48.18.291.

Severability—1967 ex.s. c 95: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons and circumstances is not affected." [1967 ex.s. c 95 § 16.]

48.18.296 Contracts to which RCW 48.18.291 through 48.18.297 inapplicable. The provisions of RCW 48.18.291 through 48.18.297 shall not apply to:

(1) Contracts of insurance issued under the assigned risk plan;

(2) Any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards; and

(3) Contracts of insurance procured under the provisions of chapter 48.15 RCW. [1986 c 287 § 3; 1985 c 264 § 22; 1983 1st ex.s. c 32 § 6; 1969 ex.s. c 241 § 23.]

Application—1985 c 264 §§ 17–22: See note following RCW 48.18.290.

Construction—1969 ex.s. c 241: See note following RCW 48.18.291.

48.18.297 Private passenger automobile defined. A private passenger automobile as used in RCW 48.18.291 through 48.18.297 shall mean:

(1) An individually owned motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others.

(2) Any other individually owned four-wheel motor vehicle with a load capacity of fifteen hundred pounds or less which is not used in the occupation, profession, or business of the insured. [1969 ex.s. c 241 § 24.]

Construction—1969 ex.s. c 241: See note following RCW 48.18.291.

48.18.298 Disability insurance—Refusal to renew by insurer. No insurer shall refuse to renew any policy of individual disability insurance issued after July 1, 1973 because of a change in the physical or mental condition or health of any person covered thereunder: *Provided*, That after approval of the insurance commissioner, an insurer may discharge its obligation to renew the contract by obtaining for the insured coverage with another insurer which is comparable in terms of premiums and benefits. [1973 1st ex.s. c 188 § 1.]

Severability—1973 1st ex.s. c 188: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 188 § 5.]

48.18.299 Disability insurance—Cancellation by insurer. No contract of insurance enumerated in RCW 48.18.298 shall be terminated by cancellation by the insurer during the period of contract except for nonpayment of premium. This section shall not be deemed to affect the right of the insurer to rescind the policy as limited and defined in RCW 48.18.090. [1973 1st ex.s. c 188 § 2.]

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.18.300 Cancellation by insured. (1) Cancellation by the insured of any policy which by its terms is cancellable at the insured's option or of any binder based on such policy may be effected by written notice thereof to the insurer or surrender of the policy or binder for cancellation prior to or on the effective date of such cancellation. In [the] event the policy or binder has been lost or destroyed and cannot be so surrendered, the insurer may in lieu of such surrender accept and in good faith rely upon the insured's written statement setting forth the fact of such loss or destruction.

(2) As soon as possible, and no later than thirty days after the receipt of the notice of cancellation from the policyholder for homeowners', dwelling fire, and private passenger auto insurance, the insurer shall pay to the insured or to the person entitled thereto as shown by the insurer's records, any unearned portion of any premium paid on the policy as computed on the customary short rate or as otherwise specified in the policy: *Provided*, That the refund of any unearned portion of any premium paid on a contract of dwelling fire insurance, homeowners' insurance, or insurance predicated upon the use of a private passenger automobile (as defined in RCW 48.18.297 and excluding contracts of insurance and policies enumerated in RCW 48.18.296) shall be computed on a pro rata basis and the insurer shall refund not less than ninety percent of any unearned portion not exceeding one hundred dollars, plus ninety-five percent of any unearned portion over one hundred dollars but not exceeding five hundred dollars, and not less than ninety-seven percent of the amount of any unearned portion in excess of five hundred dollars. If the amount of any refund is less than two dollars, no refund need be made. If no premium has been paid on the policy, the insured shall be liable to the insurer for premium for the period during which the policy was in force.

(3) The surrender of a policy to the insurer for any cause by any person named therein as having an interest insured thereunder shall create a presumption that such surrender is concurred in by all persons so named.

(4) This section shall not apply to life insurance policies or to annuity contracts. [1980 c 102 § 8; 1979 ex.s. c 199 § 8; 1955 c 303 § 16; 1947 c 79 § .18.30; Rem. Supp. 1947 § 45.18.30.]

48.18.310 Cancellation by commissioner. The commissioner may order the immediate cancellation of any policy the procuring or effectuation of which was accomplished through or accompanied by a violation of this code, except in cases where the policy by its terms is not cancellable by the insurer and the insured did not knowingly participate in any such violation. [1947 c 79 § .18.31; Rem. Supp. 1947 § 45.18.31.]

48.18.320 Annulment of liability policies. No insurance contract insuring against loss or damage through legal liability for the bodily injury or death by accident of any individual, or for damage to the property of any person, shall be retroactively annulled by any agreement between the insurer and insured after the occurrence of

any such injury, death, or damage for which the insured may be liable, and any such annulment attempted shall be void. [1947 c 79 § .18.32; Rem. Supp. 1947 § 45.18.32.]

48.18.340 Dividends payable to real party in interest. (1) Every insurer issuing participating policies, shall pay dividends, unused premium refunds or savings distributed on account of any such policy, only to the real party in interest entitled thereto as shown by the insurer's records, or to any person to whom the right thereto has been assigned in writing of record with the insurer, or given in the policy by such real party in interest.

(2) Any person who is shown by the insurer's records to have paid for his own account, or to have been ultimately charged for, the premium for insurance provided by a policy in which another person is the nominal insured, shall be deemed such real party in interest proportionate to premium so paid or so charged. This subsection shall not apply as to any such dividend, refund, or distribution which would amount to less than one dollar.

(3) This section shall not apply to contracts of group life insurance, group annuities, or group disability insurance. [1947 c 79 § .18.34; Rem. Supp. 1947 § 45.18.34.]

48.18.350 Breach of warranty prior to loss—Effect. If any breach of a warranty or condition in any insurance contract occurs prior to a loss under the contract, such breach shall not avoid the contract nor avail the insurer to avoid liability, unless the breach exists at the time of the loss. [1947 c 79 § .18.35; Rem. Supp. 1947 § 45.18.35.]

48.18.360 Assignment of policies—Life and disability. Subject to the terms of the policy relating to its assignment, life insurance policies, other than industrial or group life insurance policies, and disability policies providing benefits for accidental death, whether such policies were heretofore or are hereafter issued, and under the terms of which the beneficiary may be changed upon the sole request of the insured, may be assigned either by pledge or transfer of title, by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Industrial life insurance policies may be made assignable only to a bank or trust company. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment. [1947 c 79 § .18.36; Rem. Supp. 1947 § 45.18.36.]

48.18.370 Payment discharges insurer—Life and disability. Whenever the proceeds of, or payments under a life or disability insurance policy, heretofore or hereafter issued, become payable and the insurer makes payment thereof in accordance with the terms of the

policy, or in accordance with any written assignment thereof pursuant to RCW 48.18.360, the person then designated in the policy or by such assignment as being entitled thereto, shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payment shall fully discharge the insurer from all claims under the policy unless, before payment is made, the insurer has received at its home office, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy. [1947 c 79 § .18.37; Rem. Supp. 1947 § 45.18.37.]

48.18.375 Assignment of interests under group insurance policy. A person whose life is insured under a group insurance policy may, subject and pursuant to the terms of the policy, or pursuant to an arrangement between the insured, the group policyholder and the insurer, assign to any or all his spouse, children, parents, or a trust for the benefit of any or all of them, all or any part of his incidents of ownership, rights, title, and interests, both present and future, under such policy including specifically, but not by way of limitation, the right to designate a beneficiary or beneficiaries thereunder and the right to have an individual policy issued to him in case of termination of employment or of said group insurance policy. Such an assignment by the insured, made either before or after July 16, 1973, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all of such incidents of ownership, rights, title, and interests so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment. This section acknowledges, declares, and codifies the existing right of assignment of interests under group insurance policies. [1973 1st ex.s. c 163 § 3.]

48.18.390 Simultaneous deaths—Payment of proceeds—Life insurance. Where the individual insured and the beneficiary designated in a life insurance policy or policy insuring against accidental death have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, unless otherwise expressly provided in the policy. [1947 c 79 § .18.39; Rem. Supp. 1947 § 45.18.39.]

Distribution of proceeds of insurance policy when insured and beneficiary die simultaneously: RCW 11.05.040.

48.18.400 Exemption of proceeds—Disability. The proceeds or avails of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for his use. [1947 c 79 § .18.40; Rem. Supp. 1947 § 45.18.40.]

48.18.410 Exemption of proceeds—Life. (1) The lawful beneficiary, assignee, or payee of a life insurance policy, other than an annuity, heretofore or hereafter effected by any person on his own life, or on the life of another, in favor of a person other than himself, shall be entitled to the proceeds and avails of the policy against the creditors and representatives of the insured and of the person effecting the insurance, and such proceeds and avails shall also be exempt from all liability for any debt of such beneficiary, existing at the time the proceeds or avails are made available for his own use.

(2) The provisions of subsection (1) of this section shall apply

(a) whether or not the right to change the beneficiary is reserved or permitted in the policy; or

(b) whether or not the policy is made payable to the person whose life is insured or to his estate if the beneficiary, assignee or payee shall predecease such person; except, that this subsection shall not be construed so as to defeat any policy provision which provides for disposition of proceeds in the event the beneficiary shall predecease the insured.

(3) The exemptions provided by subsection (1) of this section, subject to the statute of limitations, shall not apply

(a) to any claim to or interest in such proceeds or avails by or on behalf of the insured, or the person so effecting the insurance, or their administrators or executors, in whatever capacity such claim is made or such interest is asserted; or

(b) to any claim to or interest in such proceeds or avails by or on behalf of any person to whom rights thereto have been transferred with intent to defraud creditors; but an insurer shall be liable to all such creditors only as to amounts aggregating not to exceed the amount of such proceeds or avails remaining in the insurer's possession at the time the insurer receives at its home office written notice by or on behalf of such creditors, of claims to recover for such transfer, with specification of the amounts claimed; or

(c) to so much of such proceeds or avails as equals the amount of any premiums or portion thereof paid for the insurance with intent to defraud creditors, with interest thereon, and if prior to the payment of such proceeds or avails the insurer has received at its home office written notice by or on behalf of the creditor, of a claim to recover for premiums paid with intent to defraud creditors, with specification of the amount claimed.

(4) For the purposes of subsection (1) of this section a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

(5) No person shall be compelled to exercise any rights, powers, options or privileges under any such policy. [1947 c 79 § .18.41; Rem. Supp. 1947 § 45.18.41.]

48.18.420 Exemption of proceeds—Group life. (1) A policy of group life insurance or the proceeds thereof

payable to the individual insured or to the beneficiary thereunder, shall not be liable, either before or after payment, to be applied to any legal or equitable process to pay any liability of any person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, shall not constitute a part of the estate of the individual insured for the payment of his debts.

(2) This section shall not apply to group life insurance policies issued under RCW 48.24.040 (debtor groups) to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued. [1947 c 79 § .18.42; Rem. Supp. 1947 § 45.18.42.]

48.18.430 Exemption of proceeds, commutation—Annuities. (1) The benefits, rights, privileges and options which under any annuity contract heretofore or hereafter issued are due or prospectively due the annuitant who paid the consideration for the annuity contract, shall not be subject to execution nor shall the annuitant be compelled to exercise any such rights, powers or options, nor shall creditors be allowed to interfere with or terminate the contract, except:

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

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

(c) If the total benefits presently due and payable to any annuitant under all annuity contracts under which he is an annuitant, shall at any time exceed payment at the rate of two hundred and fifty dollars per month, then the court may order such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such portion of such excess benefits as to the court may appear just and proper, after due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) The benefits, rights, privileges or options accruing under such contract to a beneficiary or assignee shall not be transferable nor subject to commutation, and if the

benefits are payable periodically or at stated times, the same exemptions and exceptions contained herein for the annuitant, shall apply with respect to such beneficiary or assignee.

(3) An annuity contract within the meaning of this section shall be any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable consideration, regardless of whether or not such sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives, or for a specified term or terms. [1949 c 190 § 25; 1947 c 79 § .18.43; Rem. Supp. 1949 § 45.18.43.]

48.18.440 Spouse's rights in life insurance policy. (1) Every life insurance policy heretofore or hereafter made payable to or for the benefit of the spouse of the insured, and every life insurance policy heretofore or hereafter assigned, transferred, or in any way made payable to a spouse or to a trustee for the benefit of a spouse, regardless of how such assignment or transfer is procured, shall, unless contrary to the terms of the policy, inure to the separate use and benefit of such spouse: *Provided*, That the beneficial interest of a spouse in a policy upon the life of a child of the spouses, however such interest is created, shall be deemed to be a community interest and not a separate interest, unless expressly otherwise provided by the policy.

(2) In any life insurance policy heretofore or hereafter issued upon the life of a spouse the designation heretofore or hereafter made by such spouse of a beneficiary in accordance with the terms of the policy, shall create a presumption that such beneficiary was so designated with the consent of the other spouse, but only as to any beneficiary who is the child, parent, brother, or sister of either of the spouses. The insurer may in good faith rely upon the representations made by the insured as to the relationship to him of any such beneficiary. [1947 c 79 § .18.44; Rem. Supp. 1947 § 45.18.44.]

48.18.450 Life insurance payable to trustee named as beneficiary in the policy. Life insurance may be made payable to a trustee to be named as beneficiary in the policy and the proceeds of such insurance paid to such trustee shall be held and disposed of by the trustee as provided in a trust agreement or declaration of trust made by the insured during his lifetime. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such insurance proceeds as beneficiary, and any such trustee may also receive assets, other than insurance proceeds, by testamentary disposition and administer them according to the terms of the trust agreement or declaration of trust as they exist at the death of the testator. [1963 c 227 § 1.]

48.18.452 Life insurance designating as beneficiary a trustee named by will. A policy of life insurance may designate as beneficiary a trustee or trustees named or

to be named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurance company. Immediately after the proving of the will the proceeds of such insurance shall be paid to the trustee or trustees named therein to be held and disposed of under the terms of the will as they exist at the death of the testator, but if no qualified trustee makes claim to the proceeds from the insurance company within one year after the death of the insured, or if satisfactory evidence is furnished the insurance company within such one-year period showing that no trustee can qualify to receive the proceeds, payment shall be made by the insurance company to those thereafter entitled. The proceeds of the insurance as collected by the trustee or trustees shall not be subject to debts of the insured and inheritance tax to any greater extent than if such proceeds were payable to any other named beneficiary other than the estate of the insured. Enactment of this section shall not invalidate previous life insurance policy beneficiary designations naming trustees of trusts established by will. [1963 c 227 § 2.]

48.18.460 Proof of loss—Furnishing forms. An insurer shall furnish, upon written request of any person claiming to have a loss under any insurance contract, forms of proof of loss for completion by such person. But such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion. [1949 c 190 § 26; 1947 c 79 § .18.46; Rem. Supp. 1949 § 45.18.46.]

48.18.470 Claims administration—Not waiver. None of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(a) Acknowledgment of the receipt of notice of loss or of claim under the policy.

(b) Furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss, or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted.

(c) Investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim. [1947 c 79 § .18.47; Rem. Supp. 1947 § 45.18.47.]

48.18.480 Discrimination prohibited. No insurer shall make or permit any unfair discrimination between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, and expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged therefor, or in the benefits payable or in any other rights or privileges accruing thereunder. This provision shall not prohibit fair discrimination by a life insurer as between individuals having unequal expectation of life. [1957 c 193 § 12; 1947 c 79 § .18.48; Rem. Supp. 1947 § 45.18.480.]

48.18.510 Validity of noncomplying forms. Any insurance policy, rider, or endorsement hereafter issued and otherwise valid, which contains any condition or provision not in compliance with the requirements of this code, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code. [1947 c 79 § .18.51; Rem. Supp. 1947 § 45.18.51.]

48.18.520 Construction of policies. Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, or modified by any rider, endorsement, or application attached to and made a part of the policy. [1947 c 79 § .18.52; Rem. Supp. 1947 § 45.18.52.]

48.18.530 Certain provisions of insurance policies deemed nontestamentary. See RCW 11.02.090.

Chapter 48.18A

VARIABLE CONTRACT ACT

Sections

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48.18A.020	Separate accounts authorized—Allocations—Benefits—Limitations—Valuation—Sale, transfer, or exchange of assets.
48.18A.030	Statements required in contracts—Payment on death, incidental benefit provision.
48.18A.035	Return of policy and refund of premium—Notice required—Effect of return.
48.18A.040	Requirements for operation under this chapter—Considerations—Authorization of subsidiary or affiliate—Exceptions.
48.18A.050	Applicability of other code provisions—Contract requirements.
48.18A.060	Licensing requirement.
48.18A.070	Authority of commissioner.
48.18A.900	Effective date—1969 c 104.

48.18A.010 Short title—Intent. This chapter shall be known as the "Variable Contract Act" and is intended to authorize the sale of both individual and group variable contracts. [1969 c 104 § 1.]

48.18A.020 Separate accounts authorized—Allocations—Benefits—Limitations—Valuation—Sale, transfer, or exchange of assets. A domestic life insurer may, by or pursuant to resolution of its board of directors, establish one or more separate accounts, and may allocate thereto amounts (including without limitation proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance or annuities (and other benefits incidental thereto), payable in fixed or variable amounts or both, subject to the following:

(1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(2) (a) Except as hereinafter provided, amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurers: *Provided*, That to the extent that the insurer's reserve liability with regard to (i) benefits guaranteed as to dollar amount and duration, and (ii) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested under such conditions as the commissioner may prescribe. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to the investments of the insurer.

(b) With respect to seventy-five percent of the market value of the total assets in a separate account no insurer shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market value, would exceed ten percent of the market value of the assets of such separate account: *Provided*, That the commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state.

(c) Unless otherwise permitted by law or approved by the commissioner, no insurer shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of such issuer: *Provided*, That the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.

(d) The limitations provided in paragraphs (b) and (c) of this subsection shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the United States Investment Company Act of 1940: *Provided*, That the investments of such investment company shall comply in substance therewith.

(3) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account: *Provided*, That unless otherwise approved by the commissioner, the portion, if any, of the assets of such separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (2) of this section shall be valued in accordance with the rules otherwise applicable to the insurer's assets.

(4) Amounts allocated to a separate account in the exercise of the power granted by this chapter shall be owned by the insurer and the insurer shall not be, nor hold itself out to be, a trustee with respect to such amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the insurer may conduct.

(5) No sale, exchange or other transfer of assets may be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (a) by a transfer of cash, or (b) by a transfer of securities having a readily determinable market value: *Provided*, That such transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts, if, in his opinion, such transfers would not be inequitable.

(6) To the extent such insurer deems it necessary to comply with any applicable federal or state law, such insurer, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having interest therein, as may be appropriate, voting and other rights and special procedures for the conduct of the business of such account, including without limitation, special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such insurer, to manage the business of such account. [1973 1st ex.s. c 163 § 4; 1969 c 104 § 2.]

48.18A.030 Statements required in contracts—
Payment on death, incidental benefit provision. (1) Every variable contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

(2) Variable annuity contracts delivered or issued for delivery in this state may include as an incidental benefit provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at time of death. For this purpose such benefit shall not be deemed to be

life insurance and therefore not subject to any statutory provisions governing life insurance contracts. A provision for any other benefits on death during the deferred period will be subject to such insurance law provisions. [1973 1st ex.s. c 163 § 5; 1969 c 104 § 3.]

48.18A.035 Return of policy and refund of premium—Notice required—Effect of return. Every individual variable contract issued shall have printed on its face or attached thereto a notice stating in substance that the policy owner shall be permitted to return the policy within ten days after it is received by the policy owner and to have the market value of the assets purchased by its premium, less taxes and investment brokerage commissions, if any, refunded, if, after examination of the policy, the policy owner is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policy owner pursuant to such notice returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. [1983 1st ex.s. c 32 § 7; 1982 c 181 § 15.]

Effective date—1982 c 181 § 15: "RCW 48.18A.035 is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1982." [1982 c 181 § 26.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.18A.040 Requirements for operation under this chapter—Considerations—Authorization of subsidiary or affiliate—Exceptions. No insurer shall deliver or issue, for delivery within this state, contracts under this chapter unless it is licensed or organized to do a life insurance or annuity business in this state, and unless the commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider among other things:

- (1) The history and financial condition of the insurer;
- (2) The character, responsibility and fitness of the officers and directors of the insurer; and
- (3) The law and regulation under which the insurer is authorized in the state of domicile to issue variable contracts.

An insurer which issues variable contracts and which is a subsidiary of, or affiliated through common management or ownership with, another life insurer authorized to do business in this state may be deemed to have met the provisions of this section if either it or the parent or affiliated company meets the requirements hereof: *Provided*, That no insurer may provide variable benefits in its contracts unless it is an admitted insurer having and continually maintaining a combined capital and surplus of at least five million dollars. [1982 c 181 § 10; 1969 c 104 § 4.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.18A.050 Applicability of other code provisions—Contract requirements. The provisions of RCW 48.23.020, 48.23.030, 48.23.080 through 48.23.120, 48.23.140, 48.23.150, 48.23.200 through 48.23.240, 48.23.310, *48.23.350, and 48.23.360, and the provisions of chapter 48.24 RCW shall be inapplicable to variable contracts; nor shall any provision in the code requiring contracts to be participating be deemed applicable to variable contracts. Except as otherwise provided in this chapter, all pertinent provisions of the insurance code shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance or individual variable annuity contract delivered or issued for delivery in this state shall contain grace, reinstatement, and nonforfeiture provisions appropriate to such contracts, and any such variable life insurance contract shall provide that the investment experience of the separate account shall in no event operate to reduce the death benefit below an amount equal to the face amount of the contract at the time the contract was issued. Any individual variable life insurance contract may contain a provision for deduction from the death proceeds of amounts of due and unpaid premiums or of indebtedness which are appropriate to such contracts. The reserve liability for variable annuities shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees. [1983 c 3 § 150; 1979 c 157 § 2; 1973 1st ex.s. c 163 § 6; 1969 c 104 § 5.]

***Reviser's note:** RCW 48.23.350 was repealed by 1982 1st ex.s. c 9 § 36(2); later enactment, see chapter 48.76 RCW.

48.18A.060 Licensing requirement. No person shall be or act as an agent for the solicitation or sale of variable contracts except while duly appointed and licensed under the insurance code as a life insurance agent with respect to the insurer, and while duly licensed as a security salesman or securities broker under a license issued by the administrator of securities pursuant to the securities act of this state; except that any person who participates only in the sale or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under sections 401 or 403 of the United States internal revenue code need not be licensed pursuant to the securities act of this state. [1973 1st ex.s. c 163 § 7; 1969 c 104 § 6.]

48.18A.070 Authority of commissioner. Notwithstanding any other provision of law, the commissioner shall have sole and exclusive authority to regulate the issuance and sale of variable contracts; except for the examination, issuance or renewal, suspension or revocation, of a security salesman's license issued to persons selling variable contracts. To carry out the purposes and provisions of this chapter he may independently, and in concert with the state securities administrator, issue such reasonable rules and regulations as may be appropriate. [1969 c 104 § 7.]

48.18A.900 Effective date—1969 c 104. This 1969 act shall take effect July 1, 1969. [1969 c 104 § 10.]

Chapter 48.19

RATES

Sections

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Anti-compact law: RCW 48.30.020.

Discrimination prohibited: RCW 48.18.480.

Rate wars prohibited: RCW 48.30.240.

48.19.010 Scope of chapter. (1) Except as is otherwise expressly provided the provisions of this chapter apply to all insurances upon subjects located, resident or to be performed in this state except:

(a) Life insurance;

(b) disability insurance;

(c) reinsurance except as to joint reinsurance as provided in RCW 48.19.360;

(d) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft;

(e) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity; and such other risks commonly insured under marine, as distinguished from inland marine, insurance contracts as may be defined by ruling of the commissioner for the purposes of this provision;

(f) title insurance.

(2) Except, that every insurer shall, as to disability insurance, before using file with the commissioner its manual of classification, manual of rules and rates, and any modifications thereof. [1987 c 185 § 24; 1947 c 79 § .19.01; Rem. Supp. 1947 § 45.19.01.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.19.020 Rate standard. Premium rates for insurance shall not be excessive, inadequate, or unfairly discriminatory. [1983 1st ex.s. c 32 § 13; 1947 c 79 § .19.02; Rem. Supp. 1947 § 45.19.02.]

48.19.030 Making of rates—Criteria. Rates shall be used, subject to the other provisions of this chapter, only if made in accordance with the following provisions:

(1) In the case of insurances under standard fire policies and that part of marine and transportation insurances not exempted under RCW 48.19.010, manual, minimum, class or classification rates, rating schedules or rating plans, shall be made and adopted; except as to specific rates on inland marine risks individually rated, which risks are not reasonably susceptible to manual or schedule rating, and which risks by general custom of the business are not written according to manual rates or rating plans.

(2) In the case of casualty and surety insurances:

(a) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(b) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(3) Due consideration in making rates for all insurances shall be given to:

(a) Past and prospective loss experience within this state for experience periods acceptable to the commissioner. If the information is not available or is not statistically credible, an insurer may use loss experience in those states which are likely to produce loss experience similar to that in this state.

(b) Conflagration and catastrophe hazards, where present.

(c) A reasonable margin for underwriting profit and contingencies.

(d) Dividends, savings and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(e) Past and prospective operating expenses.

(f) Past and prospective investment income.

(g) All other relevant factors within and outside this state.

(4) In addition to other factors required by this section, rates filed by an insurer on its own behalf may also be related to the insurer's plan of operation and plan of risk classification.

(5) Except to the extent necessary to comply with RCW 48.19.020 uniformity among insurers in any matter within the scope of this section is neither required nor prohibited. [1989 c 25 § 3; 1947 c 79 § .19.03; Rem. Supp. 1947 § 45.19.03.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.040 Filing required. (1) Every insurer or rating organization shall, before using, file with the commissioner every classifications manual, manual of rules and rates, rating plan, rating schedule, minimum rate, class rate, and rating rule, and every modification of any of the foregoing which it proposes. The insurer need not so file any rate on individually rated risks as described in subdivision (1) of RCW 48.19.030; except that any such specific rate made by a rating organization shall be filed.

(2) Every such filing shall indicate the type and extent of the coverage contemplated and must be accompanied by sufficient information to permit the commissioner to determine whether it meets the requirements of this chapter. An insurer or rating organization shall offer in support of any filing:

(a) The experience or judgment of the insurer or rating organization making the filing;

(b) An exhibit detailing the major elements of operating expense for the types of insurance affected by the filing;

(c) An explanation of how investment income has been taken into account in the proposed rates; and

(d) Any other information which the insurer or rating organization deems relevant.

(3) If an insurer has insufficient loss experience to support its proposed rates, it may submit loss experience for similar exposures of other insurers or of a rating organization.

(4) Every such filing shall state its proposed effective date.

(5) General liability, professional liability, and commercial automobile insurance rate filings must be submitted or updated at least once in each fifteen-month

interval so that the commissioner has timely supporting information necessary to determine that the current schedules, manuals, rules, rates, and rating plans meet the requirements of RCW 48.19.020.

(6) A filing made pursuant to this chapter shall be exempt from the provisions of RCW 48.02.120(3). However, the filing and all supporting information accompanying it shall be open to public inspection only after the filing becomes effective.

(7) Where a filing is required no insurer shall make or issue an insurance contract or policy except in accordance with its filing then in effect, except as is provided by RCW 48.19.090. [1989 c 25 § 4; 1983 1st ex.s. c 32 § 14; 1947 c 79 § .19.04; Rem. Supp. 1947 § 45.19.04.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.050 Filings by rating bureau. (1) If so authorized by an insurer, the commissioner shall accept, in lieu of filings by the insurer, filings on its behalf made by a rating organization then licensed as provided in this chapter.

(2) As to fire insurance under a standard form fire policy, and the following insurances (other than vehicle insurance coverages) when issued as part of a standard form fire policy, an insurer may so authorize a rating organization to make all its filings only, and may not make a portion of such filings upon its own behalf and authorize a rating organization to make other such filings:

(a) Additional property insurance coverages, or

(b) Coverages including any kind of insurance in addition to fire for a single undivided premium.

(3) Except, that notwithstanding the provisions of subsection (2) an insurer which prior to the first day of January, 1947, made its own filings in this state as to a particular class of fire risks, and its filings in this state as to other classes of fire risks were made by a rating organization authorized by the insurer so to do, may:

(a) Continue to make all its own filings as to such specific class of risks or authorize a rating organization to make its filings as to such specific class of risks or any part thereof, and

(b) authorize a different rating organization to make all only of its filings as to all other classes of risks insured by it in this state against fire under the standard form fire policy; or

(c) make all its own filings as to all classes of risks insured by it against fire under the standard form fire policy, or make all its own such filings except as to any which may relate to any such specific class of risks, which filings so excepted the insurer may authorize a rating organization to make; or

(d) authorize a rating organization to make all only of its filings as to all classes or risks insured by it against fire in this state under the standard form fire policy. [1957 c 193 § 13; 1947 c 79 § .19.05; Rem. Supp. 1947 § 45.19.05.]

48.19.060 Filings—Review, waiting period, disapproval. (1) The commissioner shall review a filing as

soon as reasonably possible after made, to determine whether it meets the requirements of this chapter.

(2) Except as provided in RCW 48.19.070:

(a) No such filing shall become effective within thirty days after the date of filing with the commissioner, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he gives notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of the filing. The commissioner may, upon application and for cause shown, waive such waiting period or part thereof as to a filing that he has not disapproved.

(b) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof. [1989 c 25 § 5; 1947 c 79 § .19.06; Rem. Supp. 1947 § 45.19.06.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.070 Special filings. The following special filings, when not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and for so long thereafter as the filing remains in effect:

(1) Special filings with respect to surety or guaranty bonds required by law or by court or executive order or by order, rule or regulation of a public body.

(2) Specific rates on inland marine risks individually rated by a rating organization, which risks are not reasonably susceptible to manual or schedule rating, and which risks by general custom of the business are not written according to manual rates or rating plans. [1947 c 79 § .19.07; Rem. Supp. 1947 § 45.19.07.]

48.19.080 Waiver of filing. Under such rules and regulations as he shall adopt the commissioner may, by order, suspend or modify the requirement of filing as to any kind of insurance. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standard prescribed in RCW 48.19.020. [1981 c 339 § 18; 1947 c 79 § .19.08; Rem. Supp. 1947 § 45.19.08.]

48.19.090 Excess rates on specific risks. Upon written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk. [1947 c 79 § .19.09; Rem. Supp. 1947 § 45.19.09.]

48.19.100 Disapproval of filing. If within the waiting period or any extension thereof as provided in RCW 48.19.060, the commissioner finds that a filing does not meet the requirements of this chapter, he shall disapprove such filing, and shall give notice of such disapproval, specifying the respect in which he finds the filing

fails to meet such requirements, and stating that the filing shall not become effective, to the insurer or rating organization which made the filing. [1989 c 25 § 6; 1947 c 79 § .19.10; Rem. Supp. 1947 § 45.19.10.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.110 Disapproval of special filing. (1) If within thirty days after a special filing subject to RCW 48.19.070 has become effective, the commissioner finds that the filing does not meet the requirements of this chapter, he shall disapprove the filing and shall give notice to the insurer or rating organization which made the filing, specifying in what respects he finds that the filing fails to meet such requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective.

(2) Such disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval. [1947 c 79 § .19.11; Rem. Supp. 1947 § 45.19.11.]

48.19.120 Subsequent disapproval. (1) If at any time subsequent to the applicable review period provided in RCW 48.19.060 or 48.19.110, the commissioner finds that a filing does not meet the requirements of this chapter, he shall, after a hearing, notice of which was given to every insurer and rating organization which made such filing, issue his order specifying in what respect he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filings shall be deemed no longer effective.

(2) Such order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(3) Any person aggrieved with respect to any filing then in effect, other than the insurer or rating organization which made the filing, may make written application to the commissioner for a hearing thereon. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding the hearing, he shall, within thirty days after receipt of the application, hold a hearing as required in subsection (1) of this section. [1989 c 25 § 7; 1983 1st ex.s. c 32 § 15; 1947 c 79 § .19.12; Rem. Supp. 1947 § 45.19.12.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.140 Rating organizations—Discrimination—"Subscriber" defined. (1) Every rating organization operating in this state shall furnish its services without discrimination as between its subscribers.

(2) "Subscriber," for the purposes of this chapter and where the context does not otherwise specify, means any insurer which employs the services of a rating organization for the purpose of making filings, whether or not the insurer is a "member" of such rating organization.

(3) This chapter is not intended to and does not govern or affect the "membership" relation as such between

a rating organization and insurers who are its "members." [1947 c 79 § .19.14; Rem. Supp. 1947 § 45.19.14.]

48.19.150 **Subscribership not required.** No provision of this code shall require, or be deemed to require, any insurer to be a subscriber of, or in any other respect affiliated with, any rating organization. [1947 c 79 § .19.15; Rem. Supp. 1947 § 45.19.15.]

48.19.160 **Rating organization license.** No rating organization shall do business in this state or make filings with the commissioner unless then licensed by the commissioner as a rating organization. [1947 c 79 § .19.16; Rem. Supp. 1947 § 45.19.16.]

48.19.170 **Application for license.** (1) Any person, whether domiciled within or outside this state, except as provided in subsection (2) of this section, may make application to the commissioner for a license as a rating organization for such kinds of insurance or subdivisions thereof, if for casualty or surety insurances, or for such subdivision, class of risks or a part or combination thereof, if for other insurances, as are specified in its application, and shall file therewith:

(a) A copy of its constitution, its articles of agreement or association, or its certificate of incorporation, or trust agreement, and of its bylaws, rules and regulations governing the conduct of its business;

(b) A list of its members and a list of its subscribers;

(c) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and

(d) A statement of its qualifications as a rating organization.

(2) Any rating organization proposing to act as such as to insurance under standard form fire policies, shall be licensed only if all the following conditions are complied with:

(a) The applicant and the operators of such rating organization shall be domiciled in and shall actually reside in this state.

(b) The ownership of such rating organization shall be vested in trustees for all its subscribers under such trust agreement as is approved by the commissioner, and the rating organization shall be and shall be conducted as a nonprofit public service institution.

(c) Such rating organization shall not be connected with any insurer or insurers except to the extent that any such insurer may be a subscriber to its services. [1947 c 79 § .19.17; Rem. Supp. 1947 § 45.19.17.]

48.19.180 **Issuance of license.** (1) If the commissioner finds that the applicant for a license as a rating organization is competent, trustworthy and otherwise qualified so to act, and that its constitution, articles of agreement or association or certificate of incorporation or trust agreement, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall, upon payment of a license

fee of twenty-five dollars, issue a license specifying the kinds of insurance, or subdivisions or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization.

(2) The commissioner shall grant or deny in whole or in part every such application within sixty days of the date of its filing with him.

(3) A license issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. [1947 c 79 § .19.18; Rem. Supp. 1947 § 45.19.18.]

48.19.190 **Suspension or revocation of license.** (1) The commissioner may, after a hearing, suspend or revoke the license issued to a rating organization for any of the following causes:

(a) If he finds that the licensee no longer meets the qualifications for the license.

(b) For failure to comply with an order of the commissioner within the time limited by the order, or any extension thereof which the commissioner may grant.

(2) The commissioner shall not so suspend or revoke a license for failure to comply with an order until the time prescribed by this code for an appeal from such order to the superior court has expired or if such appeal has been taken, until such order has been affirmed.

(3) The commissioner may determine when a suspension or revocation of license shall become effective. A suspension of license shall remain in effect for the period fixed by him, unless he modifies or rescinds the suspension, or until the order, failure to comply with which constituted grounds for the suspension, is modified, rescinded or reversed. [1947 c 79 § .19.19; Rem. Supp. 1947 § 45.19.19.]

48.19.200 **Notice of changes.** Every rating organization shall notify the commissioner promptly of every change in

(1) its constitution, its articles of agreement or association, or its certificate of incorporation, or trust agreement, and its bylaws, rules and regulations governing the conduct of its business;

(2) its list of members and subscribers;

(3) the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served. [1947 c 79 § .19.20; Rem. Supp. 1947 § 45.19.20.]

48.19.210 **Subscribers—Rights, limitations.** (1) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer to subscribe to its rating services for any kind of insurance or subdivision thereof, for which it is authorized to act as a rating organization, subject to subsection (2) of RCW 48.19.050.

(2) Notice of proposed changes in such rules and regulations shall be given to each subscriber.

(3) An insurer shall not concurrently be a subscriber to the services of more than one rating organization as to

the same subdivision, class of risk or part or combination of a kind of insurance.

(4) As to fire insurance under standard form fire policies, an insurer may not concurrently be a subscriber to the services of more than one rating organization except as provided in subsection (2) of RCW 48.19.050. [1947 c 79 § 19.21; Rem. Supp. 1947 § 45.19.21.]

48.19.220 Review of rules and refusal to admit insurers. (1) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon notice to the rating organization, and to the subscriber or insurer.

(2) If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers who are not members of the rating organization.

(3) If a rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action. [1947 c 79 § 19.22; Rem. Supp. 1947 § 45.19.22.]

48.19.230 Subscriber committees. The subscribers of any rating organization may, from time to time, individually or through committees representing various subscribers, consult with the rating organization with respect to matters within this chapter which affect such subscribers. [1947 c 79 § 19.23; Rem. Supp. 1947 § 45.19.23.]

48.19.240 Rules cannot affect dividends. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. [1947 c 79 § 19.24; Rem. Supp. 1947 § 45.19.24.]

48.19.250 Cooperative activities. (1) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, if the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally.

(2) The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this code, he may issue a written order specifying in what

respect such activity or practice is so unfair, unreasonable, or inconsistent, and requiring the discontinuance of such activity or practice. [1947 c 79 § 19.25; Rem. Supp. 1947 § 45.19.25.]

48.19.260 Technical services. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all subscribers without discrimination. [1947 c 79 § 19.26; Rem. Supp. 1947 § 45.19.26.]

48.19.270 Records—Examinations. Each rating organization shall keep an accurate and complete record of all work performed by it, and of all its receipts and disbursements. Such rating organization and its records shall be examined by the commissioner at such times and in such manner as is provided in chapter 48.03 RCW of this code. [1947 c 79 § 19.27; Rem. Supp. 1947 § 45.19.27.]

48.19.280 Deviations. (1) Every member or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization. Deviations from the organization's filings are permitted only when filed with the commissioner in accordance with this chapter.

(2) Every such deviation shall terminate upon a material change of the basic rate from which the deviation is made. The commissioner shall determine whether a change of the basic rate is so material as to require such termination of deviations. [1989 c 25 § 8; 1957 c 193 § 14; 1947 c 79 § 19.28; Rem. Supp. 1947 § 45.19.28.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.290 Appeal from rating organization's action. (1) Any subscriber to a rating organization may appeal to the commissioner from the rating organization's action or decision in approving or rejecting any proposed change in or addition to the rating organization's filings. The commissioner shall, after a hearing on the appeal:

(a) Issue an order approving the rating organization's action or decision or directing it to give further consideration to such proposal; or

(b) If the appeal is from the rating organization's action or decision in rejecting a proposed addition to its filings, he may, in event he finds that the action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the rating organization's failure to make a filing on behalf of such subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in subdivision (2) of RCW 48.19.030, from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding the appeal the commissioner shall apply the standards set

forth in RCW 48.19.020 and 48.19.030. [1947 c 79 § .19.29; Rem. Supp. 1947 § 45.19.29.]

48.19.300 Service to insureds. Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. [1947 c 79 § .19.30; Rem. Supp. 1947 § 45.19.30.]

48.19.310 Complaints of insureds. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon notice to the appellant and to the rating organization or insurer, may affirm or reverse such action. [1947 c 79 § .19.31; Rem. Supp. 1947 § 45.19.31.]

48.19.320 Advisory organizations—Definition. (1) Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

(2) This section does not apply to subscribers' committees provided for in RCW 48.19.230. [1947 c 79 § .19.32; Rem. Supp. 1947 § 45.19.32.]

48.19.330 Requisites of advisory organization. Every advisory organization before serving as such to any rating organization or independently filing insurer doing business in this state, shall file with the commissioner:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities;

(2) A list of its members;

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served; and

(4) An agreement that the commissioner may examine such advisory organization in accordance with the provisions of RCW 48.03.010. [1947 c 79 § .19.33; Rem. Supp. 1947 § 45.19.33.]

48.19.340 Desist orders. If, after a hearing, the commissioner finds that the furnishing of information or assistance by an advisory organization, as referred to in RCW 48.19.320, involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this code, he may issue a written order specifying in what respect such act or practice is unfair or unreasonable or so otherwise inconsistent, and requiring the discontinuance of such act or practice. [1947 c 79 § .19.34; Rem. Supp. 1947 § 45.19.34.]

48.19.350 Disqualification of data. No insurer which makes its own filing nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this chapter or with any order of the commissioner involving such statistics or recommendations issued under RCW 48.19.340. If the commissioner finds such insurer or rating organization to be in violation of this section he may issue an order requiring the discontinuance of the violation. [1947 c 79 § .19.35; Rem. Supp. 1947 § 45.19.35.]

48.19.360 Joint underwriting or joint reinsurance. (1) Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as is provided in this section, subject, however, with respect to joint underwriting, to all other provisions of this chapter, and, with respect to joint reinsurance, to RCW 48.19.270, 48.01.080 and 48.19.430; and to chapter 48.03 RCW of this code.

(2) If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair, or unreasonable or so inconsistent, and requiring the discontinuance of the activity or practice. [1947 c 79 § .19.36; Rem. Supp. 1947 § 45.19.36.]

48.19.370 Recording and reporting of loss and expense experience. (1) The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in RCW 48.19.020 and 48.19.030. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and

plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states.

(3) No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it.

(4) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

(5) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans. [1947 c 79 § .19.37; Rem. Supp. 1947 § 45.19.37.]

48.19.380 Exchange of information. Every rating organization and insurer may exchange information and experience data with insurers and rating organizations in this and other states and may consult with them with respect to rate making and the application of rating systems. [1947 c 79 § .19.38; Rem. Supp. 1947 § 45.19.38.]

48.19.390 False or misleading information. No person shall wilfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. [1947 c 79 § .19.39; Rem. Supp. 1947 § 45.19.39.]

48.19.400 Assigned risks. Agreements may be made among casualty insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner. [1947 c 79 § .19.40; Rem. Supp. 1947 § 45.19.40.]

48.19.410 Examination of contracts. (1) The commissioner may permit the organization and operation of examining bureaus for the examination of policies, daily reports, binders, renewal certificates, endorsements, and other evidences of insurance or of the cancellation thereof, for the purpose of ascertaining that lawful rates are being charged.

(2) A bureau shall examine documents with regard to such kinds of insurance as the commissioner may, after hearing, reasonably require to be submitted for examination. A bureau may examine documents as to such other kinds of insurance as the issuing insurers may voluntarily submit for examination. Upon request of the commissioner, a bureau shall also examine affidavits filed pursuant to RCW 48.15.040, surplus lines contracts

and related documents, and shall make recommendations to the commissioner to assist the commissioner in determining whether surplus lines have been procured in accordance with chapter 48.15 RCW and rules issued thereunder.

(3) No bureau shall operate unless licensed by the commissioner as to the kinds of insurance as to which it is permitted so to examine. To qualify for a license a bureau shall:

(a) Be owned in trust for the benefit of all the insurers regularly using its services, under a trust agreement approved by the commissioner.

(b) Make its services available without discrimination to all authorized insurers applying therefor, subject to such reasonable rules and regulations as to the obligations of insurers using its services, as to the conduct of its affairs, and as to the correction of errors and omissions in documents examined by it as are approved by the commissioner.

(c) Have no manager or other employee who is an employee of an insurer other than to the extent that he is an employee of the bureau owned by insurers through such trust agreement.

(d) Pay to the commissioner a fee of ten dollars for issuance of its license.

(4) Such license shall be of indefinite duration and shall remain in force until revoked by the commissioner or terminated at the request of the bureau. The commissioner may revoke the license, after hearing,

(a) if the bureau is no longer qualified therefor;

(b) if the bureau fails to comply with a proper order of the commissioner;

(c) if the bureau violates or knowingly participates in the violation of any provision of this code.

(5) Any person aggrieved by any rule, regulation, act or omission of a bureau may appeal to the commissioner therefrom. The commissioner shall hold a hearing upon such appeal, and shall make such order upon the hearing as he deems to be proper.

(6) Every such bureau operating in this state shall be subject to the supervision of the commissioner, and the commissioner shall examine it as provided in chapter 48.03 RCW of this code.

(7) Every examining bureau shall keep adequate records of the outstanding errors and omissions found in coverages examined by it and of its receipts and disbursements, and shall hold as confidential all information contained in documents submitted to it for examination.

(8) The commissioner shall not license an additional bureau for the examination of documents relative to a kind of insurance if such documents are being examined by a then existing licensed bureau. Any examining bureau operating in this state immediately prior to the effective date of this code under any law of this state repealed as of such date, shall have prior right to apply for and secure a license under this section. [1983 1st ex.s. c 32 § 8; 1947 c 79 § .19.41; Rem. Supp. 1947 § 45.19.41.]

48.19.420 Rate agreements. Two or more insurers mutually may agree to adhere to rates, rating plans, rating systems or underwriting practices or uniform modifications thereof, all subject to the following conditions:

(1) All of the terms of the agreements shall be in writing executed on behalf of each such insurer.

(2) An executed copy of every such written agreement and of every modification thereof shall be filed with the commissioner.

(3) Within a reasonable length of time after every such filing, the commissioner shall either approve or disapprove such agreement or modification. No such agreement or modification shall be effective unless and until approved by the commissioner.

(4) The commissioner shall not approve any such agreement or modification which:

(a) Constitutes or would tend to result in an unreasonable restraint upon free competition;

(b) contains terms otherwise tending to injure the public interest.

(5) No cause of action shall lie in favor of any insurer which is party to any such agreement against any other insurer party thereto on account of any breach thereof.

(6) All rate filings covered by such agreement shall be subject to the provisions of this chapter or of other applicable law.

(7) The commissioner may after a hearing thereon and for cause withdraw any approval previously given any such agreement or modification. [1947 c 79 § .19.42; Rem. Supp. 1947 § 45.19.42.]

48.19.430 Penalties. Any person violating any provision of this chapter shall be subject to a penalty of not more than fifty dollars for each such violation, but if such violation is found to be wilful a penalty of not more than five hundred dollars for each such violation may be imposed. Such penalties may be in addition to any other penalty provided by law. [1947 c 79 § .19.43; Rem. Supp. 1947 § 45.19.43.]

48.19.450 Casualty rate filing—Credit. The commissioner shall, in reviewing a casualty rate filing, determine in accordance with sound and reliable actuarial principles whether *this act requires an insurer to grant its policyholders a credit in such casualty rate filing. Upon determining that data in support of such a credit is actuarially credible, the commissioner shall approve or disapprove such casualty rate filing in accordance therewith. The commissioner shall not approve any casualty rate that is inadequate, excessive, or unfairly discriminatory. [1986 c 305 § 907.]

***Reviser's note:** "This act" consists of the enactment of RCW 4.22-.070, 4.24.005, 4.24.264, 4.24.268, 4.24.420, 4.56.250, 4.56.260, 5.40-.050, 5.40.060, 7.70.090, 48.19.450, and 48.22.050, the amendments to RCW 4.16.160, 4.16.300, 4.16.310, 4.16.350, 4.22.030, 4.24.115, 5.60-.060, and 51.24.060, and the repeal of RCW 4.56.240 by 1986 c 305.

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

48.19.460 Automobile insurance—Premium reductions for older insureds completing accident prevention

course. Any schedule of rates or rating plan for automobile liability and physical damage insurance submitted to or filed with the commissioner shall provide for an appropriate reduction in premium charges except for underinsured motorist coverage for those insureds who are fifty–five years of age and older, for a two–year period after successfully completing a motor vehicle accident prevention course meeting the criteria of the department of licensing with a minimum of eight hours, or additional hours as determined by rule of the department of licensing. An eight–hour program–learning self–instruction course shall be made available in areas in which a classroom course meeting the criteria of this section is not offered. The classroom course may be conducted by a public or private agency approved by the department. The self–instruction course shall be conducted by an agency approved by the department to conduct classroom courses under this section. [1987 c 377 § 1; 1986 c 235 § 1.]

48.19.470 Automobile insurance—Premium reductions for persons eligible under RCW 48.19.460. All insurance companies writing automobile liability and physical damage insurance in this state shall allow an appropriate reduction in premium charges except for underinsured motorist coverage to all eligible persons subject to RCW 48.19.460. [1986 c 235 § 2.]

48.19.480 Automobile insurance—Completion of accident prevention course, certificate. Upon successfully completing the approved course, each participant shall be issued by the course's sponsoring agency, a certificate that shall be the basis of qualification for the discount on insurance. [1986 c 235 § 3.]

48.19.490 Automobile insurance—Continued eligibility for discount. Each participant shall take an approved course every two years to continue to be eligible for the discount on insurance. [1986 c 235 § 4.]

48.19.500 Motor vehicle insurance—Seat belts, etc. Due consideration in making rates for motor vehicle insurance shall be given to any anticipated change in losses that may be attributable to the use of seat belts, child restraints, and other lifesaving devices. An exhibit detailing these changes and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance. [1989 c 11 § 20; 1987 c 310 § 1.]

Severability—1989 c 11: See note following RCW 9A.56.220.

48.19.501 Motor vehicle insurance—Anti-theft devices—Lights—Multiple vehicles. Due consideration in making rates for motor vehicle insurance shall be given to:

(1) Any anticipated change in losses that may be attributable to the use of properly installed and maintained anti–theft devices in the insured private passenger automobile. An exhibit detailing these losses and any credits or discounts resulting from any such changes

shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance.

(2) Any anticipated change in losses that may be attributable to the use of lights and lighting devices that have been proven effective in increasing the visibility of motor vehicles during daytime or in poor visibility conditions and to the use of rear stop lights that have been proven effective in reducing rear-end collisions. An exhibit detailing these losses and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance.

(3) Any anticipated change in losses per vehicle covered that may be attributable to the fact that the insured has more vehicles covered under the policy than there are insured drivers in the same household. An exhibit detailing these changes and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance. [1989 c 11 § 21; 1987 c 320 § 1.]

Severability—1989 c 11: See note following RCW 9A.56.220.

Effective date—1987 c 320: "This act shall take effect on January 1, 1988." [1987 c 320 § 2.]

Chapter 48.20 DISABILITY INSURANCE

Sections

48.20.002	Scope of chapter.
48.20.012	Format of disability policies.
48.20.013	Return of policy and refund of premium—Notice required—Effect of return.
48.20.015	Endorsements.
48.20.022	Policies issued by domestic insurer for delivery in another state.
48.20.032	Standard provisions required—Substitutions—Captions.
48.20.042	Standard provision No. 1—Entire contract; changes.
48.20.050	Standard provision No. 2—Misstatement of age or sex.
48.20.052	Standard provision No. 3—Time limit on certain defenses.
48.20.062	Standard provision No. 4—Grace period.
48.20.072	Standard provision No. 5—Reinstatement.
48.20.082	Standard provision No. 6—Notice of claim.
48.20.092	Standard provision No. 7—Claim forms.
48.20.102	Standard provision No. 8—Proofs of loss.
48.20.112	Standard provision No. 9—Time of payment of claims.
48.20.122	Standard provision No. 10—Payment of claims.
48.20.132	Standard provision No. 11—Physical examination and autopsy.
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48.20.162	Optional standard provisions.
48.20.172	Optional standard provision No. 14—Change of occupation.
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48.20.202	Optional standard provision No. 16—Insurance with other insurers (Provision of service or expense incurred basis).
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48.20.360	Extended disability benefit.
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48.20.390	Chiropody.
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48.20.420	Dependent child coverage—Continuation for incapacity.
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48.20.450	Standardization and simplification of terms and coverages—Disclosure requirements.
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48.20.470	Standardization and simplification—Outline of coverage—Format and contents.
48.20.480	Standardization and simplification—Simplified application form—Coverage of loss from preexisting health condition.
48.20.490	Continuation of coverage by former spouse and dependents.
48.20.500	Coverage for adopted children.
48.20.510	Cancellation of rider.
48.20.520	Phenylketonuria.

Approval of policy forms: RCW 48.18.100.

Assignment of policies: RCW 48.18.360.

Exemption of proceeds: RCW 48.18.400.

General provisions regarding filing, approval, contents of policies, execution, applications, etc.: Chapter 48.18 RCW.

Grounds for disapproval of policy forms: RCW 48.18.110.

Insurable interest, personal insurance: RCW 48.18.030.

Minimum standard conditions and terminology for disability policies, established by commissioner: RCW 48.18.120(2).

Minor contracting for life or disability insurance: RCW 48.18.020.

Payment to person designated in policy or by assignment discharges insurer: RCW 48.18.370.

Rates, manuals, classifications—Filing: RCW 48.19.010(2).

Refusal to renew or cancellation of disability insurance: RCW 48.18.298, 48.18.299.

48.20.002 Scope of chapter. Nothing in this chapter shall apply to or affect (1) any policy of workers' compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide

additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract. [1987 c 185 § 25; 1951 c 229 § 1.]

Reviser's note: For prior laws governing standard provision requirements for individual accident or health insurance policies see 1947 c 79 §§ .20.01 through .20.33 and .20.37 and Rem. Supp. 1947 §§ 45.20.01 through 45.20.33 and 45.20.37.

Many of the sections enacted in 1951 c 229 are in substance amendatory of sections previously appearing in chapter 48.20 RCW, although they appear in 1951 c 229 as new sections. To assist those using the code, the prior enactment on the same subject is shown in the history note following the new section wherever practical.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.20.012 Format of disability policies. No disability policy shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) It shall purport to insure only one person, except as to family expense insurance written pursuant to RCW 48.20.340.

(2) The style, arrangement and over-all appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and caption and subcaptions).

(3) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in RCW 48.20.042 to 48.20.272, inclusive, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies.

(4) Each such form, including riders and endorsements, shall be identified by a form number in the lower left hand corner of the first page thereof.

(5) It shall contain no provision purporting to make any portion of the insurer's charter, rules, constitution, or bylaws a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner. [1951 c 229 § 2; 1947 c 79 § .20.02; formerly Rem. Supp. 1949 § 45.20.02.]

48.20.013 Return of policy and refund of premium—Notice required—Effect of return. Every individual disability insurance policy issued after January 1, 1968, except single premium nonrenewable policies, shall have printed on its face or attached thereto a notice stating in substance that the person to whom the policy is issued shall be permitted to return the policy within ten days of its delivery to the purchaser and to have the premium paid refunded if, after examination of the policy, the purchaser is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policy holder or purchaser pursuant to such notice, returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. [1983 1st ex.s. c 32 § 9; 1967 c 150 § 26.]

48.20.015 Endorsements. If a contract is issued on any basis other than as applied for, an endorsement setting forth such modification(s) must accompany and be attached to the policy; and no endorsement shall be effective unless signed by the policyowner, and a signed copy thereof returned to the insurer. [1975 1st ex.s. c 266 § 9.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.20.022 Policies issued by domestic insurer for delivery in another state. If any policy is issued by a domestic insurer for delivery to a person residing in another state, and if the insurance commissioner or corresponding public official of such other state has advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the applicable standards set forth in this chapter and in chapter 48.18 RCW. [1951 c 229 § 3.]

48.20.032 Standard provisions required—Substitutions—Captions. Except as provided in RCW 48.18.130, each such policy delivered or issued for delivery to any person in this state shall contain the provisions as specified in RCW 48.20.042 to 48.20.152, inclusive, in the words in which the same appear; except, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded by the applicable caption shown or, at the insurer's option, by such appropriate individual or group caption or subcaption as the commissioner may approve. [1951 c 229 § 4; 1947 c 79 § .20.03; formerly Rem. Supp. 1947 § 45.20.03.]

48.20.042 Standard provision No. 1—Entire contract; changes. There shall be a provision as follows:

ENTIRE CONTRACTS; CHANGES: This policy, including the endorsements and attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions. [1951 c 229 § 5. Prior law: (i) 1947 c 79 § .20.05; Rem. Supp. 1947 § 45.20.05. (ii) 1947 c 79 § .20.06; Rem. Supp. 1947 § 45.20.06.]

48.20.050 Standard provision No. 2—Misstatement of age or sex. There shall be a provision as follows:

"MISSTATEMENT OF AGE OR SEX: If the age or sex of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age or sex."

The amount of any underpayments which may have been made on account of any such misstatement under a disability income policy shall be paid the insured along with the current payment and the amount of any overpayment may be charged against the current or succeeding payments to be made by the insurer. Interest may be applied to such underpayments or overpayments as specified in the insurance policy form but not exceeding six percent per annum. [1983 1st ex.s. c 32 § 16.]

48.20.052 Standard provision No. 3—Time limit on certain defenses. There shall be a provision as follows:

"TIME LIMIT ON CERTAIN DEFENSES: (a) After two years from the date of issue of this policy no misstatements except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two year period, nor to limit the application of RCW 48.20.050, 48.20.172, 48.20.192, 48.20.202, and 48.20.212 in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE":

"After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.")

"(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or

physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(More stringent provisions may be required by the commissioner in connection with individual disability policies sold without any application or with minimal applications.) [1983 1st ex.s. c 32 § 17; 1975 1st ex.s. c 266 § 12; 1973 1st ex.s. c 152 § 4; 1969 ex.s. c 241 § 12; 1951 c 229 § 6.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.20.062 Standard provision No. 4—Grace period. There shall be a provision as follows:

GRACE PERIOD: A grace period of ----- (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision: "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.")

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision: "Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.") [1951 c 229 § 7.]

48.20.072 Standard provision No. 5—Reinstatement. There shall be a provision as follows:

REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy: *Provided, however,* That if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted

in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.) [1951 c 229 § 8; 1947 c 79 § .20.07; formerly Rem. Supp. 1947 § 45.20.07.]

48.20.082 Standard provision No. 6—Notice of claim. There shall be a provision as follows:

NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ----- (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.") [1951 c 229 § 9. Prior law: 1947 c 79 § .20.08; Rem. Supp. 1947 § 45.20.08.]

48.20.092 Standard provision No. 7—Claim forms. There shall be a provision as follows:

CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss written proof covering the occurrence, the character and the extent of the loss for which claim is made. [1951 c 229 § 10; 1947 c 79 § .20.10; formerly Rem. Supp. 1947 § 45.20.10.]

Furnishing claim forms does not constitute waiver of any defense by insurer: RCW 48.18.470.

Insurer has no responsibility as to completion of claim forms: RCW 48.18.460.

48.20.102 Standard provision No. 8—Proofs of loss. There shall be a provision as follows:

PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required. [1951 c 229 § 11. Prior: (i) 1947 c 79 § .20.11; Rem. Supp. 1947 § 45.20.11. (ii) 1947 c 79 § .20.09, part; Rem. Supp. 1947 § 45.20.09, part.]

48.20.112 Standard provision No. 9—Time of payment of claims. There shall be a provision as follows:

TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ----- (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof. [1951 c 229 § 12. Prior: (i) 1947 c 79 § .20.13; Rem. Supp. 1947 § 45.20.13. (ii) 1947 c 79 § .20.14; Rem. Supp. 1947 § 45.20.14.]

48.20.122 Standard provision No. 10—Payment of claims. (1) There shall be a provision as follows:

PAYMENT OF CLAIMS: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(2) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$----- (insert an amount which shall not exceed \$1000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in

good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person." [1951 c 229 § 13. Prior: 1947 c 79 § .20.15; Rem. Supp. 1947 § 45.20.15.]

Proceeds of disability policy are exempt from creditors: RCW 48.18.400.

48.20.132 Standard provision No. 11—Physical examination and autopsy. There shall be a provision as follows:

PHYSICAL EXAMINATIONS AND AUTOPSY: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law. [1951 c 229 § 14. Prior: 1947 c 79 § .20.12; Rem. Supp. 1947 § 45.20.12.]

48.20.142 Standard provision No. 12—Legal actions. There shall be a provision as follows:

LEGAL ACTIONS: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished. [1951 c 229 § 15. Prior: 1947 c 79 § .20.18; Rem. Supp. 1947 § 45.20.18.]

48.20.152 Standard provision No. 13—Change of beneficiary. There shall be a provision as follows:

CHANGE OF BENEFICIARY: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.) [1951 c 229 § 16. Prior: 1947 c 79 § .20.17; Rem. Supp. 1947 § 45.20.17.]

48.20.162 Optional standard provisions. Except as provided in RCW 48.18.130, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in RCW 48.20.172 to 48.20.272, inclusive, unless such provisions are in the words in which the same appear in the applicable section; except, that the insurer may, at its option,

use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the insurer's option, by such appropriate individual or group caption or subcaption as the commissioner may approve. [1951 c 229 § 17. Prior: 1947 c 79 § .20.20; Rem. Supp. 1947 § 45.20.20.]

48.20.172 Optional standard provision No. 14—Change of occupation. There may be a provision as follows:

CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation. [1951 c 229 § 18.]

48.20.192 Optional standard provision No. 15—Other insurance in this insurer. There may be a provision as follows:

OTHER INSURANCE IN THIS INSURER: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for _____ (insert type of coverage or coverages) in excess of \$_____ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

[1951 c 229 § 20. Prior: 1947 c 79 § .20.24; Rem. Supp. 1947 § 45.20.24.]

48.20.202 Optional standard provision No. 16—Insurance with other insurers (Provision of service or expense incurred basis). (1) There may be a provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in RCW 48.20.212, there shall be added to the caption of the foregoing provision the phrase "----- expense incurred benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage." [1987 c 185 § 26; 1951 c 229 § 21. Prior: 1947 c 79 § .20.22; Rem. Supp. 1947 § 45.20.22.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

(1989 Ed.)

48.20.212 Optional standard provision No. 17—Insurance with other insurers. (1) There may be a provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in RCW 48.20.202, there shall be added to the caption of the foregoing provision the phrase "----- other benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage." [1987 c 185 § 27; 1951 c 229 § 22. Prior: 1947 c 79 § .20.22; Rem. Supp. 1947 § 45.20.22.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.20.222 Optional standard provision No. 18—Relation of earnings to insurance. (1) There may be a provision as follows:

RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings of

the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age 50 or, (b) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations. [1987 c 185 § 28; 1951 c 229 § 23.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.20.232 Optional standard provision No. 19—Unpaid premium. There may be a provision as follows:

UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom. [1951 c 229 § 24. Prior: 1947 c 79 § .20.23; Rem. Supp. 1947 § 45.20.23.]

48.20.242 Optional standard provision No. 20—Cancellation. There may be a provision as follows:

CANCELLATION: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of

insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation. [1951 c 229 § 25. Prior: 1947 c 79 § .20.21; Rem. Supp. 1947 § 45.20.21.]

48.20.252 Optional standard provision No. 21—Conformity with state statutes. There may be a provision as follows:

CONFORMITY WITH STATE STATUTES: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes. [1951 c 229 § 26.]

48.20.262 Optional standard provision No. 22—Illegal occupation. There may be a provision as follows:

ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation. [1951 c 229 § 27. Prior: 1947 c 79 § .20.26; Rem. Supp. 1947 § 45.20.26.]

48.20.272 Optional standard provision No. 23—Intoxicants and narcotics. There may be a provision as follows:

INTOXICANTS AND NARCOTICS: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician. [1951 c 229 § 28. Prior: 1947 c 79 § .20.27; Rem. Supp. 1947 § 45.20.27.]

48.20.282 Order of certain policy provisions. The provisions which are the subject of RCW 48.20.042 to 48.20.272, inclusive, or any corresponding provisions which are used in lieu thereof in accordance with such sections, shall be printed in the consecutive order of the provisions in such sections or, at the insurer's option, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued. [1951 c 229 § 29.]

48.20.292 Third party ownership. The word "insured," as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein. [1951 c 229 § 30.]

Insurable interest defined, personal insurance: RCW 48.18.030.

48.20.302 Requirements of other jurisdictions. (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may

contain any provision which is not less favorable to the insured or to the beneficiary than the provisions of this chapter and which is prescribed or required by the laws of the state under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country. [1951 c 229 § 31.]

Domestic insurer may transact insurance in other state as permitted by laws thereof: RCW 48.07.140.

48.20.312 Age limit. If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy. [1951 c 229 § 32. Prior: 1947 c 79 § .20.25; Rem. Supp. 1947 § 45.20.25.]

48.20.322 Effective date of standard provision and certain other sections—Five year period. The provisions contained in RCW 48.20.002 to 48.20.322, inclusive, shall take effect on September 1, 1951. A policy, rider or endorsement, which could have been lawfully used or delivered or issued for delivery to any person in this state immediately before such effective date may be used or delivered or issued for delivery to any such person during five years after such effective date. [1951 c 229 § 33.]

48.20.340 "Family expense disability insurance" defined. (1) Family expense disability insurance is that covering members of any one family including one or both spouses and dependents provided under a master policy issued to the head of the family.

(2) Any authorized disability insurer may issue family expense disability insurance.

(3) A disability policy providing such family expense coverage, in addition to other provisions required to be contained in disability policies under this chapter, shall contain the following provisions:

(a) A provision that the policy and the application of the head of the family shall constitute the entire contract between the parties.

(b) A provision that to the family group originally insured shall, on notice to the insurer, be added from time to time all new members of the family as they become eligible for insurance in such family group, and on the payment of such additional premium as may be required

therefor. [1961 c 194 § 5; 1947 c 79 § .20.34; Rem. Supp. 1947 § 45.20.34.]

48.20.350 "Franchise plan" defined. (1) Disability insurance on a franchise plan is that issued to

(a) five or more employees of a common employer, or to

(b) ten or more members of any bona fide trade or professional association or labor union, which association or union was formed and exists for purposes other than that of obtaining insurance, and under which such employees or members, with or without their dependents, are issued individual policies which may vary as to amounts and kinds of coverage as applied for, under an arrangement whereby the premiums on the policies are to be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association, or by some designated employee or officer of the association acting on behalf of the employer or association members.

(2) An insurer may charge different rates, provide different benefits, or employ different underwriting procedure for individuals insured under a franchise plan, if such rates, benefits, or procedures as used do not discriminate as between franchise plans, and do not discriminate unfairly as between individuals insured under franchise plans and individuals otherwise insured under similar policies. [1947 c 79 § .20.35; Rem. Supp. 1947 § 45.20.35.]

48.20.360 Extended disability benefit. A disability insurance contract which provides a reasonable amount of disability indemnity for both accidental injuries and sickness, other than a contract of group or blanket insurance, may provide a benefit in amount not exceeding two hundred dollars payable in event of death from any causes. Such benefit shall be deemed to constitute the payment of disability benefits beyond the period for which otherwise payable, and shall not be deemed to constitute life insurance. [1947 c 79 § .20.36; Rem. Supp. 1947 § 45.20.36.]

48.20.380 Incontestability after reinstatement. The reinstatement of any policy of noncancellable disability insurance hereafter delivered or issued for delivery in this state shall be contestable only on account of fraud or misrepresentation of facts material to the reinstatement and only for the same period following reinstatement as is provided in the policy with respect to the contestability thereof after the original issuance of the policy. [1947 c 79 § .20.38; Rem. Supp. 1947 § 45.20.38.]

48.20.390 Chiropody. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any medical or surgical service performed by a holder of a license issued pursuant to chapter 18.22 RCW provided that (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder

of a license issued pursuant to chapter 18.71 RCW. [1963 c 87 § 1.]

Application—1963 c 87: "This act shall apply to all contracts issued on or after the effective date of this act." [1963 c 87 § 3.] The effective date of this act was June 13, 1963 (midnight June 12), see preface, 1963 session laws.

48.20.393 Mammograms—Insurance coverage. Each disability insurance policy issued or renewed after January 1, 1990, that provides coverage for hospital or medical expenses shall provide coverage for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the board of nursing pursuant to chapter 18.88 RCW or physician's assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of an insurer to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1989 c 338 § 1.]

48.20.395 Reconstructive breast surgery. (1) Any disability insurance contract providing hospital and medical expenses and health care services delivered or issued in this state after July 24, 1983, shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Any disability insurance contract providing hospital and medical expenses and health care services delivered or issued in this state after January 1, 1986, shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast has been performed. [1985 c 54 § 5; 1983 c 113 § 1.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.20.397 Mastectomy, lumpectomy. No person engaged in the business of insurance under this chapter may refuse to issue any contract of insurance or cancel or decline to renew the contract solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 1.]

Effective date—1985 c 54: "This act shall take effect January 1, 1986." [1985 c 54 § 9.]

48.20.410 Optometry. Notwithstanding any provision of any disability insurance contract, benefits shall not be

denied thereunder for any eye care service rendered by a holder of a license issued pursuant to chapter 18.53 RCW, provided, that (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1965 c 149 § 2.]

Construction—1965 c 149: "Sections 1 through 3 of this act shall not apply to contracts in force prior to the effective date of this 1965 act, nor to any renewal of such contracts where there has been no change in any provisions thereof." [1965 c 149 § 4.] The effective date of this 1965 act was June 10, 1965.

48.20.411 Registered nurses. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license issued pursuant to chapter 18.88 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1973 1st ex.s. c 188 § 3.]

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.20.412 Chiropractic. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license issued pursuant to chapter 18.25 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1971 ex.s. c 13 § 1.]

Severability—1971 ex.s. c 13: See RCW 48.31A.900.

48.20.414 Psychological services. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any psychological service rendered by a holder of a license issued pursuant to chapter 18.83 RCW: *Provided,* That (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1971 ex.s. c 197 § 1.]

Application—1971 ex.s. c 197: "Sections 1 and 2 of this act shall not apply to any contract in force prior to the effective date of this 1971 act, nor to any renewal of such contract where there has been no change in any provision thereof." [1971 ex.s. c 197 § 3.]

48.20.416 Dentistry. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license issued pursuant to chapter 18.32 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service has [had] been performed by a holder of a license issued [pursuant] to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1974 ex.s. c 42 § 1.]

48.20.420 Dependent child coverage—Continuation for incapacity. Any disability insurance contract providing health care services, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract, shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer by the subscriber within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1985 c 264 § 10; 1969 ex.s. c 128 § 3.]

48.20.430 Dependent child coverage—From moment of birth—Congenital anomalies—Notification of birth. (1) Any disability insurance contract providing hospital and medical expenses and health care services, delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for dependent children of the insured, shall provide coverage for newborn infants of the insured from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of birth. This subsection applies

to policies issued or renewed on or after January 1, 1984. [1983 1st ex.s. c 32 § 18; 1974 ex.s. c 139 § 1.]

48.20.450 Standardization and simplification of terms and coverages—Disclosure requirements. The commissioner shall issue regulations to establish specific standards, including standards of full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of individual policies of disability insurance which shall be in addition to and in accordance with applicable laws of this state, including RCW 48.20.450 through 48.20.480, which may cover but shall not be limited to:

- (1) Terms of renewability;
- (2) Initial and subsequent conditions of eligibility;
- (3) Nonduplication of coverage provisions;
- (4) Coverage of dependents;
- (5) Preexisting conditions;
- (6) Termination of insurance;
- (7) Probationary periods;
- (8) Limitations;
- (9) Exceptions;
- (10) Reductions;
- (11) Elimination periods;
- (12) Requirements for replacement;
- (13) Recurrent conditions; and
- (14) The definition of terms including but not limited to the following: Hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable, and noncancellable. [1985 c 264 § 11; 1975 1st ex.s. c 266 § 16.]

Purpose—1975 1st ex.s. c 266: "The purpose of *sections 14 through 18 of this 1975 amendatory act is to provide reasonable standardization and simplification of terms and coverages of individual disability insurance policies to facilitate public understanding and comparison, to eliminate provisions contained in individual disability insurance policies which may be misleading or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of disability coverages." [1975 1st ex.s. c 266 § 15.]

***Reviser's note:** During the course of passage of 1975 1st ex.s. c 266 [Substitute House Bill No. 198], the section numbering was changed, but the internal references were not changed accordingly. Thus the reference "sections 14 through 18 of this 1975 amendatory act" appears to be erroneous. Reference to "sections 15 through 19," codified herein as this section and RCW 48.20.450 through 48.20.480, was apparently intended.

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.20.460 Standardization and simplification—Minimum standards for benefits and coverages. (1) The commissioner shall issue regulations to establish minimum standards for benefits under each of the following categories of coverage in individual policies, other than conversion policies issued pursuant to a contractual conversion privilege under a group policy, of disability insurance:

- (a) Basic hospital expense coverage;
- (b) Basic medical-surgical expense coverage;
- (c) Hospital confinement indemnity coverage;
- (d) Major medical expense coverage;
- (e) Disability income protection coverage;

- (f) Accident only coverage;
- (g) Specified disease or specified accident coverage;
- (h) Medicare supplemental coverage; and
- (i) Limited benefit coverage.

(2) Nothing in this section shall preclude the issuance of any policy which combines two or more of the categories of coverage enumerated in items (a) through (f) of subsection (1) of this section.

(3) No policy shall be delivered or issued for delivery in this state which does not meet the prescribed minimum standards for the categories of coverage listed in items (a) through (i) of subsection (1) of this section, unless the commissioner finds such policy will be in the public interest and such policy meets the requirements set forth in RCW 48.18.110.

(4) The commissioner shall prescribe the method of identification of policies based upon coverages provided. [1981 c 339 § 19; 1975 1st ex.s. c 266 § 17.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.20.470 Standardization and simplification—

Outline of coverage—Format and contents. (1) No policy of individual disability insurance shall be delivered or issued for delivery in this state unless an outline of coverage described in subsection (2) of this section is furnished to the applicant in accord with such rules or regulations as the commissioner shall prescribe.

(2) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1) of this section. "Format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(a) A statement identifying the applicable category or categories of coverage provided by the policy as prescribed in RCW 48.20.450;

(b) A description of the principal benefits and coverage provided in the policy;

(c) A statement of the exceptions, reductions and limitations contained in the policy;

(d) A statement of the renewal provisions including any reservation by the insurer of a right to change premiums; and

(e) A statement that the outline is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions. [1985 c 264 § 12; 1975 1st ex.s. c 266 § 18.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.20.480 Standardization and simplification—

Simplified application form—Coverage of loss from preexisting health condition. Notwithstanding the provisions of RCW 48.20.052, if an insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history, the policy must cover any loss occurring after twelve months from any preexisting condition not specifically excluded from

coverage by terms of the policy, and, except as so provided, the policy shall not include wording that would permit a defense based upon preexisting conditions. [1975 1st ex.s. c 266 § 19.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.20.490 Continuation of coverage by former spouse and dependents. Every policy of disability insurance issued, amended, or renewed after June 12, 1980, for an individual and his/her dependents shall contain provisions to assure that the covered spouse and/or dependents, in the event that any cease to be a qualified family member by reason of termination of marriage or death of the principal insured, shall have the right to continue the policy coverage without a physical examination, statement of health, or other proof of insurability. [1980 c 10 § 1.]

48.20.500 Coverage for adopted children. (1) Any disability insurance contract providing hospital and medical expenses and health care services, delivered or issued for delivery in this state, which provides coverage for dependent children, as defined in the contract of the insured, shall cover adoptive children placed with the insured on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 2.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.20.510 Cancellation of rider. Upon application by an insured, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the insured during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the insured from that condition, such agreement not to be unreasonably withheld. The option of the insured to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 1.]

48.20.520 Phenylketonuria. (1) The legislature finds that:

(a) Phenylketonuria is a rare inherited genetic disorder.

(b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.

(c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.

(d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.

(e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any disability insurance contract delivered or issued for delivery or renewed in this state on or after September 1, 1988, that insures for hospital or medical expenses shall provide coverage for the formulas necessary for the treatment of phenylketonuria. [1988 c 173 § 1.]

Chapter 48.21

GROUP AND BLANKET DISABILITY INSURANCE

Sections

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Irrigation district may contract for and pay premiums on group insurance for employees: RCW 87.03.160.

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48.21.010 "Group disability insurance" defined.

Group disability insurance is that form of disability insurance provided by a master policy issued to an employer, to a trustee appointed by an employer or employers, or to an association of employers formed for purposes other than obtaining such insurance, covering, with or without their dependents, the employees, or specified categories of the employees, of such employers or their subsidiaries or affiliates, or issued to a labor union, or to an association of employees formed for purposes other than obtaining such insurance, covering, with or without their dependents, the members, or specified categories of the members, of the labor union or association, or issued pursuant to RCW 48.21.030. Group disability insurance shall also include such other groups as qualify for group life insurance under the provisions of this code. [1949 c 190 § 27; 1947 c 79 § .21.01; Rem. Supp. 1949 § 45.21.01.]

48.21.020 "Employees," "employer" defined. The term "employees" as used in this chapter shall be deemed to include as employees of a single employer, the compensated officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. The term "employer" as used in this chapter shall be deemed to include any municipal corporation or governmental unit, agency or department thereof as well as private individuals, firms, corporations and other persons. [1947 c 79 § .21.02; Rem. Supp. 1947 § 45.21.02.]

48.21.030 Health care groups. A policy of group disability insurance may be issued to a corporation, as policyholder, existing primarily for the purpose of assisting individuals who are its subscribers in securing medical, hospital, dental, and other health care services for themselves and their dependents, covering all and not less than five hundred such subscribers and dependents, with respect only to medical, hospital, dental, and other health care services. [1947 c 79 § .21.03; Rem. Supp. 1947 § 45.21.03.]

48.21.040 "Blanket disability insurance" defined. (1) Any policy or contract of disability insurance which conforms with the description and complies with the requirements contained in one of the following six paragraphs shall be deemed a blanket disability insurance policy:

(a) A policy issued to any common carrier of passengers, which carrier shall be deemed the policyholder, covering a group defined as all persons who may become such passengers, and whereby such passengers shall be insured against loss or damage resulting from death or bodily injury either while, or as a result of, being such passengers.

(b) A policy issued in the name of any volunteer fire department, first aid or ambulance squad or volunteer police organization, which shall be deemed the policyholder, and covering all the members of any such organization against loss from accidents resulting from hazards incidental to duties in connection with such organizations.

(c) A policy issued in the name of any established organization whether incorporated or not, having community recognition and operated for the welfare of the community and its members and not for profit, which shall be deemed the policyholder, and covering all volunteer workers who serve without pecuniary compensation and the members of the organization, against loss from accidents occurring while engaged in the actual performance of duties on behalf of such organization or in the activities thereof.

(d) A policy issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, insuring such employees against death or bodily injury resulting while, or from, being exposed to such exceptional hazards.

(e) A policy covering students or employees issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.

(f) A policy or contract issued to any other substantially similar group, which, in the commissioner's discretion, may be subject to the insurance of a blanket disability policy or contract.

(2) Nothing contained in this section shall be deemed to affect the liability of policyholders for the death of, or injury to, any such members of such group.

(3) Individual applications shall not be required from individuals covered under a blanket disability insurance contract. [1959 c 225 § 7; 1947 c 79 § .21.04; Rem. Supp. 1947 § 45.21.04.]

48.21.050 Standard provisions required. Every policy of group or blanket disability insurance shall contain in substance the provisions as set forth in RCW 48.21.060 to 48.21.090, inclusive, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder. No such policy of group or blanket disability insurance shall contain any provision relative to notice or proof of loss,

or to the time for paying benefits, or to the time within which suit may be brought upon the policy, which in the opinion of the commissioner is less favorable to the individuals insured than would be permitted by the standard provisions required for individual disability insurance policies. [1947 c 79 § .21.05; Rem. Supp. 1947 § 45.21.05.]

48.21.060 The contract—Representations. There shall be a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued; that all statements made by the policyholder or by the individuals insured shall in the absence of fraud be deemed representations and not warranties, and that no statement made by any individual insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such individual or to his beneficiary, if any. [1947 c 79 § .21.06; Rem. Supp. 1947 § 45.21.06.]

48.21.070 Payment of premiums. There shall be a provision that all premiums due under the policy shall be remitted by the employer or employers of the persons insured, by the policyholder, or by some other designated person acting on behalf of the association or group insured, to the insurer on or before the due date thereof with such period of grace as may be specified therein. [1947 c 79 § .21.07; Rem. Supp. 1947 § 45.21.07.]

48.21.075 Payment of premiums by employee in event of suspension of compensation due to labor dispute. Any employee whose compensation includes group disability or blanket disability insurance providing health care services, the premiums for which are paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the premiums as they become due directly to the policyholder whenever the employee's compensation is suspended or terminated directly or indirectly as the result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the policy provides. During that period of time the policy may not be altered or changed. Nothing in this section shall be deemed to impair the right of the insurer to make normal decreases or increases of the premium rate upon expiration and renewal of the policy, in accordance with the provisions of the policy. Thereafter, if such insurance coverage is no longer available, then the employee shall be given the opportunity to purchase an individual policy at a rate consistent with rates filed by the insurer with the commissioner. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the policyholder in writing, by mail addressed to the address last on record with the policyholder, that the employee may pay the premiums to the policyholder as they become due as provided in this section.

Payment of the premiums must be made when due or the insurance coverage may be terminated by the insurer.

The provisions of any insurance policy contrary to provisions of this section are void and unenforceable after May 29, 1975. [1975 1st ex.s. c 117 § 1.]

Severability—1975 1st ex.s. c 117: "If any provision of this 1975 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 117 § 4.]

48.21.080 Certificates of coverage. In group disability insurance policies there shall be a provision that the insurer shall issue to the employer, the policyholder, or other person or association in whose name such policy is issued, for delivery to each insured employee or member, a certificate setting forth in summary form a statement of the essential features of the insurance coverage, and to whom the benefits thereunder are payable described by name, relationship, or reference to the insurance records of the policyholder or insurer. If family members are insured, only one certificate need be issued for each family. This section shall not apply to blanket disability insurance policies. [1961 c 194 § 6; 1947 c 79 § .21.08; Rem. Supp. 1947 § 45.21.08.]

48.21.090 Age limitations. There shall be a provision specifying the ages, if any there be, to which the insurance provided therein shall be limited; and the ages, if any there be, for which additional restrictions are placed on benefits, and the additional restrictions placed on the benefits at such ages. [1947 c 79 § .21.09; Rem. Supp. 1947 § 45.21.09.]

48.21.100 Examination and autopsy. There may be a provision that the insurer shall have the right and opportunity to examine the person of the insured employee, member or dependent when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law. [1947 c 79 § .21.10; Rem. Supp. 1947 § 45.21.10.]

48.21.110 Payment of benefits. The benefits payable under any policy or contract of group or blanket disability insurance shall be payable to the employee or other insured member of the group or to the beneficiary designated by him, other than the policyholder, employer or the association or any officer thereof as such, subject to provisions of the policy in the event there is no designated beneficiary as to all or any part of any sum payable at the death of the individual insured.

The policy may provide that any hospital, medical, or surgical benefits thereunder may be made payable jointly to the insured employee or member and the person furnishing such hospital, medical, or surgical services. [1955 c 303 § 17; 1947 c 79 § .21.11; Rem. Supp. 1947 § 45.21.11.]

48.21.120 Readjustment of premiums—Dividends. Any contract of group disability insurance may provide for the readjustment of the rate of premium based on the experience thereunder at the end of the first year or

of any subsequent year of insurance thereunder, and such readjustment may be made retroactive only for such policy year. Any refund under any plan for readjustment of the rate of premium based on the experience under group policies heretofore or hereafter issued, and any dividend paid under such policies may be used to reduce the employer's share of the cost of the coverage, except that if the aggregate refunds or dividends under such group policy and any other group policy or contract issued to the policyholder exceed the aggregate contributions of the employer toward the cost of the coverages, such excess shall be applied by the policyholder for the sole benefit of insured employees. [1947 c 79 § .21.12; Rem. Supp. 1947 § 45.21.12.]

48.21.130 Chiropody. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any medical or surgical service performed by a holder of a license issued pursuant to chapter 18.22 RCW provided that (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW. [1963 c 87 § 2.]

Application—1963 c 87: Nonapplicability to prior contracts and certain renewals, see note following RCW 48.20.390.

48.21.140 Optometry. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any eye care service rendered by a holder of a license issued pursuant to chapter 18.53 RCW, provided, that (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1965 c 149 § 3.]

Construction—1965 c 149: Nonapplicability to prior contracts and certain renewals, see note following RCW 48.20.410.

48.21.141 Registered nurses. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.88 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1973 1st ex.s. c 188 § 4.]

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.21.142 Chiropractic. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.25 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1971 ex.s. c 13 § 2.]

Severability—1971 ex.s. c 13: See RCW 48.31A.900.

48.21.144 Psychological services. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any psychological service rendered by a holder of a license issued pursuant to chapter 18.83 RCW: *Provided,* That (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1971 ex.s. c 197 § 2.]

Application—1971 ex.s. c 197: See note following RCW 48.20.414.

48.21.146 Dentistry. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.32 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1974 ex.s. c 42 § 2.]

48.21.150 Dependent child coverage—Continuation for incapacity. Any group disability insurance contract or blanket disability insurance contract, providing health care services, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age

shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer, but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1977 ex.s. c 80 § 32; 1969 ex.s. c 128 § 4.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

48.21.155 Dependent child coverage—From moment of birth—Congenital anomalies—Notification of birth. (1) Any group disability insurance contract except blanket disability insurance contract, providing hospital and medical expenses and health care services, renewed, delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for the dependent children of persons in the insured group, shall provide coverage for newborn infant children of persons in the insured group from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of birth. This subsection applies to policies issued or renewed on or after January 1, 1984. [1983 1st ex.s. c 32 § 20; 1974 ex.s. c 139 § 2.]

48.21.160 Chemical dependency benefits—Legislative declaration. The legislature recognizes that chemical dependency is a disease and, as such, warrants the same attention from the health care industry as other similarly serious diseases warrant; the legislature further recognizes that health insurance contracts and contracts for health care services include inconsistent provisions providing benefits for the treatment of chemical dependency. In order to assist the many citizens of this state who suffer from the disease of chemical dependency, and who are presently effectively precluded from obtaining adequate coverage for medical assistance under the terms of their health insurance contract or health care service contract, the legislature hereby declares that provisions providing benefits for the treatment of chemical dependency shall be included in new contracts and that this section, RCW 48.21.180, 48.21.190, 48.44.240, 48.46.350, and RCW 48.21.195, 48.44.245, and 48.46.355 are necessary for the protection of the public health and safety. Nothing in this section, RCW 48.21.180, 48.21.190, 48.44.240, 48.46.350, and RCW 48.21.195, 48.44.245, and 48.46.355 shall be construed to relieve

any person of any civil or criminal liability for any act or omission that is the result of a chemical dependency or to grant any person with a chemical dependency any special right, privilege, or status under the law against discrimination, chapter 49.60 RCW. [1987 c 458 § 13; 1974 ex.s. c 119 § 1.]

Effective date—1987 c 458 §§ 13–20: "Sections 13 through 20 of this act shall take effect on January 1, 1988." [1987 c 458 § 24.] Sections 13 through 20 of this act [1987 c 458] consist of the enactment of RCW 48.21.195, 48.44.245, and 48.46.355, the amendment of RCW 48.21.160, 48.21.180, 48.44.240, and 48.46.350, and the repeal of RCW 48.21.170.

Severability—1987 c 458: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 458 § 25.]

48.21.180 Chemical dependency benefits—Contracts issued or renewed after January 1, 1988. Each group disability insurance contract which is delivered or issued for delivery or renewed, on or after January 1, 1988, and which insures for hospital or medical care shall contain provisions providing benefits for the treatment of chemical dependency rendered to the insured by an alcoholism or drug treatment facility which is an "approved treatment facility" under *RCW 69.54.030 or **70.96A.020(2). [1987 c 458 § 14; 1974 ex.s. c 119 § 3.]

Reviser's note: *(1) RCW 69.54.030 was repealed by 1989 c 270 § 35.

** (2) RCW 70.96A.020 was amended twice during the 1989 session, by 1989 c 270 and c 271, both changing the definition "approved treatment facility."

Effective date—**Severability**—1987 c 458: See notes following RCW 48.21.160.

48.21.190 Chemical dependency benefits—RCW 48.21.160 through 48.21.190, 48.44.240 inapplicable, when. RCW 48.21.160 through 48.21.190 and 48.44.240 as now or hereafter amended shall not apply to the renewal of a contract in force prior to the pertinent date provided for such contract under RCW 48.21.160 through 48.21.190 and 48.44.240 as now or hereafter amended where there exists a right of renewal on the part of the insured or subscriber without any change in any provision of the contract: *Provided further*, That RCW 48.21.160 through 48.21.190 and 48.44.240 as now or hereafter amended shall not apply to contracts which provide only accident coverage, nor to any contract written as supplemental coverage to any federal or state programs of health care including, but not limited to, Title XVIII health insurance for the aged (commonly referred to as Medicare, Parts A and B), and amendments thereto. [1975 1st ex.s. c 266 § 10; 1974 ex.s. c 119 § 5.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.21.195 "Chemical dependency" defined. For the purposes of RCW 48.21.160 and 48.21.180 "chemical dependency" means an illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW

and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. [1987 c 458 § 15.]

Effective date—**Severability**—1987 c 458: See notes following RCW 48.21.160.

48.21.197 Chemical dependency benefits—Rules. By September 1, 1987, the insurance commissioner shall adopt rules governing benefits for treatment of chemical dependency under medical plans issued under chapters 48.21, 48.44, and 48.46 RCW. These rules shall recognize that many persons are dependent on both alcohol and drugs; they shall prohibit the stacking of benefits and shall require that benefits for chemical dependency be equivalent to benefits previously required for alcoholism. [1987 c 458 § 21.]

Severability—1987 c 458: See note following RCW 48.21.160.

48.21.200 Reduction or refusal of benefits on basis of other existing coverages. (1) No group disability insurance policy which provides benefits for hospital, medical, or surgical expenses shall be delivered or issued for delivery in this state after September 8, 1975 which contains any provision whereby the insurer may reduce or refuse to pay such benefits otherwise payable thereunder solely on account of the existence of similar benefits provided under any individual disability insurance policy, or under any individual health care service contract.

(2) No group disability insurance policy providing hospital, medical or surgical expense benefits and which contains a provision for the reduction of benefits otherwise payable thereunder on the basis of other existing coverages, shall provide that such reduction will operate to reduce total benefits payable below an amount equal to one hundred percent of total allowable expenses. The commissioner shall by rule establish guidelines for the application of this section, including: (a) The procedures by which persons insured under such policies are to be made aware of the existence of such a provision; (b) the benefits which may be subject to such a provision; (c) the effect of such a provision on the benefits provided; (d) establishment of the order of benefit determination; and (e) reasonable claim administration procedures to expedite claim payments under such a provision: *Provided, however*, That any group disability insurance policy which is issued as part of an employee insurance benefit program authorized by *RCW 41.05.025(3) may exclude all or part of any deductible amounts from the definition of total allowable expenses for purposes of coordination of benefits within the plan and between such plan and other applicable group coverages: *And provided further*, That any group disability insurance policy providing coverage for persons in this state may exclude all or part of any deductible amounts required

by a group disability insurance policy from the definition of total allowable expenses for purposes of coordination of benefits between such policy and a group disability insurance policy issued as part of an employee insurance benefit program authorized by *RCW 41.05.025(3).

(3) The provisions of this section shall apply to health care service contractor contracts and health maintenance organization agreements. [1983 c 202 § 16; 1983 c 106 § 24; 1975 1st ex.s. c 266 § 20.]

Reviser's note: (1) This section was amended by 1983 c 202 § 16 and 1983 c 106 § 24, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*(2) RCW 41.05.025 was repealed by 1988 c 107 § 35, effective October 1, 1988.

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.21.220 Home health care, hospice care, optional coverage required—Standards, limitations, restrictions—Rules—Medicare supplemental contracts excluded. (1) Every insurer entering into or renewing group or blanket disability insurance policies governed by this chapter shall offer optional coverage for home health care and hospice care for persons who are homebound and would otherwise require hospitalization. Such optional coverage need only be offered in conjunction with a policy that provides payment for hospitalization as a part of health care coverage.

(2) Home health care and hospice care coverage offered under subsection (1) of this section shall conform to the following standards, limitations, and restrictions in addition to those set forth in chapter 70.126 RCW:

(a) The coverage may include reasonable deductibles, coinsurance provisions, and internal maximums;

(b) The coverage should be structured to create incentives for the use of home health care and hospice care as an alternative to hospitalization;

(c) The coverage may contain provisions for utilization review and quality assurance;

(d) The coverage may require that home health agencies and hospices have written treatment plans approved by a physician licensed under chapter 18.57 or 18.71 RCW, and may require such treatment plans to be reviewed at designated intervals;

(e) The coverage shall provide benefits for, and restrict benefits to, services rendered by home health and hospice agencies licensed by the department of social and health services;

(f) Hospice care coverage shall provide benefits for terminally ill patients for an initial period of care of not less than six months and may provide benefits for an additional six months of care in cases where the patient is facing imminent death or is entering remission if certified in writing by the attending physician;

(g) Home health care coverage shall provide benefits for a minimum of one hundred thirty health care visits per calendar year. However, a visit of any duration by an employee of a home health agency for the purpose of providing services under the plan of treatment constitutes one visit;

(h) The coverage may be structured so that services or supplies included in the primary contract are not duplicated in the optional home health and hospice coverage.

(3) The insurance commissioner shall adopt any rules necessary to implement this section.

(4) The requirements of this section shall not apply to contracts or policies governed by chapter 48.66 RCW.

(5) An insurer, as a condition of reimbursement, may require compliance with home health and hospice certification regulations established by the United States department of health and human services. [1988 c 245 § 31; 1984 c 22 § 1; 1983 c 249 § 1.]

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: "This act shall take effect July 1, 1984." [1984 c 22 § 8.]

Effective date—1983 c 249: See note following RCW 70.126.001.
Home health care, hospice care, rules: Chapter 70.126 RCW.

48.21.225 Mammograms—Insurance coverage. Each group disability insurance policy issued or renewed after January 1, 1990, that provides coverage for hospital or medical expenses shall provide coverage for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the board of nursing pursuant to chapter 18.88 RCW or physician's assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of an insurer to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1989 c 338 § 2.]

48.21.230 Reconstructive breast surgery. (1) Each group disability insurance contract issued or renewed after July 24, 1983, which insures for hospital or medical care shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Each group disability insurance contract issued or renewed after January 1, 1986, which insures for hospital or medical care shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast has been performed. [1985 c 54 § 6; 1983 c 113 § 2.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.21.235 Mastectomy, lumpectomy. No person engaged in the business of insurance under this chapter may refuse to issue any contract of insurance or cancel or decline to renew the contract solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The

amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 2.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.21.240 Mental health treatment, optional supplemental coverage—Waiver. (1) Each group insurer providing disability insurance coverage in this state for hospital or medical care under contracts which are issued, delivered, or renewed in this state on or after July 1, 1986, shall offer optional supplemental coverage for mental health treatment for the insured and the insured's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by: (a) A physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83 RCW; (c) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (d) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer, health care service contractor, or health maintenance organization providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW.

(3) The group disability insurance contract may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the insurer.

(4) This section shall not apply to a group disability insurance contract that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987. [1987 c 283 § 3; 1986 c 184 § 2; 1983 c 35 § 1.]

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Legislative intent—1986 c 184: "It is the intent of the legislature that all insurers, health care service contractors, and health maintenance organizations that provide health care coverage in the state shall offer the option of including mental health treatment in their health benefit plans. Further it is the intent of the legislature that all mental health care benefit plans shall provide reimbursement for mental health treatment by every type of provider listed as follows: Physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed

under chapter 18.83 RCW, and community mental health agencies licensed under chapter 71.24 RCW." [1986 c 184 § 1.]

Effective date—1986 c 184: "This act shall take effect March 1, 1987." [1986 c 184 § 5.]

Severability—1986 c 184: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 184 § 6.]

Effective date—1983 c 35: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 c 35 § 5.]

Severability—1983 c 35: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 35 § 4.]

48.21.244 Benefits for prenatal diagnosis of congenital disorders—Contracts entered into or renewed on or after January 1, 1990. On or after January 1, 1990, every group disability contract entered into or renewed that covers hospital, medical, or surgical expenses on a group basis, and which provides benefits for pregnancy, childbirth, or related medical conditions to enrollees of such groups, shall offer benefits for prenatal diagnosis of congenital disorders of the fetus by means of screening and diagnostic procedures during pregnancy to such enrollees when those services are determined to be medically necessary by the disability contractor in accord with standards set in rule by the board of health. Every group disability contractor shall communicate the availability of such coverage to all group disability contract holders and to all groups with whom they are negotiating. [1988 c 276 § 6.]

Prenatal testing—Limitation on changes to coverage: RCW 48.42.090.

48.21.250 Continuation option to be offered. Every insurer that issues policies providing group coverage for hospital or medical expense shall offer the policyholder an option to include a policy provision granting a person who becomes ineligible for coverage under the group policy, the right to continue the group benefits for a period of time and at a rate agreed upon. The policy provision shall provide that when such coverage terminates, the covered person may convert to a policy as provided in RCW 48.21.260. [1984 c 190 § 2.]

Legislative intent—1984 c 190: "The legislature recognizes that when people covered by a group health insurance policy lose their group insurance benefits because they are no longer eligible, they need time to obtain a suitable form of replacement coverage or time to complete a reasonable course of medical treatment for a health condition that existed when the group benefits ended.

Spouses and dependents can lose their group insurance and may not have any other health insurance when one spouse covered under a group policy dies, obtains a divorce, or becomes unemployed. Often the cost of an individual policy prevents these persons from obtaining any other health insurance.

The intent of *this act is to require insurers, health care service contractors, and health maintenance organizations to:

(1) Offer to the contract holder the option to continue health and medical benefits for employees, members, spouses, or dependents whose eligibility for coverage under a group policy, contract, or agreement is terminated; and

(2) Provide a conversion policy, contract, or agreement to employees, members, spouses, or dependents whose eligibility for coverage under a group policy, contract, or agreement is terminated." [1984 c

190 § 1.] ****This act** consists of the enactment of RCW 48.21.250, 48.21.260, 48.21.270, 48.44.360, 48.44.370, 48.44.380, 48.46.440, 48.46.450, and 48.46.460 and the repeal of RCW 48.21.210, 48.44.280, and 48.46.065.

Application—1984 c 190: "RCW 48.21.250, 48.44.360, and 48.46.440 shall apply to any policy, contract, or agreement issued, renewed, or amended on or after January 1, 1985." [1984 c 190 § 12.]

Severability—1984 c 190: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 190 § 13.]

48.21.260 Conversion policy to be offered—Exceptions, conditions. (1) Except as otherwise provided by this section, any group disability insurance policy issued, renewed, or amended on or after January 1, 1985, that provides benefits for hospital or medical expenses shall contain a provision granting a person covered by the group policy the right to obtain a conversion policy from the insurer upon termination of the person's eligibility for coverage under the group policy.

(2) An insurer need not offer a conversion policy to:

(a) A person whose coverage under the group policy ended when the person's employment or membership was terminated for misconduct: *Provided*, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal Medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion policy, a person must submit a written application and the first premium payment for the conversion policy not later than thirty-one days after the date the person's group coverage terminates. The conversion policy shall become effective, without lapse of coverage, immediately following termination of coverage under the group policy.

(4) If an insurer or group policyholder does not renew, cancels, or otherwise terminates the group policy, the insurer shall offer a conversion policy to any person who was covered under the terminated policy unless the person is eligible to obtain group hospital or medical expense coverage within thirty-one days after such nonrenewal, cancellation, or termination of the group policy.

(5) The insurer shall determine the premium for the conversion policy in accordance with the insurer's table of premium rates applicable to the age and class of risk of each person to be covered under the policy and the type and amount of benefits provided. [1984 c 190 § 3.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.21.270 Conversion policy—Restrictions and requirements. (1) An insurer shall not require proof of insurability as a condition for issuance of the conversion policy.

(2) A conversion policy may not contain an exclusion for preexisting conditions except to the extent that a waiting period for a preexisting condition has not been satisfied under the group policy.

(3) An insurer must offer at least three policy benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible and a lifetime benefit maximum of two hundred fifty thousand dollars per person;

(b) A comprehensive medical plan with a five hundred dollar deductible and a lifetime benefit maximum of five hundred thousand dollars per person; and

(c) A basic medical plan with a one thousand dollar deductible and a lifetime maximum of seventy-five thousand dollars per person.

(4) The insurance commissioner may revise the deductibles and lifetime benefit amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion policies.

(6) The commissioner shall adopt rules to establish specific standards for conversion policy provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms. [1984 c 190 § 4.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.21.280 Coverage for adopted children. (1) Any group disability insurance contract, except a blanket disability insurance contract, providing hospital and medical expenses and health care services, delivered or issued for delivery in this state, which provides coverage for dependent children, as defined in the contract of the insured, shall cover adoptive children placed with the insured on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 3.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.21.290 Cancellation of rider. Upon application by an insured, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the insured during that time for the condition specified in the rider, and a physician, selected by the

carrier for that purpose, agrees in writing to the full medical recovery of the insured from that condition, such agreement not to be unreasonably withheld. The option of the insured to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 2.]

48.21.300 Phenylketonuria. (1) The legislature finds that:

(a) Phenylketonuria is a rare inherited genetic disorder.

(b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.

(c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.

(d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.

(e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any group disability insurance contract delivered or issued for delivery or renewed in this state on or after September 1, 1988, that insures for hospital or medical expenses shall provide coverage for the formulas necessary for the treatment of phenylketonuria. [1988 c 173 § 2.]

48.21.310 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each employer-sponsored group policy for comprehensive health insurance which is entered into, or renewed, on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. Nothing in this section shall prohibit an insurer from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the insurer. Benefits shall be payable for services for the maintenance of an insured in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be payable to restore and improve function.

(4) It is the intent of this section that employers purchasing comprehensive health insurance, including the

benefits required by this section, together with the insurer, retain authority to design and employ utilization and cost controls. Therefore, benefits delivered under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the employer purchasing insurance and the insurer. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available or may limit the number of services delivered as agreed by the employer purchasing insurance and the insurer. [1989 c 345 § 2.]

48.21.320 Temporomandibular joint disorders—Insurance coverage. (1) Except as provided in this section, a group disability policy entered into or renewed after December 31, 1989, shall offer optional coverage for the treatment of temporomandibular joint disorders.

(a) Insurers offering medical coverage only may limit benefits in such coverages to medical services related to treatment of temporomandibular joint disorders. Insurers offering dental coverage only may limit benefits in such coverage to dental services related to treatment of temporomandibular joint disorders. No insurer offering medical coverage only may define all temporomandibular joint disorders as purely dental in nature, and no insurer offering dental coverage only may define all temporomandibular joint disorders as purely medical in nature.

(b) Insurers offering optional temporomandibular joint disorder coverage as provided in this section may, but are not required to, offer lesser or no temporomandibular joint disorder coverage as part of their basic group disability contract.

(c) Benefits and coverage offered under this section may be subject to negotiation to promote broad flexibility in potential benefit coverage. This flexibility shall apply to services to be reimbursed, determination of treatments to be considered medically necessary, systems through which services are to be provided, including referral systems and use of other providers, and related issues.

(2) Unless otherwise directed by law, the insurance commissioner shall adopt rules, to be implemented on January 1, 1993, establishing minimum benefits, terms, definitions, conditions, limitations, and provisions for the use of reasonable deductibles and copayments.

(3) An insurer need not make the offer of coverage required by this section to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefit statutes under Title 48 RCW that does not provide coverage for temporomandibular joint disorders. [1989 c 331 § 2.]

Legislative finding—1989 c 331: "The legislature finds that:

(1) Temporomandibular joint disorders are conditions for which treatment often is not covered in medical and dental group insurance contracts;

(2) Individuals with temporomandibular joint disorders experience substantial pain and financial hardship;

(3) Public awareness is needed concerning temporomandibular joint disorders and would be promoted by a mandated offering of temporomandibular joint disorders coverage to group purchasers; and

(4) A mandated offering of temporomandibular joint disorders coverage shall not prescribe minimum initial benefits so that the insurers and the purchasers are allowed broad flexibility in benefit design and application." [1989 c 331 § 1.]

Effective date—1989 c 331: "This act shall take effect January 1, 1990, but the insurance commissioner may immediately take such steps as are necessary to ensure that this act is fully implemented on its effective date." [1989 c 331 § 6.]

Chapter 48.21A

DISABILITY INSURANCE—EXTENDED HEALTH

Sections

48.21A.010	Declaration of purpose.
48.21A.020	Definitions.
48.21A.030	Insurers may join—Policyholder—Reduced benefit provision—Master group policy—Offering—Cancellation.
48.21A.040	Agents, brokers, and solicitors.
48.21A.050	Powers and duties of associations.
48.21A.060	Commissioner's powers—Forms—Rates—Standard provisions—Withdrawal of approval—Federal, state benefits—Annual reports.
48.21A.070	Documents to be filed—Deceptive name or advertising.
48.21A.080	Remedies.
48.21A.090	Home health care, hospice care, optional coverage required—Standards, limitations, restrictions—Rules—Medicare supplemental contracts excluded.

Refusal to renew or cancellation of disability insurance: RCW 48.18.298, 48.18.299.

48.21A.010 Declaration of purpose. It is the purpose of this chapter to provide a means of more adequately meeting the needs of persons who are sixty-five years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended. [1965 ex.s. c 70 § 27.]

48.21A.020 Definitions. Wherever used in this chapter, the following terms shall have the meanings herein-after set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association of insurers formed for the purpose of enabling cooperative action to provide disability insurance in accordance with this chapter in this or any other state

having legislation enabling the issuance of insurance of the type provided in this chapter.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this chapter. [1965 ex.s. c 70 § 28.]

48.21A.030 Insurers may join—Policyholder—Reduced benefit provision—Master group policy—Offering—Cancellation. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is sixty-five years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than one hundred percent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons sixty-five years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurances described in this section shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Washington to all persons sixty-five and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled. [1965 ex.s. c 70 § 29.]

48.21A.040 Agents, brokers, and solicitors. Notwithstanding the provisions of RCW 48.17.200, any person licensed to transact disability insurance as an agent, broker or solicitor may transact extended health insurance and may be paid a commission thereon. [1965 ex.s. c 70 § 30.]

48.21A.050 Powers and duties of associations. Any association formed for the purposes of this chapter may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such

association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of RCW 48.03.010 through 48.03.070, inclusive, either separately or concurrently with examination of any of its member insurers. [1983 c 3 § 151; 1965 ex.s. c 70 § 31.]

48.21A.060 Commissioner's powers—Forms—Rates—Standard provisions—Withdrawal of approval—Federal, state benefits—Annual reports. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or thirty days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms of such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumption excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this chapter, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than ninety days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Washington, the extended health insurance benefits provided by policies issued under this chapter shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates

applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this chapter and the calendar year experience applicable to such insurance offered under this chapter, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report. [1965 ex.s. c 70 § 32.]

48.21A.070 Documents to be filed—Deceptive name or advertising. The articles of association of any association formed in accordance with this chapter, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this chapter shall not be such as to mislead or deceive the public. [1965 ex.s. c 70 § 33.]

48.21A.080 Remedies. No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance. [1965 ex.s. c 70 § 34.]

48.21A.090 Home health care, hospice care, optional coverage required—Standards, limitations, restrictions—Rules—Medicare supplemental contracts excluded. (1) Every insurer entering into or renewing extended health insurance governed by this chapter shall offer optional coverage for home health care and hospice care for persons who are homebound and would otherwise require hospitalization. Such optional coverage need only be offered in conjunction with a policy that provides payment for hospitalization as a part of health care coverage.

(2) Home health care and hospice care coverage offered under subsection (1) of this section shall conform to the following standards, limitations, and restrictions in addition to those set forth in chapters 70.126 and 70.127 RCW:

(a) The coverage may include reasonable deductibles, coinsurance provisions, and internal maximums;

(b) The coverage should be structured to create incentives for the use of home health care and hospice care as an alternative to hospitalization;

(c) The coverage may contain provisions for utilization review and quality assurance;

(d) The coverage may require that home health agencies and hospices have written treatment plans approved by a physician licensed under chapter 18.57 or 18.71 RCW, and may require such treatment plans to be reviewed at designated intervals;

(e) The coverage shall provide benefits for, and restrict benefits to, services rendered by home health and hospice agencies licensed under chapter 70.127 RCW;

(f) Hospice care coverage shall provide benefits for terminally ill patients for an initial period of care of not less than six months and may provide benefits for an additional six months of care in cases where the patient is facing imminent death or is entering remission if certified in writing by the attending physician;

(g) Home health care coverage shall provide benefits for a minimum of one hundred thirty health care visits per calendar year. However, a visit of any duration by an employee of a home health agency for the purpose of providing services under the plan of treatment constitutes one visit;

(h) The coverage may be structured so that services or supplies included in the primary contract are not duplicated in the optional home health and hospice coverage.

(3) The insurance commissioner shall adopt any rules necessary to implement this section.

(4) The requirements of this section shall not apply to contracts or policies governed by chapter 48.66 RCW.

(5) An insurer, as a condition of reimbursement, may require compliance with home health and hospice certification regulations established by the United States department of health and human services. [1989 1st ex.s. c 9 § 220; 1988 c 245 § 32; 1984 c 22 § 2; 1983 c 249 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

Home health care, hospice care, rules: Chapter 70.126 RCW.

Chapter 48.22 CASUALTY INSURANCE

Sections

48.22.020	Assigned risk plans.
48.22.030	Underinsured, hit-and-run, phantom vehicle coverage to be provided—Exceptions—Conditions—Deductibles.
48.22.040	Underinsured motor vehicle coverage where liability insurer is insolvent—Extent of coverage—Rights of insurer upon making payment.
48.22.050	Market assistance plans.
48.22.060	Debt and financing coverage.

Casualty rates, rating organization: Chapter 48.19 RCW.

Injured public assistance recipient, department has lien, payment to recipient does not discharge lien: RCW 74.09.180 through 74.09.186.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.22.020 Assigned risk plans. The commissioner shall after consultation with the insurers licensed to write motor vehicle liability insurance in this state, approve a reasonable plan or plans for the equitable apportionment among such insurers of applicants for such insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods and, when such plan has been approved, all such insurers shall subscribe thereto and shall participate therein. Any applicant for such insurance, any person insured under such plan and any insurer affected may appeal to the commissioner from any ruling or decision of the manager or committee designated to operate such plan. [1947 c 79 § .22.02; Rem. Supp. 1947 § 45.22.02.]

Rate modifications for assigned risks: RCW 48.19.400.

48.22.030 Underinsured, hit-and-run, phantom vehicle coverage to be provided—Exceptions—Conditions—Deductibles. (1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7) (a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident. [1985 c 328 § 1; 1983 c 182 § 1; 1981 c 150 § 1; 1980 c 117 § 1; 1967 c 150 § 27.]

Severability—1983 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 182 § 3.]

Effective date—1981 c 150: "This act shall take effect on September 1, 1981." [1981 c 150 § 3.]

Effective date—1980 c 117: "This act shall take effect on September 1, 1980." [1980 c 117 § 8.]

48.22.040 Underinsured motor vehicle coverage where liability insurer is insolvent—Extent of coverage—Rights of insurer upon making payment. (1) The term "underinsured motor vehicles" with reference to coverage offered under any insurance policy regulated under this chapter shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability

of its insured within the limits specified therein because of insolvency.

(2) An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's underinsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.

(3) In the event of payment to an insured under the coverage required by this chapter and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such insured against any person or organization legally responsible for the bodily injury, death, or property damage for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer. Whenever an insurer shall make payment under the coverage required by this section and which payment is occasioned by an insolvency, such insurer's right of recovery or reimbursement shall not include any rights against the insured of said insolvent insurer for any amounts which would have been paid by the insolvent insurer. Such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had, if the insured of the insolvent insurer had personally made the payment. [1983 c 182 § 2; 1980 c 117 § 2; 1967 ex.s. c 95 § 3.]

Severability—1983 c 182: See note following RCW 48.22.030.

Effective date—1980 c 117: See note following RCW 48.22.030.

48.22.050 Market assistance plans. The commissioner shall by regulation require insurers authorized to write casualty insurance in this state to form a market assistance plan to assist persons and other entities unable to purchase casualty insurance in an adequate amount from either the admitted market or nonadmitted market.

For the purpose of this section, a market assistance plan means a voluntary mechanism by insurers writing casualty insurance in this state in either the admitted or nonadmitted market to provide casualty insurance for a class of insurance designated in writing to the plan by the commissioner.

The bylaws and method of operation of any market assistance plan shall be approved by the commissioner prior to its operation.

A market assistance plan shall have a minimum of twenty-five insurers willing to insure risks within the class designated by the commissioner. If twenty-five insurers do not voluntarily agree to participate, the commissioner may require casualty insurers to participate in a market assistance plan as a condition of continuing to do business in this state. The commissioner shall make such a requirement to fulfill the quota of at least twenty-five insurers. The commissioner shall make his

or her designation on the basis of the insurer's premium volume of casualty insurance in this state. [1986 c 305 § 906.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

48.22.060 Debt and financing coverage. Every insurer that writes collision and comprehensive coverage for loss or damage to "private passenger automobiles" or "motor homes," as those terms are defined in RCW 48.18.297 and 46.04.305, respectively, shall provide, upon the insured's request, coverage that will pay, in the event of total loss, an amount, in excess of the actual cash value of the vehicle, sufficient to satisfy any outstanding indebtedness secured by and incurred in conjunction with the financing of the purchase of a new private passenger automobile or motor home.

Nothing in this section prohibits an insurer from denying or excluding such coverage where the insured or someone acting on the insured's behalf acts in a fraudulent manner to obtain or file a claim under such coverage. [1988 c 248 § 16; 1987 c 240 § 1.]

Effective date—1987 c 240: "The effective date of this act is January 1, 1988." [1987 c 240 § 2.]

Chapter 48.23

LIFE INSURANCE AND ANNUITIES

Sections

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Assignment of policies: RCW 48.18.360.

Charitable gift annuity business: Chapter 48.38 RCW.

Exemption of proceeds

commutation, annuities: RCW 48.18.430.

life insurance: RCW 48.18.410.

Insurable interest, personal insurance: RCW 48.18.030.

Minor may contract for life or disability insurance: RCW 48.18.020.

Payment to person designated in policy or by assignment discharges insurer: RCW 48.18.370.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

Simultaneous deaths: RCW 48.18.390.

Spouses' rights in life insurance policy: RCW 48.18.440.

48.23.010 Scope of chapter. The provisions of this chapter apply to contracts of life insurance and annuities other than group life insurance, group annuities, and, except for RCW 48.23.260, 48.23.270, 48.23.340, and *48.23.350, other than industrial life insurance: *Provided*, That the provisions of Title 48 RCW shall not apply to charitable gift annuities issued by a board of a state university, regional university, or a state college, nor to the issuance thereof. [1979 c 130 § 2; 1947 c 79 § .23.01; Rem. Supp. 1947 § 45.23.01.]

***Reviser's note:** RCW 48.23.350 was repealed by 1982 1st ex.s. c 9 § 36(2); later enactment, see chapter 48.76 RCW.

Severability—1979 c 130: See note following RCW 28B.10.485.

48.23.020 Standard provisions required—Life insurance. (1) No policy of life insurance other than industrial, group and pure endowments with or without return of premiums or of premiums and interest, shall be delivered or issued for delivery in this state unless it contains in substance all of the provisions required by RCW 48.23.030 to 48.23.130, inclusive. This provision shall not apply to annuity contracts.

(2) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein. [1947 c 79 § .23.02; Rem. Supp. 1947 § 45.23.02.]

48.23.030 Grace period. There shall be a provision that the insured is entitled to a grace period of one month, but not less than thirty days, within which the payment of any premium after the first may be made, subject at the option of the insurer to an interest charge not in excess of six percent per annum for the number of

days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in force, but in case the policy becomes a claim during the grace period before the overdue premium is paid, or the deferred premiums of the current policy year, if any, are paid, the amount of such premium or premiums with interest thereon may be deducted in any settlement under the policy. [1947 c 79 § .23.03; Rem. Supp. 1947 § 45.23.03.]

48.23.040 Entire contract—Representations. In all such policies other than those containing a clause making the policy incontestable from date of issue, there shall be a provision that the policy and the application therefor, if a copy thereof has been endorsed upon or attached to the policy at issue and made a part thereof, shall constitute the entire contract between the parties, and that all statements made by the applicant or by the insured, shall, in the absence of fraud, be deemed representations and not warranties. [1947 c 79 § .23.04; Rem. Supp. 1947 § 45.23.04.]

48.23.050 Incontestability. There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from its date of issue, except for nonpayment of premiums and except, at the option of the insurer, as to provisions relative to benefits in event of total and permanent disability and as to provisions which grant additional insurance specifically against accidental death. [1947 c 79 § .23.05; Rem. Supp. 1947 § 45.23.05.]

48.23.060 Misstatement of age. There shall be a provision that if it is found that the age of the insured (or the age of any other individual considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age or ages, according to the insurer's rate at date of issue. [1947 c 79 § .23.06; Rem. Supp. 1947 § 45.23.06.]

48.23.070 Participation in surplus. (1) In all policies which provide for participation in the insurer's surplus, there shall be a provision that the policy shall so participate annually in the insurer's divisible surplus as apportioned by the insurer, beginning not later than the end of the third policy year. Any policy containing provision for annual participation beginning at the end of the first policy year, may also provide that each dividend shall be paid subject to the payment of the premiums for the next ensuing year. The insured under any annual dividend policy shall have the right each year to have the current dividend arising from such participation either paid in cash, or applied in accordance with such other dividend option as may be specified in the policy and elected by the insured. The policy shall further provide which of the options shall be effective if the insured shall fail to notify the insurer in writing of his election within the period of grace allowed for the payment of premium.

(2) This section shall not apply to paid-up nonforfeiture benefits nor paid-up policies issued on default in payment of premiums. [1947 c 79 § .23.07; Rem. Supp. 1947 § 45.23.07.]

48.23.075 Participation in surplus—Requirements for forms. (1) Life insurance and annuity policy forms of the following types shall be defined and designated as participating forms of insurance only if they contain a provision for participation in the insurer's surplus, and shall be defined and designated as nonparticipating forms if they do not contain a provision for participation in the insurer's surplus:

(a) Forms which provide that the premium or consideration at the time of issue and subsequent premiums or considerations will be established by the insurer based on current, or then current, projected assumptions for such factors as interest, mortality, persistency, expense, or other factors, subject to a maximum guaranteed premium or premiums set forth in the policy; and

(b) Forms (except those for variable life insurance and variable annuity plans which are subject to chapter 48.18A RCW) which provide that their premiums or considerations are credited to an account to which interest is credited, and from which the cost of any life insurance or annuity benefits or other benefits or specified expenses are deducted.

(2) The commissioner may by regulation further clarify the definitions and requirements contained in subsection (1) of this section, and may classify any other types of forms as participating or nonparticipating, consistent therewith. [1982 c 181 § 19.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.23.080 Policy loan. (1) There shall be a provision that after three full years' premiums have been paid thereon, the insurer at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a rate of interest provided in this chapter as now or hereafter amended, a sum to be determined as follows:

(a) If such policy is issued prior to the operative date of RCW *48.23.350, the sum, including any interest paid in advance but not beyond the end of the current policy year, shall be equal to or at the option of the owner of the policy less than, the reserve at the end of the current policy year on the policy and on any dividend additions thereto, less a sum not more than two and one-half percent of the amount insured by the policy and of any dividend additions thereto. The policy may contain a provision by which the insurer reserves the right to defer the making of the loan, except when made to pay premiums, for a period not exceeding six months after the date of application therefor.

(b) If such policy is issued on or after such operative date, the sum, including any interest to the end of the current policy year shall not exceed the cash surrender value at the end of the current policy year, as required by RCW *48.23.350.

(c) (i) The policy shall contain (A) a provision that policy loans shall bear interest at a specified rate not

exceeding six percent per annum, or (B) a provision that policy loans shall bear interest at a variable of not less than four nor more than eight percent per annum.

(ii) The variable rate shall not be changed more frequently than once per year and no change may exceed one percent per annum except reductions. The insurer shall give at least thirty days' notice to the policy owner or the owner's designee of any changes in the interest rate.

(iii) The provisions of (c)(i) and (c)(ii) of this subsection shall apply only in policies in existence prior to August 1, 1981.

(2) Such policy shall further provide that the insurer may deduct from such loan value any existing indebtedness on the policy (unless such indebtedness has already been deducted in determining the cash surrender value) and any unpaid balance of the premium for the current policy year; and that if the loan is made or repaid on a date other than the anniversary of the policy, the insurer shall be entitled to interest for the portion of the current policy year at the rate of interest specified in the policy.

(3) Such policy may further provide that if the interest on the loan is not paid when due, it shall be added to the existing indebtedness and shall bear interest at the same rate; and that if and when the total indebtedness on the policy, including interest due or accruing, equals or exceeds the amount of the loan value thereof which would otherwise exist at such time, the policy shall terminate in full settlement of such indebtedness and become void; except, that it shall be stipulated in the policy that no such termination shall be effective prior to the expiration of at least thirty days after notice of the pendency of the termination was mailed by the insurer to the insured and the assignee, if any, at their respective addresses last of record with the insurer.

(4) The insurer shall provide in any policy issued on or after the operative date of RCW *48.23.350 that the making of any loan, other than a loan to pay premiums, may be deferred for not exceeding six months after the application for the loan has been received by it. [1981 c 247 § 3; 1977 ex.s. c 250 § 1; 1947 c 79 § .23.08; Rem. Supp. 1947 § 45.23.08.]

*Reviser's note: RCW 48.23.350 was repealed by 1982 1st ex.s. c 9 § 36(2); later enactment, see chapter 48.76 RCW.

Purpose—Effective date—1981 c 247: See notes following RCW 48.23.085.

Construction—1977 ex.s. c 250: "This 1977 amendatory act shall not impair the terms and conditions of any policy of life insurance in force prior to the effective date of this 1977 amendatory act." [1977 ex.s. c 250 § 2.]

48.23.085 Policy loan interest rates. (1) As used in this section, "published monthly average" means:

(a) The "Moody's Corporate Bond Yield Average – Monthly Average Corporates" as published by Moody's Investors Service, Incorporated or any successor thereto; or

(b) If the "Moody's Corporate Bond Yield Average – Monthly Average Corporates" is no longer published, a substantially similar average, established by rule issued by the commissioner.

(2) Policies issued on or after August 1, 1981, shall provide for policy loan interest rates by containing:

(a) A provision permitting a maximum interest rate of not more than eight percent per annum; or

(b) A provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law.

(3) The rate of interest charged on a policy loan made under (2)(b) of this section shall not exceed the higher of the following:

(a) The published monthly average for the calendar month ending two months before the date on which the rate is determined; or

(b) The rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum.

(4) If the maximum rate of interest is determined pursuant to (2)(b) of this section, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(5) The maximum rate for each policy shall be determined at regular intervals at least once every twelve months, but not more frequently than once in any three-month period. At the intervals specified in the policy:

(a) The rate being charged may be increased whenever such increase as determined under subsection (3) of this section would increase that rate by one-half of one percent or more per annum; and

(b) The rate being charged shall be reduced whenever such reduction as determined under subsection (3) of this section would decrease that rate by one-half of one percent or more per annum.

(6) The life insurer shall:

(a) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

(b) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in (c) of this subsection;

(c) Send to policyholders with loans reasonable advance notice of any increase in the rate; and

(d) Include in the notices required in this subsection the substance of the pertinent provisions of subsections (2) and (4) of this section.

(7) The substance of the pertinent provisions of subsections (2) and (4) of this section shall be set forth in the policies to which they apply.

(8) The loan value of the policy shall be determined in accordance with RCW 48.23.080, but no policy shall terminate in a policy year as the sole result of change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

(9) For purposes of this section:

(a) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy;

(b) The term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due;

(c) The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer; and

(d) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

(10) No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates. [1981 c 247 § 2.]

Purpose—1981 c 247: "The purpose of this act is to permit and set guidelines for life insurers to include in life insurance policies issued after the effective date of this act a provision for periodic adjustment of policy loan interest rates." [1981 c 247 § 1.]

Effective date—1981 c 247: "This act shall take effect August 1, 1981, and shall not apply to any insurance contract before that date." [1981 c 247 § 5.]

48.23.090 Table of values and options. There shall be a table showing in figures the loan value, if any, and any options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy, or for its life if maturity or expiry occurs in less than twenty years. [1947 c 79 § .23.09; Rem. Supp. 1947 § 45.23.09.]

48.23.100 Nonforfeiture options. There shall be a provision specifying the option to which the policyholder is automatically entitled in the absence of the election of other nonforfeiture options upon default in premium payment after nonforfeiture values become available. [1947 c 79 § .23.10; Rem. Supp. 1947 § 45.23.10.]

48.23.110 Table of installments. If the policy provides for payment of its proceeds in installments or as an annuity, a table showing the amount and period of such installments or annuity shall be included in the policy. Except, that if in the judgment of the commissioner it is not practical to include certain tables in the policy, the requirements of this section may be met as to such policy by the insurer filing such tables with the commissioner. [1947 c 79 § .23.11; Rem. Supp. 1947 § 45.23.11.]

48.23.120 Reinstatement. There shall be a provision that the policy may be reinstated at any time within three years after the date of default in the payment of any premium, unless the policy has been surrendered for its cash value, or the period of any extended insurance provided by the policy has expired, upon evidence of insurability satisfactory to the insurer and the payment of all overdue premiums, and payment (or, within the limits permitted by the then cash values of the policy, reinstatement) of any other indebtedness to the insurer upon the policy with interest as to premiums at a rate not exceeding six percent per annum compounded annually. [1981 c 247 § 4; 1947 c 79 § .23.12; Rem. Supp. 1947 § 45.23.12.]

Purpose—**Effective date**—1981 c 247: See notes following RCW 48.23.085.

48.23.130 Settlement on proof of death. There shall be a provision that when a policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and surrender of the policy. [1947 c 79 § .23.13; Rem. Supp. 1947 § 45.23.13.]

48.23.140 Standard provisions—Annuities, pure endowment contracts. No annuity or pure endowment contract, other than reversionary annuities, or survivorship annuities, or group annuities, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in RCW 48.23-.150 to 48.23.210 inclusive. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

This section shall not apply to contracts for deferred annuities included in, or upon the lives of beneficiaries under, life insurance policies. [1947 c 79 § .23.14; Rem. Supp. 1947 § 45.23.14.]

48.23.150 Grace period—Annuities, pure endowments. In such contracts, there shall be a provision that there shall be a period of grace of one month, but not less than thirty days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer, to an interest charge thereon at a rate to be specified in the contract but not exceeding six percent per annum for the number of days of grace elapsing before such payment, during which period of grace, the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer of the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement. [1947 c 79 § .23.15; Rem. Supp. 1947 § 45.23.15.]

48.23.160 Incontestability—Annuities, pure endowments. If any statements, other than those relating to age, sex, and identity, are required as a condition to issuing such an annuity or pure endowment contract, and subject to RCW 48.23.180, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of two years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer, such contract may also except any provisions relative to benefits in the event of total and permanent disability and any provisions which grant insurance specifically against death by accident. [1947 c 79 § .23.16; Rem. Supp. 1947 § 45.23.16.]

48.23.170 Entire contract—Annuities, pure endowments. In such contracts there shall be a provision that the contract shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the contract when issued, a

provision that the contract and the application therefor shall constitute the entire contract between the parties. [1947 c 79 § .23.17; Rem. Supp. 1947 § 45.23.17.]

48.23.180 Misstatement of age or sex—Annuities, pure endowments. In such contracts there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or if any of them has been misstated, the amount payable or benefit accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex; and that if the insurer shall make or has made any underpayment or underpayments or any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding six percent per annum, shall, in the case of underpayment, be paid the insured or, in the case of overpayment, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract. [1982 c 181 § 12; 1947 c 79 § .23.18; Rem. Supp. 1947 § 45.23.18.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.23.190 Dividends—Annuities, pure endowments. If such contract is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract. [1947 c 79 § .23.19; Rem. Supp. 1947 § 45.23.19.]

48.23.200 Nonforfeiture benefits—Annuities, pure endowments. Such contracts issued after the operative date of RCW 48.23.360 and individual deferred annuities issued before the operative date of RCW 48.23.420 through 48.23.520 shall contain:

(1) A provision that in the event of default in any stipulated payment, the insurer will grant a paid-up nonforfeiture benefit on a plan stipulated in the contract, effective as of such date, of such value as is hereinafter specified.

(2) A statement of the mortality table and interest rate used in calculating the paid-up nonforfeiture benefit available under the contract.

(3) An explanation of the manner in which the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the contract or any indebtedness to the insurer on the contract. [1982 1st ex.s. c 9 § 34; 1979 c 157 § 3; 1947 c 79 § .23.20; Rem. Supp. 1947 § 45.23.20.]

48.23.210 Reinstatement—Annuities, pure endowments. In such contracts there shall be a provision that the contract may be reinstated at any time within one year from the date of default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated, with interest thereon at a rate to be specified in the contract but not exceeding six percent per annum payable annually, and in cases where applicable,

the insurer may also include a requirement of evidence of insurability satisfactory to the insurer. [1947 c 79 § .23.21; Rem. Supp. 1947 § 45.23.21.]

48.23.220 Standard provisions—Reversionary annuities. No contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in RCW 48.23.230 and 48.23.240. Any of such provisions not applicable to single premium annuities shall not, to that extent, be incorporated therein.

This section shall not apply to group annuities or to annuities included in life insurance policies. [1947 c 79 § .23.22; Rem. Supp. 1947 § 45.23.22.]

48.23.230 Sections applicable. Any such reversionary annuity contract shall contain the provisions specified in RCW 48.23.150 to 48.23.190, inclusive, except that under RCW 48.23.150 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue or deferred payment in lieu of providing for a deduction of such payments from an amount payable upon a settlement under the contract. [1947 c 79 § .23.23; Rem. Supp. 1947 § 45.23.23.]

48.23.240 Reinstatement—Reversionary annuities. In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer, and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid, or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding six percent per annum compounded annually. [1947 c 79 § .23.24; Rem. Supp. 1947 § 45.23.24.]

48.23.250 Supplemental benefits. The commissioner may make reasonable rules and regulations concerning the conditions in provisions granting additional benefits in event of the insured's accidental death, or in event the insured becomes totally and permanently disabled, which are a part of or supplemental to life insurance contracts. [1947 c 79 § .23.25; Rem. Supp. 1947 § 45.23.25.]

48.23.260 Limitation of liability. (1) The insurer may in any life insurance policy or annuity or pure endowment contract limit its liability to a determinable amount not less than the full reserve of the policy and of dividend additions thereto in event only of death occurring:

(a) As a result of war, or any act of war, declared or undeclared, or of service in the military, naval or air forces or in civilian forces auxiliary thereto, or from any cause while a member of any such military, naval or air forces of any country at war, declared or undeclared.

(b) As a result of suicide of the insured, whether sane or insane, within two years from date of issue of the policy.

(c) As a result of aviation under conditions specified in the policy.

(2) An insurer may specify conditions pertaining to the items of subsection (1) of this section which in the commissioner's opinion are more favorable to the policyholder. [1947 c 79 § .23.26; Rem. Supp. 1947 § 45.23.26.]

48.23.270 Incontestability after reinstatement. The reinstatement of any policy of life insurance or contract of annuity hereafter delivered or issued for delivery in this state may be contestable on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement as the policy provides with respect to contestability after original issuance. [1947 c 79 § .23.27; Rem. Supp. 1947 § 45.23.27.]

48.23.290 Premium deposits. (1) A life insurer may, under such policy provisions or agreements as have been approved by the commissioner consistent with this section, contract for and accept premium deposits in addition to the regular premiums specified in the policy, for the purpose of paying future premiums, or to facilitate conversion of the policy, or to increase the benefits thereof.

(2) The unused accumulation from such deposits shall be held and accounted for as a premium deposit fund, and the policy or agreement shall provide for the manner of application of the premium deposit fund to the payment of premiums otherwise in default and for the disposition of the fund if it is not sufficient to pay the next premium.

(3) Such fund shall:

(a) Be available upon surrender of the policy, in addition to the cash surrender value; and

(b) be payable upon the insured's death or upon maturity of the policy; and

(c) be paid to the insured whenever the cash surrender value together with the premium deposit fund equals or exceeds the amount of insurance provided by the policy, unless the amount of the deposit does not exceed that which may be required to facilitate conversion of the policy to another plan in accordance with its terms.

(4) No part of the premium deposit fund shall be paid to the insured during the continuance of the policy except at such times and in such amounts as is specified in the policy or in the deposit agreement. [1947 c 79 § .23.29; Rem. Supp. 1947 § 45.23.29.]

48.23.300 Policy settlements—Interest. Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries, and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in

writing by the insurer and the policyholder. Upon maturity of a policy in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate funds so held but may hold them as part of its general assets.

An insurer shall pay interest on death benefits payable under the terms of a life insurance policy insuring the life of any person who was a resident of this state at the time of death. Such interest shall accrue commencing on the date of death at the rate then paid by the insurer on other withdrawable policy proceeds left with the company, but not less than eight percent. Benefits payable that have not been tendered to the beneficiary within ninety days of the receipt of proof of death shall accrue interest, commencing on the ninety-first day, at the aforementioned rate plus three percent. This section applies to death of insureds that occur on or after September 1, 1985. [1985 c 264 § 23; 1983 1st ex.s. c 32 § 21; 1947 c 79 § .23.30; Rem. Supp. 1947 § 45.23.30.]

48.23.310 Deduction of indebtedness. In determining the amount due under any life insurance policy heretofore or hereafter issued, deduction may be made of

(1) any unpaid premiums or installments thereof for the current policy year due under the terms of the policy, and of

(2) the amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid, such principal increased by unpaid interest and compounded as provided in this chapter. [1947 c 79 § .23.31; Rem. Supp. 1947 § 45.23.31.]

48.23.320 Miscellaneous proceeds. Upon the death of the insured and except as is otherwise expressly provided by the policy or premium deposit agreement, a life insurer may pay to the surviving spouse, children, beneficiary, or other person other than the insured's estate, appearing to the insurer to be equitably entitled thereto, sums held by it and comprising:

(1) Premiums paid in advance, and which premiums did not fall due prior to such death, or funds held on deposit for the payment of future premiums.

(2) Dividends theretofore declared on the policy and held by the insurer under the insured's option.

(3) Dividends becoming payable on or after the death of the insured. [1947 c 79 § .23.32; Rem. Supp. 1947 § 45.23.32.]

48.23.330 Trafficking in dividend rights. No life insurer nor any of its representatives, agents, or affiliates, shall buy, take by assignment other than in connection with policy loans, or otherwise deal or traffic in any rights to dividends existing under participating life insurance policies issued by the insurer. [1947 c 79 § .23.33; Rem. Supp. 1947 § 45.23.33.]

48.23.340 Prohibited policy plans. No life insurer shall hereafter issue for delivery or deliver in this state any life insurance policy:

(1) Issued under any plan for the segregation of policyholders into mathematical groups and providing benefits for a surviving policyholder of a group arising out of the death of another policyholder of such group, or under any other similar plan.

(2) Providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise. [1947 c 79 § .23.34; Rem. Supp. 1947 § 45.23.34.]

48.23.360 Calculation of nonforfeiture benefits under annuities.

(1) Nonforfeiture benefits: Any paid-up nonforfeiture benefit available under any annuity or pure endowment contract pursuant to RCW 48.23.200, in the event of default in a consideration due on any contract anniversary shall be such that its present value as of such anniversary shall be not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits (excluding any total disability benefits attached to such contracts) which would have been provided for by the contract including any existing paid-up additions, if there had been no default, over the sum of (a) the then present value of the net consideration defined in subsection (2) of this section corresponding to considerations which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the contract, including interest due or accrued. In determining the benefits referred to in this section and in calculating the net consideration referred to in such subsection (2), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional dates, the annuity payments shall be deemed to commence at the latest date permitted by the contract for the commencement of such payments and the considerations shall be deemed to be payable until such date, which, however, shall not be later than the contract anniversary nearest the annuitant's seventieth birthday.

(2) Net considerations: The net considerations for any annuity or pure endowment contract referred to in subsection (1) of this section shall be calculated on an annual basis, shall be such that the present value thereof at date of issue of the annuity shall equal the then present value of the future benefits thereunder (excluding any total disability benefits attached to such contracts) and shall be not less than the following percentages of the respective considerations specified in the contracts for the respective contract years:

First year fifty percent
 Second and subsequent years ninety percent

Provided, That in the case of participating annuity contracts the percentages hereinbefore specified may be decreased by five.

(3) Basis of calculation: All net considerations and present values for such contracts referred to in this section shall be calculated on the basis of the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by

the commissioner, and the rate of interest, not exceeding three and one-half percent per annum, specified in the contract for calculating cash surrender values, if any, and paid-up nonforfeiture benefits; except that with respect to annuity and pure endowment contracts issued on or after the operative date of RCW *48.12.150(3)(b)(ii) for such contracts, such rate of interest may be as high as four percent per annum: *Provided*, That if such rate of interest exceeds three and one-half percent per annum, all net considerations and present values for such contracts referred to in this section shall be calculated on the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner.

(4) Calculations on default: Any cash surrender value and any paid-up nonforfeiture benefit, available under any such contract in the event of default in the payment of any consideration due at any time other than on the contract anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional considerations beyond the last preceding contract anniversary. All values herein referred to may be calculated upon the assumption that any death benefit is payable at the end of the contract year of death.

(5) Deferment of payment: If an insurer provides for the payment of a cash surrender value, it shall reserve the right to defer the payment of such value for a period of six months after demand therefor with surrender of the contract.

(6) Lump sum in lieu: Notwithstanding the requirements of this section, any deferred annuity contract may provide that if the annuity allowed under any paid-up nonforfeiture benefit would be less than one hundred twenty dollars annually, the insurer may at its option grant a cash surrender value in lieu of such paid-up nonforfeiture benefit of such amount as may be required by subsection (3) of this section.

(7) Operative date: If no election is made by an insurer for an operative date prior to July 1, 1948, such date shall be the operative date for this section. [1973 1st ex.s. c 162 § 6; 1951 c 190 § 1; 1947 c 79 § .23.36; Rem. Supp. 1947 § 45.23.36.]

**Reviser's note:* RCW 48.12.150 was repealed by 1982 1st ex.s. c 9 § 36(1); later enactment, see chapter 48.74 RCW.

48.23.370 Duties of insurer issuing both participating and nonparticipating policies—Rules.

(1) A life insurer issuing both participating and nonparticipating policies shall maintain records which segregate the participating from the nonparticipating business and clearly show the profits and losses upon each such category of business.

(2) For the purposes of such accounting the insurer shall make a reasonable allocation as between the respective such categories of the expenses of such general operations or functions as are jointly shared. Any allocation of expense as between the respective categories shall be made upon a reasonable basis, to the end that each category shall bear a just portion of joint expense involved in the administration of the business of such category.

(3) No policy hereafter delivered or issued for delivery in this state shall provide for, and no life insurer or representative shall hereafter knowingly offer or promise payment, credit or distribution of participating "dividends," "earnings," "profits," or "savings," by whatever name called, to participating policies out of such profits, earnings or savings on nonparticipating policies.

(4) The commissioner may promulgate rules for the purpose of assuring the equitable treatment of all policyholders so that one group of policyholders shall not support or be supported by another group of policyholders. [1982 c 181 § 13; 1965 ex.s. c 70 § 22.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.23.380 Return of policy and refund of premium—Grace period—Notice—Effect. Every individual life insurance policy issued after September 1, 1977, shall have printed on its face or attached thereto a notice stating in substance that the policy owner shall be permitted to return the policy within ten days after it is received by the policy owner and to have the premium paid refunded if, after examination of the policy, the policy owner is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policy owner pursuant to such notice, returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued.

This section shall not apply to individual life insurance policies issued in connection with a credit transaction or issued under a contractual policy change or conversion privilege provision contained in a policy. [1983 1st ex.s. c 32 § 10; 1977 c 60 § 1.]

48.23.410 Short title. RCW 48.23.420 through 48.23.520 shall be known as the standard nonforfeiture law for individual deferred annuities. [1982 1st ex.s. c 9 § 21.]

48.23.420 Inapplicability of enumerated sections to certain policies. RCW 48.23.420 through 48.23.520 do not apply to any reinsurance; group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended; premium deposit fund; variable annuity; investment annuity; immediate annuity; any deferred annuity contract after annuity payments have commenced; or reversionary annuity; nor to any contract which is delivered outside this state through an agent or other representative of the company issuing the contract. [1982 1st ex.s. c 9 § 22.]

48.23.430 Paid-up annuity and cash surrender provisions required. In the case of contracts issued on or after

the operative date of this section as defined in RCW 48.23.520, no contract of annuity, except as stated in RCW 48.23.420, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500;

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or before the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in RCW 48.23.450, 48.23.460, 48.23.480, and 48.23.500. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and

(4) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid before such period would be less than twenty dollars monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment is relieved of any further obligation under such contract. [1982 1st ex.s. c 9 § 23.]

48.23.440 Minimum nonforfeiture amounts. The minimum values as specified in RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at

any time at or prior to the commencement of any annuity payments is equal to an accumulation up to such time at a rate of interest of three percent per annum of percentages of the net considerations, as defined in this subsection, paid prior to such time, decreased by the sum of:

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per annum; and

(b) The amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years; and

(b) The annual contract charge shall be the lesser of (i) thirty dollars or (ii) ten percent of the gross annual consideration.

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars. [1982 1st ex.s. c 9 § 24.]

48.23.450 Minimum present value of paid-up annuity benefit. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to

the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract. [1982 1st ex.s. c 9 § 25.]

48.23.460 Minimum cash surrender benefits—Death benefit. For contracts which provide cash surrender benefits, such cash surrender benefits available before maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event may any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit. [1982 1st ex.s. c 9 § 26.]

48.23.470 Contracts without cash surrender, death benefits—Minimum present value of paid-up annuity benefits. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid before the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event may the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time. [1982 1st ex.s. c 9 § 27.]

48.23.480 Optional maturity dates. For the purpose of determining the benefits calculated under RCW 48.23.460 and 48.23.470, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election is permitted by the contract, but shall not

be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later. [1982 1st ex.s. c 9 § 28.]

48.23.490 Statement required in contract without cash surrender or death benefits. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided. [1982 1st ex.s. c 9 § 29.]

48.23.500 Calculation of benefits available other than on contract anniversary. Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs. [1982 1st ex.s. c 9 § 30.]

48.23.510 Additional benefits. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500, additional benefits payable (1) in the event of total and permanent disability, (2) as reversionary annuity or deferred reversionary annuity benefits, or (3) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, or cash surrender and death benefits that may be required by RCW 48.23.410 through 48.23.520. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, or cash surrender and death benefits. [1982 1st ex.s. c 9 § 31.]

48.23.520 Operative date of RCW 48.23.410 through 48.23.520. After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provisions of RCW 48.23.410 through 48.23.520 after a specified date before the second anniversary of July 10, 1982. After the filing of such notice, then upon such specified date, which shall be the operative date of RCW 48.23.410 through 48.23.520 for such

company, RCW 48.23.410 through 48.23.520 shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of RCW 48.23.410 through 48.23.520 for such company shall be the second anniversary of July 10, 1982. [1982 1st ex.s. c 9 § 32.]

Chapter 48.24

GROUP LIFE AND ANNUITIES

Sections

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48.24.010 Group requirements. (1) No contract of life insurance shall hereafter be delivered or issued for delivery in this state insuring the lives of more than one individual unless to one of the groups as provided for in this chapter, and unless in compliance with the other provisions of this chapter.

(2) Subsection (1) of this section shall not apply to contracts of life insurance

(a) insuring only individuals related by marriage, by blood, or by legal adoption; or

(b) insuring only individuals having a common interest through ownership of a business enterprise, or of a substantial legal interest or equity therein, and who are actively engaged in the management thereof; or

(c) insuring the lives of employees and retirees under contracts executed with the state health care authority under the provisions of chapter 41.05 RCW. [1988 c 107 § 22; 1973 1st ex.s. c 147 § 11; 1947 c 79 § .24.01; Rem. Supp. 1947 § 45.24.01.]

Implementation—**Effective dates**—1988 c 107: See RCW 41.05.901.

Effective date—**Effect of veto**—**Savings**—**Severability**—1973 1st ex.s. c 147: See notes following RCW 41.05.050.

48.24.020 Employee groups. The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee is deemed the policyholder, insuring employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least ten employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. [1955 c 303 § 29; 1947 c 79 § .24.02; Rem. Supp. 1947 § 45.24.02.]

48.24.025 Payment of premium by employee when compensation suspended due to labor dispute. Any employee whose compensation includes group life insurance, the premiums for which are paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the premiums as they become due directly to the policyholder whenever the employee's compensation is suspended or terminated directly or indirectly as the result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the policy provides. During that period of time the policy may not be altered or changed. Nothing in this section shall be deemed to impair the right of the insurer to make normal decreases or increases of the premium rate upon expiration and renewal of the policy, in accordance with the provisions of the policy. Thereafter, if such insurance coverage is no longer available, then the employee shall be given the opportunity to purchase an individual policy at a rate consistent with rates filed by the insurer with the commissioner. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the policyholder in writing, by mail addressed to the address last on record with the policyholder, that the employee may pay the premiums to the policyholder as they become due as provided in this section.

Payment of the premiums must be made when due or the insurance coverage may be terminated by the insurer.

The provisions of any insurance policy contrary to provisions of this section are void and unenforceable after May 29, 1975. [1975 1st ex.s. c 117 § 2.]

Severability—1975 1st ex.s. c 117: See note following RCW 48.21.075.

48.24.030 Dependents of employees or members of certain groups. (1) Insurance under any group life insurance policy issued pursuant to RCW 48.24.020, or 48.24.050, or 48.24.060, or 48.24.070 or 48.24.090 may, if seventy-five percent of the then insured employees or labor union members or public employee association members or members of the Washington state patrol elect, be extended to insure the spouse and dependent children, or any class or classes thereof, of each such insured employee or member who so elects, in amounts in accordance with a plan which precludes individual selection by the employees or members or by the employer or labor union or trustee, and which insurance on the life of any one family member other than a spouse shall not be in excess of fifty percent of the insurance on the life of the insured employee or member or two thousand dollars, whichever is less.

Insurance on the life of a spouse of an insured employee or member shall not exceed fifty percent of the amount of insurance on the life of the insured employee or member.

Premiums for the insurance on such family members shall be paid by the policyholder, either from the employer's funds or funds contributed by him, trustee's

funds, or labor union funds, and/or from funds contributed by the insured employees or members, or from both.

(2) Such a spouse insured pursuant to this section shall have the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter. [1975 1st ex.s. c 266 § 11; 1965 ex.s. c 70 § 23; 1963 c 192 § 1; 1953 c 197 § 10; 1947 c 79 § .24.03; Rem. Supp. 1947 § 45.24.03.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.24.035 Credit union groups. The lives of a group of individuals may be insured under a policy issued to a credit union, which shall be deemed the policyholder, to insure eligible members of such credit union for the benefit of persons other than the credit union or its officials, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of a credit union, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer, or all of any class or classes thereof determined by conditions pertaining to their age or membership in the credit union or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the credit union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued for which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance.

(3) The policy must cover at least twenty-five members at the date of issue.

(4) The amount of insurance under the policy shall not exceed the amount of the total shares and deposits of the member.

(5) As used herein, "credit union" means a credit union organized and operating under the federal credit union act of 1934 or chapter 31.12 RCW. [1982 c 181 § 14; 1961 c 194 § 8.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.24.040 Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditors, subject to the provisions of the insurance code relating to credit life insurance and credit accident and health insurance and to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness, except that nothing in this section shall preclude an insurer from excluding from the classes eligible for insurance classes of debtors determined by age. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and

the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

(4) Payment by the debtor insured under any such group life insurance contract of the premium charged the creditor by the insurer for such insurance pertaining to the debtor, shall not be deemed to constitute a charge upon a loan in violation of any usury law. [1967 c 150 § 28; 1961 c 194 § 9; 1955 c 303 § 18; 1947 c 79 § .24.04; Rem. Supp. 1947 § 45.24.04.]

48.24.045 Certain associations as groups. The lives of a group of individuals may be insured under a policy issued to an association which has been in active existence for at least one year, which has a constitution and bylaws, and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance. Under this group life insurance policy, the association shall be deemed the policyholder. The policy may insure association employees, members, or their employees. Beneficiaries under the policy shall be persons other than the association or its officers or trustees. The term "employees" as used in this section may include retired employees. [1979 ex.s. c 44 § 1.]

48.24.050 Labor union groups. The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union, or all of any

class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued of which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which the premium is to be derived in part from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least twenty-five members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. [1955 c 303 § 19; 1947 c 79 § .24.05; Rem. Supp. 1947 § 45.24.05.]

48.24.060 Public employee associations. The lives of a group of public employees may be insured under a policy issued to the departmental head or to a trustee, or issued to an association of public employees formed for purposes other than obtaining insurance and having, when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five percent of the number of employees eligible for membership in such classes, which department head or trustee or association shall be deemed the policyholder, to insure such employees for the benefit of persons other than the policyholder or any of its officials, subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be all of the employees of the department or members of the association, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the association, or both.

(2) The premium for the policy shall be paid by the policyholder, in whole or in part either from salary deductions authorized by, or charges collected from, the insured employees or members specifically for the insurance, or from the association's own funds, or from both. Any such deductions from salary may be paid by the employer to the association or directly to the insurer. No policy may be placed in force unless and until at least seventy-five percent of the then eligible employees or association members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have authorized their employer to make any required deductions from salary.

(3) The rate of charges to the insured employees or members specifically for the insurance, and the dues of the association if they include the cost of insurance, shall be determined according to each attained age or in not less than four reasonably spaced attained age groups. In no event shall the rate of such dues or charges be level for all members regardless of attained age.

(4) The policy must cover at least twenty-five persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or members or by the association.

As used herein, "public employees" means employees of the United States government, or of any state, or of any political subdivision or instrumentality of any of them. [1989 c 10 § 9. Prior: 1973 1st ex.s. c 163 § 8; 1973 1st ex.s. c 152 § 5; 1963 c 195 § 21; 1955 c 303 § 20; 1953 c 197 § 11; 1947 c 79 § .24.06; Rem. Supp. 1947 § 45.24.06.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.24.070 Trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by two or more employer members of an employers' association, or by one or more labor unions, or by one or more employers and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees or members for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) If the policy is issued to two or more employer members of an employers' association, such policy may be issued only if (a) the association has been in existence for at least five years and was formed for purposes other than obtaining insurance and (b) the participating employers, meaning such employer members whose employees are to be insured, constitute at date of issue at least fifty percent of the total employers eligible to participate, unless the number of persons covered at date of issue exceeds six hundred, in which event such participating employers must constitute at least twenty-five percent of such total employers in either case omitting from consideration any employer whose employees are already covered for group life insurance.

(2) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are connected with such trusteeship. The policy may provide

that the term "employees" shall include retired employees.

(3) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or, partly from such funds and partly from funds contributed by the insured persons. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent of the then eligible persons, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at least fifty persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. [1973 1st ex.s. c 163 § 9; 1963 c 86 § 1; 1959 c 225 § 9; 1955 c 303 § 21; 1953 c 197 § 12; 1947 c 79 § .24.07; Rem. Supp. 1947 § 45.24.07.]

48.24.080 Agent groups. The lives of a group of individuals may be insured under a policy issued to a principal, or if such principal is a life insurer, by or to such principal, covering when issued not less than twenty-five agents of such principal, subject to the following requirements:

(1) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for such principal for a commission or other fixed or ascertainable compensation.

(2) The policy must insure either all of the agents or all of any class or classes thereof, determined by conditions pertaining to the services to be rendered by such agents, except that if a policy is intended to insure several such classes it may be issued to insure any such class of which seventy-five percent are covered and extended to other classes as seventy-five percent thereof express the desire to be covered.

(3) The premium on the policy shall be paid by the principal or by the principal and the agents jointly. When the premium is paid by the principal and agents jointly and the benefits of the policy are offered to all eligible agents, the policy, when issued, must insure not less than seventy-five percent of such agents.

(4) The amounts of insurance shall be based upon some plan which will preclude individual selection.

(5) The insurance shall be for the benefit of persons other than the principal.

(6) Such policy shall terminate if, subsequent to issue, the number of agents insured falls below twenty-five lives or seventy-five percent of the number eligible and the contribution of the agents, if the premiums are on a renewable term insurance basis, exceed one dollar per

month per one thousand dollars of insurance coverage plus any additional premium per one thousand dollars of insurance coverage charged to cover one or more hazardous occupations.

(7) For the purposes of this section "agents" shall be deemed to include agents, subagents, solicitors, and salesmen. [1949 c 190 § 33; Rem. Supp. 1949 § 45.24.08.]

48.24.090 Washington state patrol. The lives of a group of individuals may be insured under a policy issued to the commanding officer, which commanding officer shall be deemed the policyholder, to insure not less than twenty-five of the members of the Washington state patrol. Such policy shall be for the benefit of beneficiaries as designated by the individuals so insured, and the premium thereon may be paid by such members. Not less than seventy-five percent of all eligible members of such Washington state patrol, or of any unit thereof determined by conditions pertaining to their employment, may be so insured. [1947 c 79 § .24.09; Rem. Supp. 1947 § 45.24.09.]

48.24.095 Financial institutions. The lives of a group of individuals may be insured under a policy issued to a state or federally regulated financial institution, which financial institution shall be deemed the policyholder. The purpose of the policy shall be to insure the depositors or depositor members of the financial institution for the benefit of persons other than the financial institution or its officers. The issuance of the policy shall be subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be the depositors or deposit members of such financial institution, except any as to whom evidence of individual insurability is not satisfactory to the insurer, or any class or classes thereof determined by conditions of age.

(2) The policy must cover at least one hundred persons at the date of issue.

(3) The amount of insurance under the policy shall not exceed the amount of the deposit account of the insured person or five thousand dollars whichever is less.

(4) Financial institutions referred to herein must be authorized to do business in the state of Washington and have their depositors' or members' deposit accounts insured against loss to the amount of at least fifteen thousand dollars by a corporate agency of the federal government. [1967 ex.s. c 95 § 15.]

48.24.100 Standard provisions. No policy of group life insurance shall be delivered or issued for delivery in this state unless it contains in substance the standard provisions as required by RCW 48.24.110 to 48.24.200, inclusive, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder; except that:

(1) Provisions set forth in RCW 48.24.160 to 48.24.200, inclusive, shall not apply to policies issued to a creditor to insure its debtors.

(2) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but such nonforfeiture benefits are not required to be the same as those required for individual life insurance policies. [1947 c 79 § .24.10; Rem. Supp. 1947 § 45.24.10.]

48.24.110 Grace period. There shall be a provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period. [1947 c 79 § .24.11; Rem. Supp. 1947 § 45.24.11.]

48.24.120 Incontestability. There shall be a provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by an individual insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such individual's lifetime nor unless it is contained in a written instrument signed by him. [1947 c 79 § 24.12; Rem. Supp. 1947 § 45.24.12.]

48.24.130 The contract—Representations. There shall be a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued and become a part of the contract; that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary. [1947 c 79 § .24.13; Rem. Supp. 1947 § 45.24.13.]

48.24.140 Insurability. There shall be a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage. [1947 c 79 § .24.14; Rem. Supp. 1947 § 45.24.14.]

48.24.150 Misstatement of age or sex. There shall be a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age or sex of a person insured has been misstated, such provision to contain a clear statement of the method of

adjustment to be used. [1983 1st ex.s. c 32 § 22; 1947 c 79 § .24.15; Rem. Supp. 1947 § 45.24.15.]

48.24.160 Beneficiary—Funeral, last illness expenses. There shall be a provision that any sum becoming due by reason of the death of the individual insured shall be payable to the beneficiary designated by such individual, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the individual insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding ten percent of such amount or one thousand dollars, whichever is greater, to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the individual insured. [1981 c 333 § 1; 1979 ex.s. c 199 § 9; 1955 c 303 § 23; 1947 c 79 § .24.16; Rem. Supp. 1947 § 45.24.16.]

48.24.170 Certificates. There shall be a provision that the insurer will issue to the policyholder for delivery to each individual insured a certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, described by name, relationship, or reference to the insurance records of the policyholder or insurer, and the rights and conditions set forth in RCW 48.24.180, 48.24.190 and 48.24.200, following. [1961 c 194 § 10; 1947 c 79 § .24.17; Rem. Supp. 1947 § 45.24.17.]

48.24.180 Conversion on termination of eligibility. There shall be a provision that if the insurance, or any portion of it, on an individual covered under the policy, other than a child insured pursuant to RCW 48.24.030, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such individual shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that,

(1) the individual policy shall, at the option of such individual, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(2) the individual policy shall be in an amount not in any event in excess of the amount of life insurance which ceases because of such termination nor less than one thousand dollars unless a smaller amount of coverage was provided for such individual under the group policy: *Provided*, That any amount of insurance which matures on the date of such termination or has matured prior thereto under the group policy as an endowment payable to the individual insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount

which is considered to cease because of such termination; and

(3) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such individual then belongs, and to his age attained on the effective date of the individual policy. [1955 c 303 § 24; 1947 c 79 § .24.18; Rem. Supp. 1947 § 45.24.18.]

48.24.190 Conversion on termination of policy. There shall be a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured individuals, every individual insured thereunder at the date of such termination, other than a child insured pursuant to RCW 48.24.030, whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by RCW 48.24.180, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the individual's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days of such termination and (b) two thousand dollars. [1953 c 197 § 13; 1947 c 79 § .24.19; Rem. Supp. 1947 § 45.24.19.]

48.24.200 Death pending conversion. There shall be a provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with RCW 48.24.180 and 48.24.190, and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. [1947 c 79 § .24.20; Rem. Supp. 1947 § 45.24.20.]

48.24.210 Limitation of liability. (1) The insurer may in any group life insurance contract provide that it is not liable, or is liable only in a reduced amount, for losses resulting:

(a) From war or any act of war, declared or undeclared, or of service in the military, naval or air forces or in civilian forces auxiliary thereto, or from any cause while a member of any such military, naval or air forces, of any country at war, declared or undeclared.

(b) From aviation under conditions specified in the policy.

(2) The insurer may in any such contract provide that any amount of insurance in excess of one thousand dollars on an individual life may be reduced to one thousand dollars or to any greater amount upon attainment

of any age not less than age sixty-five or upon the anniversary of the policy nearest attainment of such age. [1947 c 79 § .24.21; Rem. Supp. 1947 § 45.24.21.]

48.24.240 Readjustment of premium. Any group life insurance contract may provide for a readjustment of the premium rate based on experience under that contract, at the end of the first or of any subsequent year of insurance, and which readjustment may be made retroactive for such policy year only. [1947 c 79 § .24.24; Rem. Supp. 1947 § 45.24.24.]

48.24.260 Application of dividends or rate reductions. Any policy dividends hereafter declared, or reduction in rate of premiums hereafter made or continued for the first or any subsequent year of insurance, under any policy of group life insurance heretofore or hereafter issued to any policyholder may be applied to reduce the policyholder's part of the cost of such insurance, except that if the aggregate dividends or refunds or credits under such group policy and any other group policy or contract issued to the policyholder exceed the aggregate contributions of the policyholder toward the cost of the coverages, such excess shall be applied by the policyholder for the sole benefit of insured individuals. [1947 c 79 § .24.26; Rem. Supp. 1947 § 45.24.26.]

Chapter 48.25

INDUSTRIAL LIFE INSURANCE

Sections

48.25.010	Scope of chapter.
48.25.020	Industrial life insurance defined.
48.25.030	Compliance enjoined.
48.25.040	Standard provisions.
48.25.050	Grace period.
48.25.060	Entire contract.
48.25.070	Incontestability.
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48.25.090	Dividends.
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48.25.130	Settlement.
48.25.140	Authority to alter policy.
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48.25.160	Facility of payment clause.
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48.25.180	Conversion—Weekly premium policies.
48.25.190	Conversion—Monthly premium policies.
48.25.200	Title on policy.
48.25.210	Application to term and specified insurance.
48.25.220	Prohibited provisions.
48.25.230	Limitation of liability.

Exemption of proceeds, life insurance: RCW 48.18.410.

Insurable interest, personal insurance: RCW 48.18.030.

Minor may contract for life or disability insurance: RCW 48.18.020.

Payment to person designated in policy or by assignment discharges insurer: RCW 48.18.370.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.25.010 Scope of chapter. The provisions of this chapter apply only to industrial life insurance contracts. [1947 c 79 § .25.01; Rem. Supp. 1947 § 45.25.01.]

48.25.020 Industrial life insurance defined. "Industrial" life insurance is any life insurance provided by an individual insurance contract issued in face amount of less than one thousand dollars, under which premiums are payable monthly or oftener, and bearing the words "industrial policy" printed upon the policy as a part of the descriptive matter. [1947 c 79 § .25.02; Rem. Supp. 1947 § 45.25.02.]

48.25.030 Compliance enjoined. No policy of industrial life insurance shall be delivered or be issued for delivery in this state after January 1, 1948, except in compliance with the provisions of this chapter and with other applicable provisions of this code. [1947 c 79 § .25.03; Rem. Supp. 1947 § 45.25.03.]

48.25.040 Standard provisions. No such policy shall be so issued or delivered unless it contains in substance the provisions as required by this chapter, or provisions which in the opinion of the commissioner are more favorable to the policyholder. [1947 c 79 § .25.04; Rem. Supp. 1947 § 45.25.04.]

48.25.050 Grace period. There shall be a provision that the insured is entitled to a grace period of four weeks within which the payment of any premium after the first may be made, except that in policies the premiums for which are payable monthly, the period of grace shall be one month but not less than thirty days; and that during the period of grace the policy shall continue in full force, but if during the grace period the policy becomes a claim, then any overdue and unpaid premiums may be deducted from any settlement under the policy. [1947 c 79 § .25.05; Rem. Supp. 1947 § 45.25.05.]

48.25.060 Entire contract. There shall be a provision that the policy shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the policy when issued, a provision that the policy and the application therefor shall constitute the entire contract. If the application is so made a part of the contract, the policy shall also provide that all statements made by the applicant in such application shall, in the absence of fraud, be deemed to be representations and not warranties. [1947 c 79 § .25.06; Rem. Supp. 1947 § 45.25.06.]

48.25.070 Incontestability. There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from its date of issue except for nonpayment of premiums, and except, at the option of the insurer, as to supplemental provisions providing benefits for total and permanent disability or specifically for accidental death. [1947 c 79 § .25.07; Rem. Supp. 1947 § 45.25.07.]

48.25.080 Misstatement of age. There shall be a provision that if it is found that the age of the individual insured, or the age of any other individual considered in determining the premium, has been misstated, any

amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages. [1947 c 79 § .25.08; Rem. Supp. 1947 § 45.25.08.]

48.25.090 Dividends. If a participating policy, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy, and that dividends arising from such apportionment shall be credited annually beginning not later than the fifth contract year. This provision shall not prohibit the payment of additional dividends on default of payment of premiums or termination of the policy. [1947 c 79 § .25.09; Rem. Supp. 1947 § 45.25.09.]

48.25.100 Nonforfeiture benefits. There shall be a provision for nonforfeiture benefits as required by chapter 48.76 RCW. [1983 c 3 § 152; 1947 c 79 § .25.10; Rem. Supp. 1947 § 45.25.10.]

48.25.110 Cash surrender value. There shall be a provision for a cash surrender value as required by chapter 48.76 RCW. [1983 c 3 § 153; 1947 c 79 § .25.11; Rem. Supp. 1947 § 45.25.11.]

48.25.120 Reinstatement. There shall be a provision that the policy may be reinstated at any time within two years from the due date of the premium in default unless the cash surrender value has been paid, or the extension period expired, upon the production of evidence of insurability satisfactory to the insurer and the payment of all overdue premiums and payment or reinstatement of any unpaid loans or advances made by the insurer against the policy with interest at a rate not exceeding six percent per annum and payable annually. [1947 c 79 § .25.12; Rem. Supp. 1947 § 45.25.12.]

48.25.130 Settlement. There shall be a provision that when the policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death or after a specified period not exceeding two months after receipt of such proof. [1947 c 79 § .25.13; Rem. Supp. 1947 § 45.25.13.]

48.25.140 Authority to alter policy. There shall be a provision that no agent shall have the power or authority to waive, change or alter any of the terms or conditions of any policy; except that, at the option of the insurer, the terms or conditions may be changed by an endorsement signed by a duly authorized officer of the insurer. [1947 c 79 § .25.14; Rem. Supp. 1947 § 45.25.14.]

48.25.150 Beneficiary. (1) Each such policy shall have a space on the front or back page of the policy for the name of the beneficiary designated with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(2) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have

an insurable interest in the life of the insured. [1947 c 79 § .25.15; Rem. Supp. 1947 § 45.25.15.]

48.25.160 Facility of payment clause. Such a policy may also provide that if the beneficiary designated in the policy does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than thirty days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor, or dies before the insured or is not legally competent to give a valid release, then the insurer may make payment thereunder to the executor or administrator of the insured, or to any of the insured's relatives by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary, or by reason of having incurred expense for the maintenance, medical attention or burial of the insured. Such policy may also include a similar provision applicable to any other payment due under the policy. [1947 c 79 § .25.16; Rem. Supp. 1947 § 45.25.16.]

48.25.170 Payment of premiums direct. In the case of weekly premium policies, there may be a provision that upon proper notice to the insurer while premiums on the policy are not in default beyond the grace period, of the intention to pay future premiums directly to the insurer at its home office or any office designated by the insurer for the purpose, the insurer will, at the end of each period of a year from the due date of the first premium so paid, for which period such premiums are so paid continuously without default beyond the grace period, refund a stated percentage of the premiums in an amount which fairly represents the savings in collection expense. [1947 c 79 § .25.17; Rem. Supp. 1947 § 45.25.17.]

48.25.180 Conversion—Weekly premium policies. There shall be a provision in the case of weekly premium policies granting, upon proper written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting his weekly premium industrial insurance to any form of life insurance with less frequent premium payments regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversion need be granted only if the insurer's weekly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of such insurance with less frequent premium payments issued by the insurer at the age of the insured on the plan of industrial or ordinary insurance desired. [1947 c 79 § .25.18; Rem. Supp. 1947 § 45.25.18.]

48.25.190 Conversion—Monthly premium policies. There shall be a provision, in the case of monthly premium industrial policies, granting, upon proper written

request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting his monthly premium industrial insurance to any form of ordinary life insurance regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversions need be granted only if the insurer's monthly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of ordinary insurance issued by the insurer at the age of the insured on the plan of ordinary insurance desired. [1947 c 79 § .25.19; Rem. Supp. 1947 § 45.25.19.]

48.25.200 Title on policy. There shall be a title on the face of each such policy briefly describing its form. [1947 c 79 § .25.20; Rem. Supp. 1947 § 45.25.20.]

48.25.210 Application to term and specified insurance. Any of the provisions required by this chapter or any portion thereof which are not applicable to single premium or term policies or to policies issued or granted pursuant to nonforfeiture provisions, shall to that extent not be incorporated therein. [1947 c 79 § .25.21; Rem. Supp. 1947 § 45.25.21.]

48.25.220 Prohibited provisions. No such policy shall contain:

(1) A provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer.

(2) A provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within two years prior to the issuance of the policy, received institutional, hospital, medical or surgical treatment or attention and if the insured or claimant under the policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk.

(3) A provision giving the insurer the right to declare the policy void because the insured had been rejected for insurance, unless such right be conditioned upon a showing by the insurer, that knowledge of such rejection would have led to a refusal by the insurer to make such contract. [1947 c 79 § .25.22; Rem. Supp. 1947 § 45.25.22.]

48.25.230 Limitation of liability. The insurer may in any such policy limit its liability for the same causes and to the same extent as is provided in RCW 48.23.260 for other life insurance contracts. [1947 c 79 § .25.23; Rem. Supp. 1947 § 45.25.23.]

Chapter 48.25A

LIFE INSURANCE—PROFIT-SHARING,
CHARTER, FOUNDERS, AND COUPON POLICIES

Sections

48.25A.010	Definitions.
48.25A.020	Certain policies not to be issued or delivered after September 1, 1967.
48.25A.030	Coupon policies—Approval by commissioner.
48.25A.040	Coupon policies—Requirements.
48.25A.050	Revocation of certificates of authority and licenses for violation of chapter.

48.25A.010 Definitions. As used in this chapter:

(1) "Profit-sharing policy" means:

(a) A life insurance policy which by its terms expressly provides that the policyholder will participate in the distribution of earnings or surplus other than earnings or surplus attributable, by reasonable and nondiscriminatory standards, to the participating policies of the company and allocated to the policyholder on reasonable and nondiscriminatory standards; or

(b) A life insurance policy the provisions of which, through sales material or oral presentations, are interpreted by the company to prospective policyholders as entitling the policyholder to the benefits described in subsection (a) of this section.

(2) "Charter policy" or "founders policy" means:

(a) A life insurance policy which by its terms expressly provides that the policyholder will receive some preferential or discriminatory advantage or benefit not available to persons who purchase insurance from the company at future dates or under other circumstances; or

(b) A life insurance policy the provisions of which, through sales material or oral presentations, are interpreted by the company to prospective policyholders as entitling the policyholder to the benefits described in subsection (a) of this section.

(3) "Coupon policy" means a life insurance policy which provides a series of pure endowments maturing periodically in amounts not exceeding the gross annual policy premiums. The term "pure endowment" or "endowment" is used in its accepted actuarial sense, meaning a benefit becoming payable at a specific future date if the insured person is then living. [1967 ex.s. c 95 § 5.]

48.25A.020 Certain policies not to be issued or delivered after September 1, 1967. No profit-sharing, charter, or founders policy shall be issued or delivered in this state after September 1, 1967. [1967 ex.s. c 95 § 6.]

48.25A.030 Coupon policies—Approval by commissioner. No coupon policy shall be issued or delivered in this state until the form of the same has been filed with and approved by the commissioner. [1967 ex.s. c 95 § 7.]

48.25A.040 Coupon policies—Requirements. Coupon policies issued or delivered in this state shall be subject to the following provisions:

(1) No detachable coupons or certificates or pass-books may be used. No other device may be used which

tends to emphasize the periodic endowment benefits or which tends to create the impression that the endowments represent interest earnings or anything other than benefits which have been purchased by part of the policyholder's premium payments.

(2) Each endowment benefit must have a fixed maturity date and payment of the endowment benefit shall not be contingent upon the payment of any premium becoming due on or after such maturity date.

(3) The endowment benefits must be expressed in dollar amounts rather than as percentages of other quantities or in other ways, both in the policy itself and in the sale thereof.

(4) A separate premium for the periodic endowment benefits must be shown in the policy adjacent to the rest of the policy premium information and must be given the same emphasis in the policy and in the sale thereof as that given the rest of the policy premium information. This premium shall be calculated with mortality, interest and expense factors which are consistent with those for the basic policy premium. [1967 ex.s. c 95 § 8.]

48.25A.050 Revocation of certificates of authority and licenses for violation of chapter. The commissioner may revoke all certificates of authority and licenses granted to any insurance company, its officers or agents violating any provision of this chapter. [1967 ex.s. c 95 § 9.]

Chapter 48.26

MARINE AND TRANSPORTATION INSURANCE
(RESERVED)

Chapter 48.27

PROPERTY INSURANCE

Sections

48.27.010	Over-insurance prohibited.
48.27.020	Replacement insurance.

Binders: RCW 48.18.230.

Insurable interest, property insurance: RCW 48.18.040.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

Rates: Chapter 48.19 RCW.

Standard form of fire policy: RCW 48.18.120.

48.27.010 Over-insurance prohibited. (1) Over-insurance shall be deemed to exist if property or an insurable interest therein is insured by one or more insurance contracts against the same hazard in any amount in excess of the fair value of the property or of such interest, as determined as of the effective date of the insurance or of any renewal thereof, or in those instances when insured value is for improvements and land.

(2) For the purposes of this section only the term "fair value" means the cost of replacement less such depreciation as is properly applicable to the subject insured.

(3) No person shall knowingly require, request, issue, place, procure, or accept any insurance contract which would result in over-insurance of the property or interest

therein proposed to be insured, except as is provided in RCW 48.27.020.

(4) No person shall compel an insured or applicant for insurance to procure property insurance in an amount in excess of the amount which could reasonably be expected to be paid under the policy (or combination of policies) in the event of a loss, whether such insurance is required in connection with a loan or otherwise.

(5) Each violation of this section shall subject the violator to the penalties provided by this code. [1984 c 6 § 1; 1947 c 79 § .27.01; Rem. Supp. 1947 § 45.27.01.]

48.27.020 Replacement insurance. By any contract of insurance of property or of any insurable interest therein, the insurer may in connection with a special provision or endorsement made a part of the policy insure the cost of repair or replacement of such property, if damaged or destroyed by a hazard insured against, and without deduction of depreciation, subject to such reasonable rules and regulations as may be made by the commissioner. [1951 c 194 § 1; 1947 c 79 § .27.02; formerly Rem. Supp. 1947 § 45.27.02.]

Chapter 48.28 SURETY INSURANCE

Sections

48.28.010	Requirements deemed met by surety insurer.
48.28.020	Fiduciary bonds—Premium as lawful expense.
48.28.030	Judicial bonds—Premium as part of recoverable costs.
48.28.040	Official bonds—Payment of premiums.
48.28.050	Release from liability.

Binders: RCW 48.18.230.

Bonds for notaries public: RCW 42.28.030.

Official bonds in general: Chapter 42.08 RCW.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.28.010 Requirements deemed met by surety insurer. Whenever by law or by rule of any court, public official, or public body, any surety bond, recognizance, obligation, stipulation or undertaking is required or is permitted to be given, any such bond, recognizance, obligation, stipulation, or undertaking which is otherwise proper and the conditions of which are guaranteed by an authorized surety insurer, or by an unauthorized surety insurer as a surplus line pursuant to chapter 48.15 RCW of this code, shall be approved and accepted and shall be deemed to fulfill all requirements as to number of sureties, residence or status of sureties, and other similar requirements, and no justification by such surety shall be necessary. [1947 c 79 § .28.01; Rem. Supp. 1947 § 45.28.01.]

48.28.020 Fiduciary bonds—Premium as lawful expense. Any fiduciary required by law to give bonds, may include as part of his lawful expense to be allowed by the court or official by whom he was appointed, the reasonable amount paid as premium for such bonds to the authorized surety insurer or to the surplus line surety insurer which issued or guaranteed such bonds. [1955 c

30 § 1. Prior: 1947 c 79 § .28.02; Rem. Supp. 1947 § 45.28.02.]

48.28.030 Judicial bonds—Premium as part of recoverable costs. In any proceeding the party entitled to recover costs may include therein such reasonable sum as was paid to such surety insurer as premium for any bond or undertaking required therein, and as may be allowed by the court having jurisdiction of such proceeding. [1955 c 30 § 2. Prior: 1947 c 79 § .28.03; Rem. Supp. 1947 § 45.28.03.]

Rules of court: Cf. RAP 14.3, 18.22.

48.28.040 Official bonds—Payment of premiums. The premium for bonds given by such surety insurers for appointive or elective public officers and for such of their deputies or employees as are required to give bond shall be paid by the state, political subdivision, or public body so served. [1955 c 30 § 3. Prior: 1947 c 79 § .28.04; Rem. Supp. 1947 § 45.28.04.]

48.28.050 Release from liability. A surety insurer may be released from its liability on the same terms and conditions as are provided by law for the release of individuals as sureties. [1947 c 79 § .28.05; Rem. Supp. 1947 § 45.28.05.]

Chapter 48.29 TITLE INSURERS

Sections

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48.29.160	Agents—County tract indexes required.
48.29.170	Agents—Separate licenses for individuals not required.

48.29.010 Scope of chapter. (1) This chapter relates only to title insurers.

(2) None of the provisions of this code shall be deemed to apply to persons engaged in the business of preparing and issuing abstracts of title to property and certifying to the correctness thereof so long as such persons do not guarantee or insure such titles. [1947 c 79 § .29.01; Rem. Supp. 1947 § 45.29.01.]

48.29.020 Qualifications—Guaranty fund deposit. A title insurer shall not be entitled to have a certificate of authority unless it otherwise qualifies therefor, nor unless:

(1) It is a stock corporation.

(2) It owns and maintains a complete set of tract indexes of the county in which its principal office within this state is located.

(3) It deposits and keeps on deposit with the commissioner a guaranty fund in amount as set forth in RCW 48.29.030 and comprised of cash or public obligations as specified in RCW 48.13.040. [1955 c 86 § 12; 1947 c 79 § .29.02; Rem. Supp. 1947 § 45.29.02.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.030 Amount of deposit. (1) The amount of the required guaranty fund deposit shall be determined by the population, as at last official United States or official state census, of the county within which the insurer is to be authorized to transact its business, as follows:

County population		Amount of guaranty fund deposit required
More than	but not more than	
0	15,000	\$ 10,000.00
15,000	35,000	\$ 15,000.00
35,000	60,000	\$ 25,000.00
60,000	100,000	\$ 50,000.00
100,000	150,000	\$ 75,000.00
150,000	300,000	\$100,000.00
300,000	500,000	\$150,000.00
500,000		\$200,000.00

(2) For authority to transact business in two or more counties, the insurer must have a guaranty fund deposit in amount not less than the amount required under subsection (1) as to that one of the counties in which business is to be so transacted for which the largest amount is so required. [1957 c 193 § 16; 1947 c 79 § .29.03; Rem. Supp. 1947 § 45.29.03.]

48.29.040 May do business in two or more counties. Subject to the deposit requirements of RCW 48.29.030, a title insurer having its principal offices in one county may be authorized to transact business in only such additional counties as to which it owns and maintains, or has a duly authorized agent that owns and maintains, a complete set of tract indexes. [1957 c 193 § 17; 1947 c 79 § .29.04; Rem. Supp. 1947 § 45.29.04.]

48.29.060 Impairment of deposit. If an insurer's guaranty fund deposit becomes impaired for any cause, the commissioner shall forthwith give notice thereof to the insurer, requiring that the impairment be cured within thirty days after the date of the notice. If the impairment is not so cured, the commissioner shall forthwith revoke the insurer's certificate of authority. [1947 c 79 § .29.06; Rem. Supp. 1947 § 45.29.06.]

48.29.070 Levy of execution against deposit. If an insurer fails to satisfy any judgment against it arising out of its liability under any title insurance policy or certificate of title issued, insured, or assumed by it,

within thirty days after the finality of the judgment became fixed, the judgment may be enforced against the insurer's guaranty fund deposit through the following procedure:

(1) The judgment creditor shall petition the court wherein the judgment is entered and as part of the same cause, truthfully setting forth the facts regarding the insurer's failure to satisfy the judgment as required by this section.

(2) Upon such petition the court shall direct issuance of a special execution directed to the sheriff of Thurston county, requiring that the sheriff sell so much of the securities on deposit as may be required to satisfy the judgment and pay the costs of the levy.

(3) The court's order for issuance of the special execution shall also direct that a copy of the judgment and of the petition be served upon the commissioner within five days after the date of the order.

(4) Upon issuance of such special execution and upon such service upon the commissioner, the commissioner shall deliver to such sheriff sufficient of such securities as may be required for sale to satisfy the judgment and to pay such costs. [1955 c 86 § 14; 1947 c 79 § .29.07; Rem. Supp. 1947 § 45.29.07.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.090 Purpose of deposit. (1) The securities comprising the guaranty fund deposit shall be held by the commissioner as a special guaranty fund securing the faithful performance by the insurer of all its undertakings and liabilities as to any title guaranteed or insured by it.

(2) Such deposit shall not be subject to any other liabilities of the insurer until after all its liabilities named in subsection (1) of this section have been discharged. [1955 c 86 § 16; 1947 c 79 § .29.09; Rem. Supp. 1947 § 45.29.09.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.100 Termination of deposit. (1) A guaranty fund deposit shall be terminated only upon the existence of any of the following conditions:

(a) Upon termination of all liabilities of the insurer, other than through reinsurance, under all guaranties or insurances of titles made, issued, or assumed by it.

(b) Upon reinsurance of all such liabilities of the insurer, with the commissioner's approval, in another insurer holding a certificate of authority as a title insurer in this state.

(2) For the purposes of this section only, all liability of the insurer with regard to a title guaranteed or insured by it shall be deemed terminated upon the expiration of twenty-one years from the date of the guaranty or insurance, unless prior thereto a claim of loss has been made with reference thereto and settlement of such loss then remains pending. [1947 c 79 § .29.10; Rem. Supp. 1947 § 45.29.10.]

48.29.110 Release of securities. (1) Upon any termination of the guaranty fund deposit, the commissioner shall release the securities comprising it to the insurer after the following conditions have been complied with:

(a) The insurer shall make written application for such release, verified by the oaths of its president and secretary.

(b) The commissioner shall in due course following upon such application make such examination of the records of the insurer, and of the insurer's officers under oath, as he deems reasonably necessary to determine that the conditions for termination of the deposit have been met.

(2) Upon release of the securities, the commissioner shall revoke the insurer's certificate of authority. [1955 c 86 § 17; 1947 c 79 § .29.11; Rem. Supp. 1947 § 45.29.11.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.120 Special reserve fund. (1) Each title insurer shall annually apportion to a special reserve fund an amount determined by applying the rate of twenty-five cents for each one thousand dollars of net increase of insurance it has in force as at the end of such year. Such apportionment shall be continued or resumed as needed to maintain the special reserve fund at an amount equal to not less than the guaranty fund deposit required of the insurer.

(2) The special reserve fund shall be held by the insurer as an additional guaranty fund, and shall be used only for the payment of losses after the insurer's liquid resources available for the payment of losses, other than such special reserve fund or the guaranty fund deposit, have been exhausted.

(3) For the purposes of computing the special reserve fund as provided in subsection (1) of this section, net increase of insurance in force resulting from reinsurance of the risks of another title insurer shall not be included to the extent that a like special reserve fund on such insurance is maintained by the ceding insurer. [1947 c 79 § .29.12; Rem. Supp. 1947 § 45.29.12.]

48.29.130 Investments. The funds of a domestic title insurer, other than those representing its guaranty fund deposit, shall be invested as follows:

(1) Funds in amount not less than its required special reserve shall be kept invested in investments eligible for domestic life insurers.

(2) Other funds may be invested in:

(a) The insurer's plant and equipment, up to a maximum of fifty percent of capital plus surplus.

(b) Stocks and bonds of abstract companies when approved by the commissioner.

(c) Investments eligible for the investment of funds of any domestic insurer. [1967 c 150 § 30; 1947 c 79 § .29.13; Rem. Supp. 1947 § 45.29.13.]

48.29.140 Premium rates. (1) Premium rates for the insuring or guaranteeing of titles shall not be excessive, inadequate, or unfairly discriminatory.

(2) Each title insurer shall forthwith file with the commissioner a schedule showing the premium rates to be charged by it. Every addition to or modification of such schedule or of any rate therein contained shall likewise be filed with the commissioner, and no such addition or modification shall be effective until expiration of fifteen days after date of such filing.

(3) The commissioner may order the modification of any premium rate or schedule of premium rates found by him after a hearing to be excessive, or inadequate, or unfairly discriminatory. No such order shall require retroactive modification. [1947 c 79 § .29.14; Rem. Supp. 1947 § 45.29.14.]

48.29.150 Taxation of title insurers. Title insurers and their property shall be taxed by this state in accordance with the general laws relating to taxation, and not otherwise. [1947 c 79 § .29.15; Rem. Supp. 1947 § 45.29.15.]

48.29.160 Agents—County tract indexes required. To be licensed as [an] agent of a title insurer, the applicant must own or lease and maintain a complete set of tract indexes of the county or counties in which such agent will do business. [1981 c 223 § 1.]

48.29.170 Agents—Separate licenses for individuals not required. Title insurance agents shall be exempt from the provisions of *RCW 48.17.090(2) and 48.17.180(1) which otherwise require that each individual empowered to exercise the authority of a licensed firm or corporation must be separately licensed. [1981 c 223 § 2.]

***Reviser's note:** The reference to "RCW 48.17.090(2)" is now erroneous because 1981 c 339 § 10 deleted subsection (2) of RCW 48.17.090 and renumbered the former subsection (3) as subsection (2).

Chapter 48.30

UNFAIR PRACTICES AND FRAUDS

Sections

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48.30.330	Immunity from libel or slander.

Discrimination prohibited: RCW 48.18.480.

Fraudulent destruction of insured property: RCW 9.91.090.

48.30.010 Unfair practices in general—Remedies and penalties. (1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive.

(3) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(4) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(5) If any such regulation is violated, the commissioner may take such other or additional action as is permitted under the insurance code for violation of a regulation. [1985 c 264 § 13; 1973 1st ex.s. c 152 § 6; 1965 ex.s. c 70 § 24; 1947 c 79 § .30.01; Rem. Supp. 1947 § 45.30.01.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.30.020 Anticompact law. (1) No person shall either within or outside of this state enter into any contract, understanding or combination with any other person to do jointly or severally any act or engage in any practice for the purpose of

(a) controlling the rates to be charged for insuring any risk or any class of risks in this state; or

(b) unfairly discriminating against any person in this state by reason of his plan or method of transacting insurance, or by reason of his affiliation or nonaffiliation with any insurance organization; or

(c) establishing or perpetuating any condition in this state detrimental to free competition in the business of insurance or injurious to the insuring public.

(2) This section shall not apply relative to ocean marine and foreign trade insurances.

(3) This section shall not be deemed to prohibit the doing of things permitted to be done in accordance with the provisions of chapter 48.19 RCW of this code.

(4) Whenever the commissioner has knowledge of any violation of this section he shall forthwith order the offending person to discontinue such practice immediately or show cause to the satisfaction of the commissioner why such order should not be complied with. If the offender is an insurer or a licensee under this code and fails to comply with such order within thirty days after receipt thereof, the commissioner may forthwith revoke the offender's certificate of authority or licenses. [1947 c 79 § .30.02; Rem. Supp. 1947 § 45.30.02.]

48.30.030 False financial statements. No person shall knowingly file with any public official nor knowingly make, publish, or disseminate any financial statement of an insurer which does not accurately state the insurer's financial condition. [1947 c 79 § .30.03; Rem. Supp. 1947 § 45.30.03.]

48.30.040 False information and advertising. No person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein. [1947 c 79 § .30.04; Rem. Supp. 1947 § 45.30.04.]

48.30.050 Advertising must show name and domicile. Every advertisement of, by, or on behalf of an insurer shall set forth the name in full of the insurer and the location of its home office or principal office, if any, in the United States (if an alien insurer). [1947 c 79 § .30.05; Rem. Supp. 1947 § 45.30.05.]

48.30.060 Insurer name—Deceptive use prohibited. No person who is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer. [1947 c 79 § .30.06; Rem. Supp. 1947 § 45.30.06.]

48.30.070 Advertising of financial condition. (1) Every advertisement by or on behalf of any insurer purporting to show its financial condition may be in a condensed form but shall in substance correspond with the insurer's last verified statement filed with the commissioner.

(2) No insurer or person in its behalf shall advertise assets except those actually owned and possessed by the insurer in its own exclusive right, available for the payment of losses and claims, and held for the protection of

its policyholders and creditors. [1947 c 79 § .30.07; Rem. Supp. 1947 § 45.30.07.]

48.30.075 Using existence of insurance guaranty associations in advertising, etc., to sell insurance. No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Washington Insurance Guaranty Association or the Washington Life and Disability Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Washington Insurance Guaranty Association Act or the Washington Life and Disability Insurance Guaranty Association Act. [1975-'76 2nd ex.s. c 109 § 9.]

48.30.080 Defamation of insurer. No person shall make, publish, or disseminate, or aid, abet or encourage the making, publishing, or dissemination of any information or statement which is false or maliciously critical and which is designed to injure in its reputation or business any authorized insurer or any domestic corporation or reciprocal being formed pursuant to this code for the purpose of becoming an insurer. [1947 c 79 § .30.08; Rem. Supp. 1947 § 45.30.08.]

48.30.090 Misrepresentation of policies. No person shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any policy or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or use any name or title of any policy or class of policies misrepresenting the nature thereof. [1947 c 79 § .30.09; Rem. Supp. 1947 § 45.30.09.]

48.30.100 Dividends not to be guaranteed. No insurer, agent, broker, solicitor, or other person, shall guarantee or agree to the payment of future dividends or future refunds of unused premiums or savings in any specific or approximate amounts or percentages on account of any insurance contract. [1947 c 79 § .30.10; Rem. Supp. 1947 § 45.30.10.]

48.30.110 Contributions to candidates for insurance commissioner. (1) No insurer or fraternal benefit society doing business in this state shall directly or indirectly pay or use, or offer, consent, or agree to pay or use any money or thing of value for or in aid of any candidate for the office of insurance commissioner; nor for reimbursement or indemnification of any person for money or property so used.

(2) Any individual who violates any provision of this section, or who participates in, aids, abets, advises, or consents to any such violation, or who solicits or knowingly receives any money or thing of value in violation of this section, shall be guilty of a gross misdemeanor and

shall be liable to the insurer or society for the amount so contributed or received. [1982 c 181 § 18; 1947 c 79 § .30.11; Rem. Supp. 1947 § 45.30.11.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.30.120 Misconduct of officers, employees. No director, officer, agent, attorney in fact, or employee of an insurer shall:

(1) Knowingly receive or possess himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omit to make or to cause or direct to be made, a full and true entry thereof in its books and accounts; nor

(2) Make or concur in making any false entry, or concur in omitting to make any material entry, in its books or accounts; nor

(3) Knowingly concur in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein; nor

(4) Having the custody or control of its books, wilfully fail to make any proper entry in the books of the insurer as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; nor

(5) If a notice of an application for an injunction or other legal process affecting or involving the property or business of the insurer is served upon him, fail to disclose the fact of such service and the time and place of such application to the other directors, officers, and managers thereof; nor

(6) Fail to make any report or statement lawfully required by a public officer. [1947 c 79 § .30.12; Rem. Supp. 1947 § 45.30.12.]

48.30.130 Presumption of knowledge of director. A director of an insurer is deemed to have such knowledge of its affairs as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of any provision of this chapter. If present at a meeting of directors at which any act, proceeding, or omission of its directors which is a violation of any such provision occurs, he must be deemed to have concurred therein unless at the time he causes or in writing requires his dissent therefrom to be entered on the minutes of the directors.

If absent from such meeting, he must be deemed to have concurred in any such violation if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the insurer for six months thereafter without causing or in writing requiring his dissent from such violation to be entered upon such record or minutes. [1947 c 79 § .30.13; Rem. Supp. 1947 § 45.30.13.]

48.30.140 Rebating. (1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, general agent, agent, broker, or solicitor shall, as an inducement to insurance, or after

insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed agent, general agent, broker, or solicitor for insurance placed on his or her own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, agents, or brokers whereby prizes, goods, wares, or merchandise, not exceeding five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances. [1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

48.30.150 Illegal inducements. No insurer, general agent, agent, broker, solicitor, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to the insured or prospective insured or to any other person on his behalf in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of five dollars.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold. [1975-'76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

48.30.155 Life or disability insurers—Insurance as inducement to purchase of goods, etc. No life or disability insurer shall directly or indirectly participate in any plan to offer or effect any kind or kinds of insurance in

this state as an inducement to the purchase by the public of any goods, securities, commodities, services or subscriptions to publications. This section shall not apply to group or blanket insurance issued pursuant to this code. [1957 c 193 § 19.]

48.30.157 Charges for extra services. Notwithstanding the provisions of RCW 48.30.140, 48.30.150, and 48.30.155, the commissioner may permit an agent or broker to enter into reasonable arrangements with insureds and prospective insureds to charge a reduced fee in situations where services that are charged for are provided beyond the scope of services customarily provided in connection with the solicitation and procurement of insurance, so that an overall charge to an insured or prospective insured is reasonable taking into account receipt of commissions and fees and their relation, proportionally, to the value of the total work performed. [1988 c 248 § 17; 1983 c 3 § 154; 1979 ex.s. c 199 § 10.]

48.30.170 Rebate—Acceptance prohibited. (1) No insured person shall receive or accept, directly or indirectly, any rebate of premium or part thereof, or any favor, advantage, share in dividends, or other benefits, or any valuable consideration or inducement not specified or provided for in the policy, or any commission on any insurance policy to which he is not lawfully entitled as a licensed agent, broker, or solicitor. The retention by the nominal policyholder in any group life insurance contract of any part of any dividend or reduction of premium thereon contrary to the provisions of RCW 48.24.260, shall be deemed the acceptance and receipt of a rebate and shall be punishable as provided by this code.

(2) The amount of insurance whereon the insured has so received or accepted any such rebate or any such commission, other than as to life or disability insurances, shall be reduced in the proportion that the amount or value of the rebate or commission bears to the premium for such insurance. In addition to such reduction of insurance, if any, any such insured shall be liable to a fine of not more than two hundred dollars. [1947 c 79 § .30.17; Rem. Supp. 1947 § 45.30.17.]

48.30.180 "Twisting" prohibited. No person shall by misrepresentations or by misleading comparisons, induce or tend to induce any insured to lapse, terminate, forfeit, surrender, retain, or convert any insurance policy. [1947 c 79 § .30.18; Rem. Supp. 1947 § 45.30.18.]

48.30.190 Illegal dealing in premiums. (1) No person shall wilfully collect any sum as premium for insurance, which insurance is not then provided or is not in due course to be provided by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall wilfully collect as premium for insurance any sum in excess of the amount actually expended or in due course is to be expended for insurance applicable to the subject on account of which the premium was collected.

(3) No person shall wilfully or knowingly fail to return to the person entitled thereto within a reasonable length of time any sum collected as premium for insurance in excess of the amount actually expended for insurance applicable to the subject on account of which the premium was collected.

(4) Each violation of this section which does not amount to a felony shall constitute a misdemeanor. [1947 c 79 § .30.19; Rem. Supp. 1947 § 45.30.19.]

48.30.200 Hypothecation of premium notes. It shall be unlawful for any insurer or its representative, or any agent or broker, to hypothecate, sell, or dispose of any promissory note, received in payment for any premium or part thereof on any contract of life insurance or of disability insurance applied for, prior to delivery of the policy to the applicant. [1947 c 79 § .30.20; Rem. Supp. 1947 § 45.30.20.]

48.30.210 Misrepresentation in application for insurance. Any agent, solicitor, broker, examining physician or other person who makes a false or fraudulent statement or representation in or relative to an application for insurance in an insurer transacting insurance under the provisions of this code, shall be guilty of a misdemeanor, and the license of any such agent, solicitor, or broker so guilty shall be revoked. [1947 c 79 § .30.21; Rem. Supp. 1947 § 45.30.21.]

48.30.220 Wilful destruction, injury, secretion, etc., of property. Any person, who, with intent to defraud or prejudice the insurer thereof, wilfully burns or in any manner injures, destroys, secretes, abandons, or disposes of any property which is insured at the time against loss or damage by fire, theft, or embezzlement, or by any other casualty, whether the same be the property of or in the possession of such person or any other person, under such circumstances not making the offense arson, is guilty of a felony. [1965 ex.s. c 70 § 25; 1947 c 79 § .30.22; Rem. Supp. 1947 § 45.30.22.]

48.30.230 False claims or proof. Any person, who, knowing it to be such:

(1) Presents, or causes to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss under a contract of insurance; or

(2) Prepares, makes, or subscribes any false or fraudulent account, certificate, affidavit, or proof of loss, or other document or writing, with intent that it be presented or used in support of such a claim, is guilty of a gross misdemeanor. [1947 c 79 § .30.23; Rem. Supp. 1947 § 45.30.23.]

48.30.240 Rate wars prohibited. (1) Any insurer which precipitates, or aids in precipitating or conducting a rate war and by so doing writes or issues a policy of insurance at a less rate than permitted under its schedules filed with the commissioner, or below the rate deemed by him to be proper and adequate to cover the

class of risk insured, shall have its certificate of authority to do business in this state suspended until such time as the commissioner is satisfied that it is charging a proper rate of premium.

(2) Any insurer which has precipitated, or aided in precipitating or conducting a rate war for the purpose of punishing or eliminating competitors or stifling competition, or demoralizing the business, or for any other purpose, and has ordered the cancellation or rewriting of policies at a rate lower than that provided by its rating schedules where such rate war is not in operation, and has paid or attempted to pay to the insured any return premiums, on any risk so to be rewritten, on which its agent has received or is entitled to receive his regular commission, such insurer shall not be allowed to charge back to such agent any portion of his commission on the ground that the same has not been earned. [1947 c 79 § .30.24; Rem. Supp. 1947 § 45.30.24.]

48.30.250 Interlocking ownership, management. (1) Any insurer may retain, invest in or acquire the whole or any part of the capital stock of any other insurer or insurers, or have a common management with any other insurer or insurers, unless such retention, investment, acquisition or common management is inconsistent with any other provision of this title, or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be a director of two or more insurers which are competitors, unless the effect thereof is to substantially lessen competition between insurers generally or tends to create a monopoly.

(3) If the commissioner finds, after a hearing thereon, that there is violation of this section he shall order all such persons and insurers to cease and desist from such violation within such time, or extension thereof, as may be specified in such order. [1949 c 190 § 34; Rem. Supp. 1949 § 45.30.25.]

48.30.260 Right of debtor or borrower to select agent, broker, insurer. (1) Every debtor or borrower, when property insurance of any kind is required in connection with the debt or loan, shall have reasonable opportunity and choice in the selection of the agent, broker, and insurer through whom such insurance is to be placed; but only if the insurance is properly provided for the protection of the creditor or lender not later than at commencement of risk as to such property as respects such creditor or lender, and in the case of renewal of insurance, only if the renewal policy, or a proper binder therefor containing a brief description of the coverage bound and the identity of the insurer in which the coverage is bound, is delivered to the creditor or lender not later than thirty days prior to the renewal date.

(2) Every person who lends money or extends credit and who solicits insurance on real and personal property must explain to the borrower in prominently displayed writing that the insurance related to such loan or credit

extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (3)(b) of this section.

(3) No person who lends money or extends credit may:

(a) Solicit insurance for the protection of property, after a person indicates interest in securing a loan or credit extension, until such person has received a commitment from the lender as to a loan or credit extension;

(b) Unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the credit transaction;

(c) Require that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any contract of insurance required as security for a loan, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;

(d) Use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser taken at a time other than the making of the loan or extension of credit, information relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) Require any procedures or conditions of duly licensed agents, brokers, or insurers not customarily required of those agents, brokers, or insurers affiliated or in any way connected with the person who lends money or extends credit; or

(f) Require property insurance in an amount in excess of the amount which could reasonably be expected to be paid under the policy, or combination of policies, in the event of a loss.

(4) Nothing contained in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(5) Nothing contained in this section shall apply to credit life or credit disability insurance. [1988 c 248 § 18; 1984 c 6 § 2; 1977 c 61 § 1; 1957 c 193 § 20.]

48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption. (1) No officer or employee of this state, or of any public agency, public authority or

public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer or agent or broker.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to the public nonprofit corporation authorized under RCW 67.40.020. [1983 2nd ex.s. c 1 § 6; 1967 ex.s. c 12 § 3.]

State convention and trade center—Corporation exempt: RCW 67.40.020.

48.30.300 Unfair discrimination based upon sex, marital status, sensory, mental, or physical handicap prohibited. No person or entity engaged in the business of insurance in this state shall refuse to issue any contract of insurance or cancel or decline to renew such contract because of the sex or marital status, or the presence of any sensory, mental, or physical handicap of the insured or prospective insured. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased or reduced on the basis of the sex or marital status, or be restricted, modified, excluded or reduced on the basis of the presence of any sensory, mental, or physical handicap of the insured or prospective insured. These provisions shall not prohibit fair discrimination on the basis of sex, or marital status, or the presence of any sensory, mental, or physical handicap when bona fide statistical differences in risk or exposure have been substantiated. [1975-'76 2nd ex.s. c 119 § 7.]

48.30.310 Commercial motor vehicle employment driving record not to be considered, when. When an individual applies for a policy of casualty insurance providing either automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage on an individually owned passenger vehicle or a renewal of such policy, an insurer shall not consider the applicant's commercial motor vehicle employment driving record in determining whether the policy will be issued or renewed or in determining the rates for the policy. An insurer shall not cancel such policy or discriminate in regard to other terms or conditions of the policy based upon the applicant's commercial motor vehicle employment driving record.

"Employment driving record" means that record maintained by the director pertaining to motor vehicle accidents or convictions for violation of motor vehicle laws while the applicant is driving a commercial motor vehicle as an employee of another. [1977 ex.s. c 356 § 3.]

48.30.320 Notice of reason for cancellation, restrictions based on handicaps. Every authorized insurer, upon canceling, denying, or refusing to renew any individual life, individual disability, homeowner, dwelling fire, or private passenger automobile insurance policy, shall, upon written request, directly notify in writing the applicant or insured, as the case may be, of the reasons for the action by the insurer. Any benefits, terms, rates, or conditions of such an insurance contract which are restricted, excluded, modified, increased, or reduced because of the presence of a sensory, mental, or physical handicap shall, upon written request, be set forth in writing and supplied to the insured. The written communications required by this section shall be phrased in simple language which is readily understandable to a person of average intelligence, education, and reading ability. [1979 c 133 § 1.]

48.30.330 Immunity from libel or slander. With respect to contracts of insurance as defined in RCW 48.30.320, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, the commissioner's agents, or members of the commissioner's staff, or against any insurer, its authorized representative, its agents, its employees, furnishing to the insurer information as to reasons for cancellation or refusal to issue or renew, for libel or slander on the basis of any statement made by any of them in any written notice of cancellation or refusal to issue or renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to issue or renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith. [1979 c 133 § 2.]

Chapter 48.31

MERGERS, REHABILITATION, LIQUIDATION

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Dissolution of business corporation: Chapter 23B.14 RCW.

48.31.010 Merger or consolidation. (1) Subject to the provisions of RCW 48.08.080, relating to the mutualization of stock insurers, RCW 48.09.350, relating to the conversion or reinsurance of mutual insurers, and RCW 48.10.330, relating to the consolidation or conversion of reciprocal insurers, a domestic insurer may merge or consolidate with another insurer, subject to the following conditions:

(a) The plan of merger or consolidation must be submitted to and be approved by the commissioner in advance of the merger or consolidation.

(b) The commissioner shall not approve any such plan unless, after a hearing, pursuant to such notice as the commissioner may require, he finds that it is fair, equitable, consistent with law, and that no reasonable objection exists. If the commissioner fails to approve the plan, he shall state his reasons for such failure in his order made on such hearing. The insurers involved in the merger shall bear the expense of the mailing of the notice of hearing and of the order on hearing.

(c) No director, officer, member, or subscriber of any such insurer, except as is expressly provided by the plan

of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration whatsoever, for in any manner aiding, promoting or assisting in the merger or consolidation.

(d) Any merger or consolidation as to an incorporated domestic insurer shall in other respects be governed by the general laws of this state relating to business corporations. Except, that as to domestic mutual insurers, approval by two-thirds of its members who vote thereon pursuant to such notice and procedure as was approved by the commissioner shall constitute approval of the merger or consolidation as respects the insurer's members.

(2) Reinsurance of all or substantially all of the insurance in force of a domestic insurer by another insurer shall be deemed a consolidation for the purposes of this section. [1973 1st ex.s. c 107 § 3; 1961 c 194 § 11; 1947 c 79 § .31.01; Rem. Supp. 1947 § 45.31.01.]

Severability—1973 1st ex.s. c 107: See note following RCW 48.17.330.

48.31.020 "Insurer"—Scope of term. For the purposes of this chapter, other than as to RCW 48.31.010, and in addition to persons included under RCW 48.31.110, the term "insurer" shall be deemed to include an insurer authorized under chapter 48.05 RCW, a health care service contractor registered under chapter 48.44 RCW, and a health maintenance organization registered under chapter 48.46 RCW, as well as all persons engaged as, or purporting to be engaged as insurers, health care service contractors, or health maintenance organizations in this state, and to persons in process of organization to become insurers, health care service contractors, or health maintenance organizations. [1989 c 151 § 1; 1947 c 79 § .31.02; Rem. Supp. 1947 § 45.31.02.]

48.31.030 Rehabilitation—Grounds. The commissioner may apply for an order directing him to rehabilitate a domestic insurer upon one or more of the following grounds: That the insurer

- (1) Is insolvent; or
- (2) Has refused to submit its books, records, accounts or affairs to the reasonable examination of the commissioner; or
- (3) Has failed to comply with the commissioner's order, made pursuant to law, to make good an impairment of capital (if a stock insurer) or an impairment of assets (if a mutual or reciprocal insurer) within the time prescribed by law; or
- (4) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other insurer without first having obtained the written approval of the commissioner; or
- (5) Is found, after examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to its members, subscribers, or stockholders, or to the public; or

(6) Has wilfully violated its charter or any law of this state; or

(7) Has an officer, director, or manager who has refused to be examined under oath, concerning its affairs, for which purpose the commissioner is authorized to conduct and to enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States, in which any such officer, director or manager may then presently be, to the full extent permitted by the laws of any such other state or territory, this special authorization considered; or

(8) Has been the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the insurer or of its property, or if a receiver, trustee, custodian, or sequestrator is appointed by a federal court or if such appointment is imminent; or

(9) Has consented to such an order through a majority of its directors, stockholders, members, or subscribers; or

(10) Has failed to pay a final judgment rendered against it in any state upon any insurance contract issued or assumed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later. [1949 c 190 § 28; 1947 c 79 § .31.03; Rem. Supp. 1949 § 45.31.03.]

48.31.040 Rehabilitation—Order—Termination.

(1) An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(2) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he may apply to the court for an order of liquidation.

(3) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply for an order terminating the rehabilitation proceeding and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be granted except when, after a full hearing, the court has determined that the purposes of the proceedings have been fully accomplished. [1947 c 79 § .31.04; Rem. Supp. 1947 § 45.31.04.]

48.31.050 Liquidation—Grounds. The commissioner may apply for an order directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trustee assets in this state, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer, upon any of the grounds specified in RCW 48.31.030 or upon any one or more of the following grounds: That the insurer

- (1) Has ceased transacting business for a period of one year; or

(2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except this code; or

(3) Has not organized or completed its organization and obtained a certificate of authority as an insurer prior to the expiration or revocation of its solicitation permit. [1947 c 79 § .31.05; Rem. Supp. 1947 § 45.31.05.]

48.31.060 Liquidation—Order. (1) An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his own name as commissioner or in the name of the insurer as the court may direct, to give notice to all creditors who may have claims against the insurer to present such claims.

(2) The commissioner may apply under this chapter for an order dissolving the corporate existence of a domestic insurer:

(a) Upon his application for an order of liquidation of such insurer, or at any time after such order has been granted; or

(b) Upon the grounds specified in item (3) of RCW 48.31.050, regardless of whether an order of liquidation is sought or has been obtained. [1947 c 79 § .31.06; Rem. Supp. 1947 § 45.31.06.]

48.31.070 Liquidation—Alien insurers. An order to liquidate the business of the United States branch of an alien insurer having trusteed assets in this state shall be in the same terms as those prescribed for domestic insurers, except that only the assets of the business of such United States branch shall be included therein. [1947 c 79 § .31.07; Rem. Supp. 1947 § 45.31.07.]

48.31.080 Conservation of assets—Foreign insurers. The commissioner may apply for an order directing him to conserve the assets within this state of a foreign insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050.

(2) That its property has been sequestered in its domiciliary sovereignty or in any other sovereignty. [1947 c 79 § .31.08; Rem. Supp. 1947 § 45.31.08.]

48.31.090 Conservation of assets—Alien insurers. The commissioner may apply for an order directing him to conserve the assets within this state of an alien insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050; or

(2) That the insurer has failed to comply, within the time designated by the commissioner, with an order of the commissioner pursuant to law to make good an impairment of its trusteed funds; or

(3) That the property of the insurer has been sequestered in its domiciliary sovereignty or elsewhere. [1947 c 79 § .31.09; Rem. Supp. 1947 § 45.31.09.]

48.31.100 Foreign insurers—Conservation, ancillary proceedings. (1) An order to conserve the assets of a foreign or alien insurer shall direct the commissioner forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) Whenever a domiciliary receiver is appointed for any such insurer in its domiciliary state which is also a reciprocal state, as defined in RCW 48.31.110, the court shall on application of the commissioner appoint the commissioner as the ancillary receiver in this state, subject to the provisions of the uniform insurers liquidation act. [1947 c 79 § .31.10; Rem. Supp. 1947 § 45.31.10.]

48.31.110 Uniform insurers liquidation act. This section and RCW 48.31.120 to 48.31.180, inclusive, comprise and may be cited as the uniform insurers liquidation act. For the purposes of this act:

(1) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the commissioner, or the equivalent insurance supervisory official of another state.

(2) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer.

(3) "State" means any state of the United States, and also the District of Columbia and Puerto Rico.

(4) "Foreign country" means territory not in any state.

(5) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States; and any such insurer is deemed to be domiciled in such state.

(6) "Ancillary state" means any state other than a domiciliary state.

(7) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of this act are in force, including the provisions requiring that the insurance commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(8) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum

or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders, or all policyholders and creditors in the United States, shall be deemed general assets.

(9) "Preferred claim" means any claim with respect to which the law of a state or of the United States accords priority of payment from the general assets of the insurer.

(10) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(11) "Secured claim" means any claim secured by mortgage, trust, deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.

(12) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require. [1961 c 194 § 12; 1947 c 79 § .31.11; Rem. Supp. 1947 § 45.31.11.]

48.31.120 Delinquency proceedings—Domestic insurers. (1) Whenever under the laws of this state a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the commissioner as such receiver. The court shall direct the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) As domiciliary receiver the commissioner shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer, or to liquidate the United States branch of an alien insurer domiciled in this state, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are hereinafter prescribed for ancillary receivers appointed in this state as to assets located in this state.

(3) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

(4) The commissioner as domiciliary receiver shall be responsible on his official bond for the proper administration of all assets coming into his possession or control. The court may at any time require an additional bond from him or his deputies if deemed desirable for the protection of the assets.

(5) Upon taking possession of the assets of an insurer the domiciliary receiver shall, subject to the direction of

the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by the laws of this state for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer.

(6) In connection with delinquency proceedings the commissioner may appoint one or more special deputy commissioners to act for him, and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings. [1947 c 79 § .31.12; Rem. Supp. 1947 § 45.31.12.]

48.31.130 Delinquency proceedings—Foreign insurers. (1) Whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment (a) if he finds that there are sufficient assets of such insurer located in this state to justify the appointment of an ancillary receiver, or (b) if ten or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he may be entitled under

the laws of this state. [1947 c 79 § .31.13; Rem. Supp. 1947 § 45.31.13.]

48.31.140 Claims of nonresidents against domestic insurer. (1) In a delinquency proceeding begun in this state against an insurer domiciled in this state, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either (a) be proved in this state as provided by law, or (b), if ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in RCW 48.31.150 with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state. [1947 c 79 § .31.14; Rem. Supp. 1947 § 45.31.14.]

48.31.150 Claims of residents against foreign insurer.

(1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer, who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceeding.

(2) Controverted claims belonging to claimants residing in this state may either (a) be proved in the domiciliary state as provided by the law of that state, or (b), if ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this state, he shall file his claim with the ancillary receiver in the manner provided by the law of this state for the proving of claims against insurers domiciled in this state, and he shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least forty days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within thirty days after the giving of such notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to

its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state. [1947 c 79 § .31.15; Rem. Supp. 1947 § 45.31.15.]

48.31.160 Priority of certain claims. (1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims whether owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

(3) The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(4) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this act, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state. [1947 c 79 § .31.16; Rem. Supp. 1947 § 45.31.16.]

48.31.170 Attachment, garnishment, execution stayed. During the pendency of delinquency proceedings in this or any reciprocal state no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding. [1947 c 79 § .31.17; Rem. Supp. 1947 § 45.31.17.]

48.31.180 Severability—Uniformity of interpretation. (1) If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(2) This uniform insurers liquidation act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. To the extent that its provisions, when applicable, conflict with other provisions of this chapter, the provisions of this act shall control. [1947 c 79 § .31.18; Rem. Supp. 1947 § 45.31.18.]

48.31.185 Receiver's proposal to disperse assets upon liquidation—Application for approval—Contents of proposal—Notice of application. (1) Within one hundred twenty days of a final determination of insolvency of an insurer and order of liquidation by a court of competent jurisdiction of this state, the receiver shall make application to the court for approval of a proposal to disperse assets out of such insurer's marshalled assets from time to time as such assets become available to the Washington Insurance Guaranty Association and the Washington Life and Disability Insurance Guaranty Association and to any entity or person performing a similar function in another state. (The Washington Insurance Guaranty Association and the Washington Life and Disability Insurance Guaranty Association and any entity or person performing a similar function in other states shall in this section be referred to collectively as the "associations".)

(2) Such proposal shall at least include provisions for:

(a) Reserving amounts for the payment of claims falling within the priorities established in RCW 48.31.280 (2)(a), (b), and (c) as now or hereafter amended;

(b) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;

(c) Equitable allocation of disbursements to each of the associations entitled thereto;

(d) The securing by the receiver from each of the associations entitled to disbursements pursuant to this section an agreement to return to the receiver such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in RCW 48.31.280 as now or hereafter amended in accordance with such priorities. No bond shall be required of any such association; and

(e) A full report to be made by the association to the receiver accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matters as the court may direct.

(3) The receiver's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver, and shall further provide that if the assets available for disbursement from time to time do not

equal or exceed the amount of such claim payments made or to be made by the associations then disbursements shall be in the amount of available assets.

(4) The receiver's proposal shall, with respect to an insolvent insurer writing life insurance, disability insurance, or annuities, provide for disbursements of assets to the Washington Life and Disability Insurance Guaranty Association or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the provisions of the Washington Life and Disability Insurance Guaranty Association Act.

(5) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to submission of such application to the court. [1975-'76 2nd ex.s. c 109 § 10.]

48.31.190 Commencement of proceeding—Venue—Effect of appellate review. (1) Proceedings under this chapter involving a domestic insurer shall be commenced in the superior court for the county in which is located the insurer's home office. Proceedings under this chapter involving other insurers shall be commenced in the superior court for Thurston county.

(2) The commissioner shall commence any such proceeding, the attorney general representing him, by an application to the court or to any judge thereof, for an order directing the insurer to show cause why the commissioner should not have the relief prayed for.

(3) Upon a showing of an emergency or threat of imminent loss to policyholders of the insurer the court may issue an ex parte order authorizing the commissioner immediately to take over the premises and assets of the insurer, the commissioner then to preserve the status quo, pending a hearing on the order to show cause, which shall be heard as soon as the court calendar permits in preference to other civil cases.

(4) In response to any order to show cause issued under this chapter the insurer shall have the burden of going forward with and producing evidence to show why the relief prayed for by the commissioner is not required.

(5) On the return of such order to show cause, and after a full hearing, the court shall either deny the relief sought in the application or grant the relief sought in the application together with such other relief as the nature of the case and the interest of policyholders, creditors, stockholders, members, subscribers, or the public may require.

(6) No appellate review of a superior court order, entered after a hearing, granting the commissioner's petition to rehabilitate an insurer or to carry out an insolvency proceeding under this chapter, shall stay the action of the commissioner in the discharge of his responsibilities under this chapter, pending a decision by the appellate court in the matter.

(7) In any proceeding under this chapter the commissioner and his deputies shall be responsible on their official bonds for the faithful performance of their duties. If

the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or his deputies. [1988 c 202 § 46; 1969 ex.s. c 241 § 13; 1967 c 150 § 31; 1947 c 79 § .31.19; Rem. Supp. 1947 § 45.31.19.]

Severability—1988 c 202: See note following RCW 2.24.050.

48.31.200 Injunctions. (1) Upon application by the commissioner for such an order to show cause or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents, and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof. [1947 c 79 § .31.20; Rem. Supp. 1947 § 45.31.20.]

48.31.210 Change of venue. At any time after the commencement of a proceeding under this chapter the commissioner may apply to the court for an order changing the venue of, and removing the proceeding to Thurston county, or to any other county of this state in which he deems that such proceeding may be most economically and efficiently conducted. [1947 c 79 § .31.21; Rem. Supp. 1947 § 45.31.21.]

48.31.220 Deposit of moneys collected. The moneys collected by the commissioner in a proceeding under this chapter, shall be, from time to time, deposited in one or more state or national banks, savings banks, or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking law of this state. The commissioner may in his discretion deposit such moneys or any part thereof in a national bank or trust company as a trust fund. [1947 c 79 § .31.22; Rem. Supp. 1947 § 45.31.22.]

48.31.230 Exemption from filing fees. The commissioner shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate, or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this chapter, whether or not such paper or instrument be executed by the commissioner or his deputies, employees, or attorneys of record and whether or not it is connected with the commencement of an action or proceeding by or against the commissioner, or with the

subsequent conduct of such action or proceeding. [1947 c 79 § .31.23; Rem. Supp. 1947 § 45.31.23.]

48.31.240 Borrowing on pledge of assets. For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this chapter the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property whether real, personal or mixed of such insurer, and the commissioner, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof. The commissioner shall be under no obligation personally or in his official capacity as commissioner to repay any loan made pursuant to this section. [1947 c 79 § .31.24; Rem. Supp. 1947 § 45.31.24.]

48.31.260 Liquidation—Date rights, liabilities fixed. The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to the provisions of RCW 48.31.300 with respect to the rights of claimants holding contingent claims. [1947 c 79 § .31.26; Rem. Supp. 1947 § 45.31.26.]

48.31.270 Voidable transfers. (1) Any transfer of, or lien upon, the property of an insurer which is made or created within four months prior to the granting of an order to show cause under this chapter with the intent of giving to any creditor or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class and which is accepted by such creditor having reasonable cause to believe that such a preference will occur, shall be voidable.

(2) Every director, officer, employee, stockholder, member, subscriber, and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the commissioner.

(3) The commissioner as liquidator, rehabilitator or conservator in any proceeding under this chapter, may avoid any transfer of, or lien upon the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the granting of an order to show cause under this chapter. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as above specified. [1947 c 79 § .31.27; Rem. Supp. 1947 § 45.31.27.]

48.31.280 Priority of claims for compensation—
Priorities of distribution in liquidation proceedings. (1) Compensation actually owing to employees other than officers of an insurer, for services rendered within three months prior to the commencement of a proceeding against the insurer under this chapter, but not exceeding three hundred dollars for each such employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the commissioner may be paid as soon as practicable after the proceeding has been commenced; except, that at all times the commissioner shall reserve such funds as will in his opinion be sufficient for the expenses of administration. Such priority shall be in lieu of any other similar priority which may be authorized by law as to the wages or compensation of such employees.

(2) The priorities of distribution in a liquidation proceeding shall be in the following order:

- (a) Expenses of administration;
- (b) Compensation of employees as provided in subsection (1) of this section;
- (c) Federal, state, and local taxes;
- (d) Claims arising out of and within the coverages of insurance policies issued by the insurer being liquidated for losses incurred, including:
 - (i) Third party claims and claims for unearned premiums;
 - (ii) Claims presented by the Washington Insurance Guaranty Association which represent "covered claims" as defined in RCW 48.32.030(4) and which have been paid by such association;
 - (iii) Claims to which the Washington life and disability insurance guaranty association shall have become subrogated under the provisions of RCW 48.32A.060; and
 - (iv) Claims similar to those described in parts (ii) and (iii) of this subsection as presented by similar guaranty associations of other states; and
- (e) All other claims. [1975-'76 2nd ex.s. c 109 § 1; 1947 c 79 § .31.28; Rem. Supp. 1947 § 45.31.28.]

48.31.290 Offsets. (1) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) of this section.

(2) No offset shall be allowed in favor of any such person where (a) the obligation of the insurer to such person would not at the date of the entry of any liquidation order, or otherwise, as provided in RCW 48.31.260, entitle him to share as a claimant in the assets of the insurer, or (b) the obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset, or (c) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon a subscription to the capital stock of a stock insurer. [1947 c 79 § .31.29; Rem. Supp. 1947 § 45.31.29.]

48.31.300 Allowance of contingent and other claims.

(1) No contingent claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to RCW 48.31.310, except that such claims shall be considered, if properly presented, and may be allowed to share where:

(a) Such claim becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of such insurer, or

(b) there is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

(2) Where an insurer has been so adjudicated to be insolvent any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer, shall have the right to file a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed

(a) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and

(b) if such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and

(c) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

No judgment against such an insured taken after the date of the entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, inquest or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceeding either of the liability of such insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

(3) No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for fixation of rights and liabilities as provided in RCW 48.31.260 unless the claimant shall surrender his security to the commissioner in which event the claim shall be allowed in the full amount for which it is valued. [1947 c 79 § .31.30; Rem. Supp. 1947 § 45.31.30.]

48.31.310 Time to file claims. (1) If upon the granting of an order of liquidation under this chapter or at any time thereafter during the liquidation proceeding, the insurer shall not be clearly solvent, the court shall after such notice and hearing as it deems proper, make an order declaring the insurer to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the commissioner shall notify all persons who may have claims against such insurer and

who have not filed proper proofs thereof, to present the same to him, at a place specified in such notice, within four months from the date of the entry of such order, or if the commissioner shall certify that it is necessary, within such longer time as the court shall prescribe. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court.

(2) Proofs of claim may be filed subsequent to the date specified, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed before said date, have been paid in full with interest. [1947 c 79 § .31.31; Rem. Supp. 1947 § 45.31.31.]

48.31.320 Report for assessment. Within three years from the date an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer was filed in the office of the clerk of the court by which such order was made, the commissioner may make a report to the court setting forth

(1) the reasonable value of the assets of the insurer;

(2) the insurer's probable liabilities; and

(3) the probable necessary assessment, if any, to pay all claims and expenses in full, including expenses of administration. [1947 c 79 § .31.32; Rem. Supp. 1947 § 45.31.32.]

48.31.330 Levy of assessment. (1) Upon the basis of the report provided for in RCW 48.31.320, including any amendments thereof, the court, ex parte, may levy one or more assessments against all members of such insurer who, as shown by the records of the insurer, were members (if a mutual insurer) or subscribers (if a reciprocal insurer) at any time within one year prior to the date of issuance of the order to show cause under RCW 48.31.190.

(2) Such assessment or assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the estimated cost of collection and percentage of uncollectibility thereof. The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to this chapter or pursuant to any other provisions of this code, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this code; except that if the court finds that the policy was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, the court may determine the upper limit of such assessment upon the basis of such minimum rate.

(3) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this code. [1947 c 79 § .31.33; Rem. Supp. 1947 § 45.31.33.]

48.31.340 Order for payment of assessment. After levy of assessment as provided in RCW 48.31.330, upon the filing of a further detailed report by the commissioner, the court shall issue an order directing each member (if a mutual insurer) or each subscriber (if a

reciprocal insurer) if he shall not pay the amount assessed against him to the commissioner on or before a day to be specified in the order, to show cause why he should not be held liable to pay such assessment together with costs as set forth in RCW 48.31.360 and why the commissioner should not have judgment therefor. [1947 c 79 § .31.34; Rem. Supp. 1947 § 45.31.34.]

48.31.350 Publication, transmittal of assessment order. The commissioner shall cause a notice of such assessment order setting forth a brief summary of the contents of such order to be:

(1) Published in such manner as shall be directed by the court; and

(2) Enclosed in a sealed envelope, addressed and mailed postage prepaid to each member or subscriber liable thereunder at his last known address as it appears on the records of the insurer, at least twenty days before the return day of the order to show cause provided for in RCW 48.31.340. [1947 c 79 § .31.35; Rem. Supp. 1947 § 45.31.35.]

48.31.360 Judgment upon the assessment. (1) On the return day of the order to show cause provided for in RCW 48.31.340 if the member or subscriber does not appear and serve verified objections upon the commissioner, the court shall make an order adjudging that such member or subscriber is liable for the amount of the assessment against him together with ten dollars costs, and that the commissioner may have judgment against the member or subscriber therefor.

(2) If on such return day the member or subscriber shall appear and serve verified objections upon the commissioner there shall be a full hearing before the court or a referee to hear and determine, who, after such hearing, shall make an order either negating the liability of the member or subscriber to pay the assessment or affirming his liability to pay the whole or some part thereof together with twenty-five dollars costs and the necessary disbursements incurred at such hearing, and directing that the commissioner in the latter case may have judgment therefor.

(3) A judgment upon any such order shall have the same force and effect, and may be entered and docketed, and may be appealed from as if it were a judgment in an original action brought in the court in which the proceeding is pending. [1947 c 79 § .31.36; Rem. Supp. 1947 § 45.31.36.]

Chapter 48.31A

REGULATION OF ACQUISITION OF CONTROL OF DOMESTIC INSURERS—HOLDING COMPANY SYSTEMS

Sections

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- 48.31A.110 Confidentiality of reports.
- 48.31A.120 Jurisdiction of courts.
- 48.31A.130 Rules, regulations, and orders.
- 48.31A.900 Severability—1971 ex.s. c 13.

48.31A.005 Purpose. The purpose of this chapter is to assure that the protections provided generally by the insurance code to policyholders, beneficiaries, claimants, and the insuring public are not dissipated or prejudiced by the fact that an insurer is or may become part of an insurance holding company system. [1983 c 46 § 1.]

48.31A.010 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Affiliate" of, or a person "affiliated" with, a specific person, shall mean a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Control", including "controlling", "controlled by", and "under common control with", shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not exist in fact.

(3) "Insurance holding company system" shall consist of two or more affiliated persons, one or more of which is an insurer.

(4) "Insurer" shall have the same meaning given it in RCW 48.01.050.

(5) "Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a

business trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

(6) "Subsidiary" of a specified person shall mean an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

(7) "Commissioner" shall mean the insurance commissioner. [1971 ex.s. c 13 § 3.]

Reviser's note: Throughout chapter 48.31A RCW the terms "this act" or "this 1971 amendatory act" have been changed to "this chapter." "This act" or "this 1971 amendatory act" [1971 ex.s. c 13] consists of this chapter, RCW 48.20.412, 48.21.142, and the 1971 amendment to RCW 48.13.260.

48.31A.020 Exchanging or acquiring voting securities resulting in control of domestic insurer, requirements for. No person other than the issuer or an affiliate of the issuer shall exchange securities for or otherwise acquire, any voting security or any security convertible into a voting security of a domestic insurer or of any other person controlling a domestic insurer if, as a result of the consummation thereof, that person would directly or indirectly, acquire actual control of the insurer unless:

(1) Such person has filed with the commissioner a statement containing such of the following information, and such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate in the public interest or for the protection of policyholders:

(a) The background and identity of all persons by whom or on whose behalf the purchases or the exchange, merger, or other acquisition of control are to be effected;

(b) The source and amount of the funds or other consideration used or to be used in making the purchases or in effecting the exchange, merger or other acquisition of control, and, if any part of such funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the purchases or effecting the exchange, merger, or other acquisition of control, a description of the transaction and the names of the parties thereto;

(c) Any plans or proposals which such persons may have to liquidate such insurer, to sell its assets or merge it with any person, or to make any other major change in its business or corporate structure or management;

(d) The amount of each class of voting securities, or securities which may be converted into voting securities, of such insurer or such controlling person, which are beneficially owned, and the amount of each class of voting securities or securities which may be converted into voting securities of such insurer or such controlling person concerning which there is a right to acquire beneficial ownership, by each such person and by each such affiliate;

(e) Information as to any contracts, arrangements or understandings with any person with respect to any securities of such insurer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division

of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements or understandings have been entered into, and giving the details thereof; and

(f) A copy of any such agreement, and any amendments thereto, to exchange or otherwise acquire securities or to merge with or otherwise to acquire control of such insurer;

(2) The exchange or acquisition has been approved by the commissioner in the manner prescribed by RCW 48.31A.050 [48.31A.050]. [1985 c 55 § 1; 1983 c 46 § 2; 1971 ex.s. c 13 § 4.]

48.31A.030 Tender offers, request or agreement to acquire voting securities resulting in control of domestic insurer—Filings with commissioner required—Copy to issuer of securities. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such voting securities for actual control of a domestic insurer made by or on behalf of any such person shall contain such of the information specified in RCW 48.31A.020 as the commissioner may prescribe, and shall be filed with the commissioner, and a copy delivered to the issuer of the voting securities, at least five business days prior to the time such material is first published or sent or given to security holders. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of policyholders and shall be filed with the commissioner, and a copy delivered to the issuer of the voting securities, at least five business days prior to the time copies of such material are first published or sent or given to security holders. [1983 c 46 § 3; 1971 ex.s. c 13 § 5.]

48.31A.040 Tender offers, request or agreement to acquire voting securities which result in control of domestic insurer—Information may be required of partners, officers, directors and owners. If the person required to file the statement referred to in RCW 48.31A.020 is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by RCW 48.31A.020 shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If the person required to file the statement referred to in RCW 48.31A.020 is a corporation, the commissioner may require that the information called for by RCW 48.31A.020 be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding securities of such corporation. [1971 ex.s. c 13 § 6.]

48.31A.050 Tender offers, request or agreement to acquire voting securities resulting in control of domestic

insurer—Approval by commissioner—Time limitation—Requirements—Application of RCW 48.31A.020 through 48.31A.050. (1) The commissioner shall approve any exchange or other acquisition of control referred to in RCW 48.31A.020 within sixty days of the receipt of the statement filed pursuant to RCW 48.31A.020 after holding a public hearing, only upon finding that:

(a) After the change of control the domestic insurer would satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance of its last certificate of authority to do the insurance business which it intends to transact in this state;

(b) The effect of the purchases, exchanges, mergers, or other acquisitions of control would not be substantially to lessen competition in insurance in this state or tend to create a monopoly therein and would not violate the laws of this state relating to monopolies or restraint of trade;

(c) The financial condition of an acquiring person is such as would not jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(d) The plans or proposals which the acquiring person has to liquidate the insurer, to sell its assets, or to merge it with any person, or to make any other major change in its business or corporate structure or management, are not unfair or prejudicial to policyholders;

(e) The competence, experience and integrity of those persons who would control the operation of the insurer indicate that it would be in the interest of policyholders and the public to permit them to do so; and

(f) There has been full compliance with this chapter or other applicable provisions of Title 48 RCW by the acquiring person.

(2) The provisions of RCW 48.31A.020 through 48.31A.050 apply to any change of control except to the extent that the commissioner, by rule or regulation or by order, shall exempt the same from the provisions of such sections as not comprehended within the purpose of those sections. [1985 c 55 § 2; 1983 c 46 § 4; 1971 ex.s. c 13 § 7.]

48.31A.055 Tender offers, request or agreement to acquire voting securities resulting in control of domestic insurer—Costs of hearing. All reasonable costs of any hearing held pursuant to RCW 48.31A.050, as determined by the commissioner, including costs associated with the commissioner's use of investigatory, professional, and other necessary personnel, mailing of required notices and other information, and use of equipment or facilities, shall be paid before issuance of the commissioner's order by the person filing the statement required by RCW 48.31A.020. [1985 c 55 § 3.]

48.31A.060 Insurer members of insurance holding company system—Registration—Filing registration statement—Contents—Information required—Exemptions—Disclaimer of affiliation. (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company

system shall register with the commissioner, except that such requirements shall not apply to a foreign insurer domiciled in a jurisdiction which has adopted by statute or regulation disclosure requirements and standards substantially similar to those contained in this chapter. Any insurer which is subject to registration under the provisions of this section shall register within sixty days after August 9, 1971 or fifteen days after it becomes subject to registration, whichever is later, unless the commissioner, for good cause shown, extends the time for registration, and then within such extended time. Nothing in this section shall be construed to prohibit the commissioner from requesting any authorized insurer, which is a member of a holding company system, which is not subject to registration under the provisions of this section for a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of its state of domicile.

(2) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(b) The following transactions currently outstanding between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales or exchanges of securities of the affiliate by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements, based upon generally accepted accounting principles, and

(vi) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company; and

(c) Other matters concerning transactions between a registered insurer and any affiliate as may be required by the commissioner.

(3) No information need be disclosed on the registration statement filed pursuant to the provisions of this section if such information is not material for the purposes of this chapter. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent or less of an insurer's admitted assets as of December 31 immediately preceding shall not be deemed material for purposes of this section.

(4) Each registered insurer shall keep current the information required to be disclosed in its registration

statement by reporting all material changes or additions on forms provided by the commissioner on or before the fifteenth day of the following month in which it learns of each such change or addition.

(5) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(6) Two or more affiliated insurers subject to registration hereunder may file a consolidated registration statement or consolidated reports amending their respective consolidated statements or their individual registration statements so long as such consolidated filings correctly reflect the condition of and transactions between such persons.

(7) The commissioner may allow any insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section, and to file all information and material required to be filed under the provisions of this chapter.

(8) The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section as not comprehended within the purposes thereof.

(9) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and basis for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard, and after making specific findings of fact to support such disallowance. [1971 ex.s. c 13 § 8.]

48.31A.070 Material transactions by registered insurers with affiliates—Standards. Material transactions by registered insurers with their affiliates occurring after August 9, 1971 shall be subject to the following standards:

(1) The terms shall be fair and reasonable;

(2) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transaction; and

(3) The insurer's surplus to policyholders following any dividends or distributions to shareholders or affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. [1971 ex.s. c 13 § 9.]

48.31A.080 Factors to be considered in determining reasonableness of insurer's surplus to policyholders. For

purposes of this chapter, in determining whether an insurer's surplus to policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
- (2) The extent to which the insurer's business is diversified among the several lines of insurance;
- (3) The number and size of risks insured in each line of business;
- (4) The extent of the geographical dispersion of the insurer's insured risks;
- (5) The nature and extent of the insurer's reinsurance program;
- (6) The quality, diversification, and liquidity of the insurer's investment portfolio;
- (7) The recent past and projected future trend in the size of the insurer's surplus to policyholders;
- (8) The surplus to policyholders maintained by other comparable insurers;
- (9) The adequacy of the insurer's reserves; and
- (10) The quality and liquidity of investments in subsidiaries. [1971 ex.s. c 13 § 10.]

48.31A.090 Extraordinary dividends or distributions by insurers subject to registration—Notice—Approval or disapproval. No insurer subject to registration under the provisions of this chapter shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until sixty days after the commissioner has received notice of the intent to declare such dividend or distribution and has not within such period disapproved such payment, or the commissioner shall have approved such payment within such sixty-day period. For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distributions made within the preceding twelve months, exceeds the greater of ten percent of such insurer's surplus to policyholders as of December 31 of the year immediately preceding, or the net gain from operations of such insurer if such insurer is a life insurer, or the net investment income if such insurer is not a life insurer, for the twelve-month period ending December 31 of the year immediately preceding. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon stockholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the period referred to above. [1971 ex.s. c 13 § 11.]

48.31A.100 Examination of registered insurers—Powers of commissioner. (1) Subject to the limitations contained in this section and in addition to the powers which the commissioner has under chapter 48.03 RCW, relating to the examination of insurers, the commissioner

shall also have the power to order any insurer registered under the provisions of this chapter to produce such records, books, or papers in the possession of the insurer or affiliates as shall be necessary to verify the information required to be contained in the insurer's registration statement, and any additional information pertinent to transactions between insurer and affiliates. Such books, records, papers and information shall be examined in the manner prescribed in chapter 48.03 RCW relating to the time, place and expense of examination.

(2) The purposes of the examination, under the provisions of subsection (1) of this section, shall be to verify the registration statement and any addition or amendment thereto made pursuant to the provisions of this chapter. [1971 ex.s. c 13 § 12.]

48.31A.110 Confidentiality of reports. Every report made pursuant to the provisions of this chapter, including every report of examination or investigation, and any duly authenticated copy thereof in the possession of any person subject to the provisions of this chapter, shall be a confidential communication, shall not be subject to subpoena and shall not be made public by the commissioner without the prior written consent of the insurer or unless the commissioner determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may make a public record or publish all or any part thereof in such manner as he may deem appropriate. [1971 ex.s. c 13 § 13.]

48.31A.120 Jurisdiction of courts. Any person obtaining or attempting to obtain control of a domestic insurer shall by such act subject such person to the jurisdiction of the courts of this state. [1971 ex.s. c 13 § 14.]

48.31A.130 Rules, regulations, and orders. The commissioner may, upon notice and opportunity for all interested parties to be heard, issue such reasonable rules, regulations and orders as shall be necessary to carry out and effectuate provisions of this chapter. [1971 ex.s. c 13 § 15.]

48.31A.900 Severability—1971 ex.s. c 13. If any provision of this 1971 amendatory act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this 1971 amendatory act which can be given effect without the invalid provisions or application and for this purpose the provisions of this 1971 amendatory act are separable. [1971 ex.s. c 13 § 17.]

**Chapter 48.32
WASHINGTON INSURANCE GUARANTY
ASSOCIATION ACT**

Sections	
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48.32.010 Purpose. The purpose of this chapter is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers. [1971 ex.s. c 265 § 1.]

48.32.020 Scope. This chapter shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, workers' compensation and ocean marine insurance. [1987 c 185 § 29; 1975-'76 2nd ex.s. c 109 § 2; 1971 ex.s. c 265 § 2.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.32.030 Definitions. As used in this chapter:

(1) "Account" means one of the two accounts created in RCW 48.32.040 as now or hereafter amended.

(2) "Association" means the Washington Insurance Guaranty Association created in RCW 48.32.040.

(3) "Commissioner" means the insurance commissioner of this state.

(4) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after the first day of April, 1971 and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise: *Provided*, That a claim for any such amount asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association, would be a "covered claim" may be filed directly with the receiver of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the

insured of such insolvent insurer. In addition, "covered claim" shall not include any claim filed with the association subsequent to the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(5) "Insolvent insurer" means an insurer (a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent and ordered liquidated by a court of competent jurisdiction, and which adjudication was subsequent to the first day of April, 1971.

(6) "Member insurer" means any person who (a) writes any kind of insurance to which this chapter applies under RCW 48.32.020, including the exchange of reciprocal or interinsurance contracts, and (b) holds a certificate of authority to transact insurance in this state.

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(8) "Person" means any individual, corporation, partnership, association, or voluntary organization. [1975-'76 2nd ex.s. c 109 § 3; 1971 ex.s. c 265 § 3.]

48.32.040 Creation of the association. There is hereby created a nonprofit unincorporated legal entity to be known as the Washington Insurance Guaranty Association. All insurers defined as member insurers in RCW 48.32.030(6) as now or hereafter amended shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under RCW 48.32.070 and shall exercise its powers through a board of directors established under RCW 48.32.050 as now or hereafter amended. For purposes of administration and assessment, the association shall be divided into two separate accounts: (1) The automobile insurance account; and (2) the account for all other insurance to which this chapter applies. [1975-'76 2nd ex.s. c 109 § 4; 1971 ex.s. c 265 § 4.]

48.32.050 Board of directors. (1) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by

them as members of the board of directors. [1975-'76 2nd ex.s. c 109 § 5; 1971 ex.s. c 265 § 5.]

48.32.060 Powers and duties of the association. (1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty days after the order of liquidation, or before the policy expiration date if less than thirty days after the order of liquidation, or before the insured replaces the policy or on request effects cancellation, if he does so within thirty days of the order of liquidation, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Allocate claims paid and expenses incurred among the two accounts enumerated in RCW 48.32.040 as now or hereafter amended separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under subsection (1)(a) above subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under RCW 48.32.110, and other expenses authorized by this chapter. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available may be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable, including the payment of claims in the order such claims are received from claimants or in groups or categories of claims, or otherwise. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a

servicing facility may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer if they are chargeable to the account for which the assessment is made.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims.

(e) Notify such persons as the commissioner directs under RCW 48.32.080(2)(a).

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.

(2) The association may:

(a) Appear in, defend, and appeal any action on a claim brought against the association.

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(c) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

(d) Sue or be sued.

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this chapter.

(f) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(g) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year. [1975-'76 2nd ex.s. c 109 § 6; 1971 ex.s. c 265 § 6.]

48.32.070 Plan of operation. (1)(a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within ninety days following May 21, 1971 or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under RCW 48.32.060 will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under RCW 48.32.050.

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under RCW 48.32.060 subsections (1)(c) and (2)(c), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter. [1971 ex.s. c 265 § 7.]

48.32.080 Duties and powers of the commissioner.

(1) The commissioner shall:

(a) Notify the association promptly whenever he or any of his examiners has, or comes into, possession of any data or information relative to any insurer under his jurisdiction for any purpose indicating that such insurer is in or is approaching a condition of impaired assets, imminent insolvency, or insolvency.

(b) Furnish to the association copies of all preliminary and final audits, investigations, memorandums, opinions,

and reports relative to any insurer under his jurisdiction for any purpose, promptly upon the preparation of any thereof.

(c) Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency. The association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member insurer at the same time such complaint is filed with a court of competent jurisdiction.

(d) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication or in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Whenever the commissioner or any of his examiners comes into possession of or obtains any data or information indicating that any insurer under his jurisdiction for any purpose is in or is approaching a condition of impaired assets, imminent insolvency, or insolvency, he shall within fifteen days of having such data or information commence investigation and/or take formal action relative to any such insurer, and in addition within said time shall notify the association of such condition. Upon failure of the commissioner so to act, the association is hereby authorized and directed to act and commence appropriate investigation or proceedings or may at its option refer the matter to the attorney general for appropriate action relative to which the attorney general shall keep the association advised throughout any such action or proceedings.

(4) Any final action or order of the commissioner under this chapter shall be subject to judicial review in a court of competent jurisdiction. [1975-'76 2nd ex.s. c 109 § 7; 1971 ex.s. c 265 § 8.]

48.32.090 Effect of paid claims. (1) Any person recovering under this chapter shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such person would have been required to

cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the right of the association against the assets of the insolvent insurer. [1971 ex.s. c 265 § 9.]

48.32.100 Nonduplication of recovery. (1) Any person having a claim against his insurer under any provision in his insurance policy which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of such recovery under the claimant's insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim, from the association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent. [1987 c 185 § 30; 1971 ex.s. c 265 § 10.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.32.110 Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In

no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner. [1971 ex.s. c 265 § 11.]

48.32.120 Examination of the association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the commissioner. [1971 ex.s. c 265 § 12.]

48.32.130 Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property. [1971 ex.s. c 265 § 13.]

48.32.145 Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c). Every member insurer which during any calendar year shall have paid one or more assessments levied pursuant to RCW 48.32.060(1)(c) as now or hereafter amended shall be entitled to take, as a credit against any premium tax falling due under RCW 48.14.020, one-fifth of the aggregate amount of such aggregate assessments during such calendar year for each of the five consecutive calendar years beginning with the calendar year following the calendar year in which such assessments are paid: *Provided*, That whenever an assessment or uncredited portion thereof is or becomes less than one thousand dollars, the entire amount may be credited against the premium tax at the next time the premium tax is paid. [1977 ex.s. c 183 § 1; 1975-'76 2nd ex.s. c 109 § 11.]

48.32.150 Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this chapter. [1971 ex.s. c 265 § 15.]

48.32.160 Stay of proceedings—Setting aside judgment. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for one hundred eighty days and such additional time thereafter as may be fixed by the court from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. Any judgment under any decision, verdict, or finding based on default of the insolvent insurer or on its failure to defend an insured which is unsatisfied at the date the insolvency is determined shall be set aside on the motion of the association and the association shall be permitted to defend such claim on the merits. [1975-'76 2nd ex.s. c 109 § 8; 1971 ex.s. c 265 § 16.]

48.32.170 Termination, distribution of fund. (1) The commissioner shall by order terminate the operation of the Washington insurers insolvency pool as to any kind of insurance afforded by property or casualty insurance policies with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which:

(a) Is a permanent plan which is adequately funded or for which adequate funding is provided; and

(b) Extends, or will extend to state policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents than the protection and benefits provided with respect to such kind of insurance under this chapter.

(2) The commissioner shall by the same such order authorize discontinuance of future payments by insurers to the Washington insurers insolvency pool with respect to the same kinds of insurance: *Provided*, That assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(3) In the event the operation of any account of the Washington insurers insolvency pool shall be so terminated as to all kinds of insurance otherwise within its scope, the pool as soon as possible thereafter shall distribute the balance of the moneys and assets remaining in said account (after discharge of the functions of the pool with respect to prior insurer insolvencies not covered by such other plan, together with related expenses) to the insurers which are then writing in this state policies of the kinds of insurance covered by such account, and which had made payments into such account, pro rata upon the basis of the aggregate of such payments made by the respective insurers to such account during

the period of five years next preceding the date of such order. Upon completion of such distribution with respect to all of the accounts specified in RCW 48.32.060, this chapter shall be deemed to have expired. [1971 ex.s. c 265 § 17.]

48.32.900 Short title. This chapter shall be known and may be cited as the Washington Insurance Guaranty Association Act. [1971 ex.s. c 265 § 18.]

48.32.910 Construction—1971 ex.s. c 265. This chapter shall be liberally construed to effect the purpose under RCW 48.32.010 which shall constitute an aid and guide to interpretation. [1971 ex.s. c 265 § 19.]

48.32.920 Section headings not part of law. Section headings as used in this chapter do not constitute any part of the law. [1971 ex.s. c 265 § 22.]

48.32.930 Severability—1971 ex.s. c 265. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1971 ex.s. c 265 § 23.]

Chapter 48.32A

WASHINGTON LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION ACT

Sections

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48.32A.930	Severability—1971 ex.s. c 259.

48.32A.010 Purpose. The purpose of this chapter is the creation of funds arising from assessments upon all insurers authorized to transact life or disability insurance business in the state of Washington, to be used to assure to the extent prescribed herein the performance of the insurance contractual obligations of insurers becoming insolvent to residents of this state and, in the case of domestic insurers, to residents of other jurisdictions as well; and to promote thereby the stability of domestic insurers. In the judgment of the legislature, the foregoing purpose not being capable of accomplishment by a corporation created under general laws, the creation of the nonprofit association hereinafter in this chapter described is deemed essential for the protection of the general welfare. [1971 ex.s. c 259 § 1.]

48.32A.020 Scope, personal insurances. This chapter shall apply as follows to life insurance policies, disability insurance policies, and annuity contracts of liquidating insurers, other than separate account variable policies and contracts authorized by chapter 48.18A RCW:

(1) To all such policies and contracts of a domestic insurer, without regard to the place of residence or domicile of the policy or contract owner, insured, annuitant, beneficiary, or payee.

(2) To all such policies and contracts of a foreign or alien insurer authorized to transact such insurance or annuity business in this state at the time such policies or contracts were issued or at the time of entry of the order of liquidation of the insolvent insurer, and of which the policy or contract owner, insured, annuitant, beneficiary, or payee is a resident of and domiciled within this state. With respect to group policies or group contracts of such foreign or alien insurers, this chapter shall apply only as to the insurance or annuities thereunder of individuals who are residents of and domiciled within this state. The place of residence or domicile shall be determined as of the date of entry of the order of liquidation against the insurer.

(3) To policies and contracts only of insolvent insurers with respect to which an order of liquidation is entered after May 21, 1971.

(4) The obligations of the association created under this chapter shall apply only as to contractual obligations of the insurer under insurance policies and annuity contracts, and shall be no greater than such obligations of the insolvent insurer at the time of entry of the order of liquidation; except, that the association shall have no liability with respect to any portions of such policies or contracts to the extent that the death benefit coverage on any one life exceeds an aggregate of three hundred thousand dollars.

(5) This chapter shall not apply to fraternal benefit societies, health care service contractors, or to insurance or liability assumed by the liquidating insurer under a contract of reinsurance other than of bulk reinsurance. [1971 ex.s. c 259 § 2.]

48.32A.030 Definitions. Within the meaning of this chapter:

(1) "Association" means "the Washington life and disability insurance guaranty association".

(2) "Board" means the board of directors of the Washington life and disability insurance guaranty association.

(3) "Commissioner" means the insurance commissioner of this state.

(4) "Policies" means life or disability insurance policies; "contracts" means annuity contracts and contracts supplemental to such insurance policies and annuity contracts.

(5) "Liquidating insurer" means an insurer with respect to which an order of liquidation has been entered by a court of competent jurisdiction.

(6) "Fund" means a guaranty fund provided for in RCW 48.32A.080.

(7) "Account" means any one of the three guaranty fund accounts created under RCW 48.32A.080(1).

(8) "Assessment" means a charge made upon an insurer by the board under this chapter for payment into a guaranty fund. The charge shall constitute a legal liability of the insurer so assessed.

(9) "Contributor" means an insurer which has paid an assessment.

(10) "Certificate" means a certificate of contribution provided for in RCW 48.32A.090. [1971 ex.s. c 259 § 3.]

48.32A.040 Guaranty association created. (1) There is hereby created a nonprofit unincorporated legal entity to be known as the Washington life and disability insurance guaranty association, which shall be composed of the commissioner, ex officio, and of each insurer authorized to transact life insurance, or disability insurance, or annuity business in this state. All such insurers shall be and remain members of the association during the continuance of, and as a condition to, their authority to transact such business in this state.

(2) The association shall be managed by a board of directors composed of the commissioner, ex officio, and of not less than five nor more than nine member insurers, each of whom shall initially be appointed by the commissioner to serve for terms of one, two, or three years. After the initial board is appointed, the board shall provide in its bylaws for selection of board members by member insurers subject to the commissioner's approval; members so selected shall serve for three year terms, acceding to office upon expiration of the terms of the respective initial board members; and board members shall thereafter serve for three year terms and shall continue in office until their respective successors be selected, approved, and have qualified. At least a majority of the members of the board shall be domestic insurers. In case of a vacancy for any reason on the initial board appointed, the commissioner shall appoint a member insurer to fill the unexpired term; vacancies on the board thereafter shall be filled in the same manner as in the original selection and approval. Board members may be reimbursed for reasonable and necessary expenses incurred in connection with the performance of their duties.

(3) A director, officer, employee, agent or other representative of the association or of a member insurer, or the commissioner or his representative shall in no event be individually liable to any person, including the association, for any act or omission to act, or for any liability incurred or assumed, on behalf of the association or by virtue thereof, any such liability so incurred or assumed to be collectible only out of a fund; nor shall any insurer member of the association be subject to any liability except for assessment as in this chapter provided.

(4) The association shall be under the immediate supervision of the commissioner and shall be subject to such provisions of the insurance code of the state of Washington as may be applicable and not inconsistent with the provisions of this chapter.

(5) The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies. [1971 ex.s. c 259 § 4.]

48.32A.050 Powers of the association. The association shall have the power:

(1) To use a seal, to contract, to sue and be sued and, in addition, possess and exercise all powers necessary or convenient for the purposes of this chapter.

(2) With the approval of the commissioner and as provided in RCW 48.32A.060, to assume, reinsure or guarantee or cause to be assumed, reinsured, or guaranteed, partially or wholly, any or all of the policies or contracts of any liquidating domestic life or disability insurer or any policy or contract to which this chapter applies, and to make available from a fund, the creation of which is hereinafter in RCW 48.32A.080 provided, such sum or sums as may be necessary for such purpose.

(3) To carry out the provisions of this section, the association shall have, and may exercise, all necessary rights, powers, privileges, and franchises of a domestic insurer, except that it shall not be authorized to issue contracts or policies unless such contracts or policies are pursuant to contracts and policies representing obligations in whole or in part of the liquidating insurer or of the association.

(4) To borrow money for the purposes of the fund, either with or without security, and pledge such assets in a fund as security for such loans, and in connection therewith, rehypothecate any securities or collateral pledged to it by an insurer. Any notes or other evidence of indebtedness of the association shall be legal investments for domestic insurers and may be carried as admitted assets.

(5) To collect or enforce by legal proceedings, if necessary, the payment of all assessments for which any insurer may be liable under this chapter; and to collect any other debt or obligation due to the association or a fund created in this chapter.

(6) To make bylaws and regulations for the conduct of the affairs of the association, not inconsistent with this chapter. [1971 ex.s. c 259 § 5.]

48.32A.060 Reinsurance, guaranty of policies, contracts. (1) The association shall, subject to such terms and conditions as it may impose with the approval of the commissioner, assume, reinsure, or guarantee the performance of the policies and contracts of any domestic life or disability insurer with respect to which an order of liquidation has been entered by any court of general jurisdiction in the state of Washington, and shall have power to receive, own, and administer any assets acquired in connection with such assumption, reinsurance, or guaranty. The association, as to any such policy or contract under which there is no default in payment of premiums subsequent to such assumption, reinsurance, or guaranty, shall make or cause to be made prompt payment of the benefits due under the terms of the policy or contract.

(2) The association shall make or cause to be made payment of the death, endowment, or disability insurance or annuity benefits due under the terms of each policy or contract insuring the life or health of, or providing annuity or other benefits for, a resident of this state which was issued or assumed by a foreign or alien insurer with respect to which an order of liquidation has been entered by a court of competent jurisdiction in the state or country of its domicile.

(3) In determining benefits to be paid with respect to the policies and contracts of a particular liquidating insurer the board may give due consideration to amounts reasonably recoverable or deductible because of the contingent liability, if any, of policyholders of the insurer (if a mutual insurer) or recoverable because of the assessment liability, if any, of the insurer's stockholders (if a stock insurer).

(4) With respect to an insolvent domestic insurer, the board shall have power to petition the court in which the delinquency proceedings are pending for, and the court shall have authority to order and effectuate, such modifications in the terms, benefits, values, and premiums thereafter to be in effect of policies and contracts of the insurer as may reasonably be necessary to effect a bulk reinsurance of such policies and contract in a solvent insurer.

In the event, after the entry of an order of liquidation, an assessment on the members is necessary to increase the assets of the insolvent company to an extent that a bulk reinsurance of such policies may be effected, the court shall have authority to order such assessment.

(5) In addition to any other rights of the association acquired by assignment or otherwise, the association shall be subrogated to the rights of any person entitled to receive benefits under this chapter against the liquidating insurer, or the receiver, rehabilitator, liquidator, or conservator, as the case may be, under the policy or contract with respect to which a payment is made or guaranteed, or obligation assumed by the association pursuant to this section, and the association may require an assignment to it of such rights by any such persons as a condition precedent to the receipt by such person of payment of any benefits under this chapter.

(6) For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the liquidating insurer to the extent of assets attributable to covered policies and contracts reduced by any amounts to which the association is entitled as a subrogee. All assets of the liquidating insurer attributable to covered policies and contracts shall be used to continue all covered policies and contracts and pay all contractual obligations of the liquidating insurer as required by this chapter. Assets attributable to covered policies and contracts, as used in this subsection, are those in that proportion of the assets which the reserves that should have been established for such policies and contracts bear to the reserves that should have been established for all insurances written by the liquidating insurer.

(7) The association shall have the power to petition the superior court for an order appointing the commissioner as receiver of a domestic insurer upon any of the grounds set forth in RCW 48.31.030. [1975 1st ex.s. c 133 § 2; 1971 ex.s. c 259 § 6.]

48.32A.070 Duplication of benefits prohibited. Whenever a guaranty or payment of proceeds or benefits of a policy or contract otherwise provided for under this chapter is also provided for by a similar law of another jurisdiction, there shall be only one recovery of values or benefits, and the association or their entity established by such law in the domiciliary jurisdiction or state of entry of the liquidating insurer shall be solely responsible for such guaranty and payment. [1971 ex.s. c 259 § 7.]

48.32A.080 Guaranty funds. (1) For purposes of administration and assessment, the association shall establish and maintain four guaranty fund accounts: (a) the life insurance account; (b) the disability insurance account; (c) the annuity account; and (d) the general account.

(2) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessment after thirty days written notice to the member insurers before payment is due.

(3) (a) The amount of any assessment for each account shall be determined by the board, and shall be divided among the accounts in the proportion that the premiums received by the liquidating insurer on the policies or contracts covered by each account bears to the premiums received by such insurer on all covered policies and contracts.

(b) Assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account bears to such premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to a particular liquidating insurer shall not be made until necessary, in the board's opinion, to implement the purposes of this chapter; and in no event shall such an assessment be made with respect to such insurer until an order of liquidation has been entered against the insurer by a court of competent jurisdiction of the insurer's state or country of domicile. Computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determination may not always be possible.

(d) The board may make an assessment of up to fifty dollars for each member insurer to be deposited in the general account and used for administrative and general expenses in carrying out the provisions of this chapter.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of such insurer's premiums in this state on the policies or contracts covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4) of this section, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in an account, does not provide in any one year an amount sufficient to carry out the responsibilities of the association with respect to such account, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(6) The amount in a fund shall be kept at such a sum as in the opinion of the board will enable the association to meet the immediate obligations and liabilities of such fund. Whenever in the opinion of the board the amount in a fund is in excess of such immediate obligations and liabilities, with the approval of the commissioner the association may distribute such excess by retirement of certificates previously issued against the fund. Such distribution shall be made pro rata upon the basis of outstanding certificates, except that by unanimous consent of all directors and with the approval of the commissioner any other reasonable method of retirement of such certificates may be adopted.

(7) As used in this section, "premiums" are those for the calendar year preceding the entry of the order of liquidation as to a particular liquidating insurer, and shall be direct gross insurance premiums and annuity considerations received on policies and contracts to which this chapter applies, less return premiums and considerations and less dividends paid or credited to policyholders.

(8) Upon dissolution of a fund by the repeal of this chapter or otherwise, the fund shall be distributed in the same manner as is provided for the repayment or retirement of certificates. If the amount in the fund at the time of dissolution is in excess of outstanding certificates issued against the fund, such excess shall be distributed among contributing member insurers in such equitable manner as is approved by the commissioner. [1975-'76 2nd ex.s. c 119 § 5; 1971 ex.s. c 259 § 8.]

48.32A.090 Certificates of contribution—Allowance as asset—Offset against premium taxes. (1) The association shall issue to each insurer paying an assessment under this chapter certificates of contribution, in appropriate form and terms as prescribed or approved by the commissioner, for the amounts so paid into the respective funds. All outstanding certificates against a

particular fund shall be of equal dignity and priority without reference to amounts or dates of issue.

(2) An outstanding certificate of contribution shall be shown by the insurer in its financial statements as an admitted asset for such amount and period of time as the commissioner may approve: *Provided*, That unless a longer period has been allowed by the commissioner the insurer shall in any event at its option have the right to so show a certificate of contribution as an admitted asset at percentages of original face amount for calendar years as follows:

- 100% for the calendar year of issuance;
- 90% for the first calendar year after the year of issuance;
- 80% for the second calendar year after the year of issuance;
- 70% for the third calendar year after the year of issuance;
- 60% for the fourth calendar year after the year of issuance;
- 50% for the fifth calendar year after the year of issuance;
- 40% for the sixth calendar year after the year of issuance;
- 30% for the seventh calendar year after the year of issuance;
- 20% for the eighth calendar year after the year of issuance;
- 10% for the ninth calendar year after the year of issuance; and
- 0% for the tenth and subsequent calendar years after the year of issuance.

Notwithstanding the foregoing, if the value of a certificate of contribution is or becomes less than one thousand dollars, the entire amount may be written off by the insurer in that year.

(3) The insurer shall offset the amount written off by it in a calendar year under subsection (2) of this section against its premium tax liability to this state accrued with respect to business transacted in such year.

(4) Any sums recovered by the association representing sums which have theretofore been written off by contributing insurers and offset against premium taxes as provided in subsection (3) of this section, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of the state of Washington.

(5) No distribution to stockholders, if any, of a liquidating insurer shall be made unless and until the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association. [1977 ex.s. c 183 § 2; 1975 1st ex.s. c 133 § 1; 1971 ex.s. c 259 § 9.]

48.32A.100 Taxation. (1) The association shall be exempt from premium tax. Any domestic insurer whose policies or contracts have been assumed, reinsured, or guaranteed by the association under this chapter shall remain liable for premium taxes on all premiums received on policies and contracts issued by it, but payment of such taxes shall be suspended. Payment of or on

account of such taxes shall be made under such terms and conditions as the commissioner may prescribe. No distribution to stockholders, if any, of the liquidating insurer shall be made unless all premium taxes, the payment of which has been suspended hereunder, have been fully paid.

(2) The association shall be exempt from all taxes and fees now or hereafter imposed by the state of Washington or by any county, municipality, or local authority or subdivision; except that any real property owned by the association shall be subject to taxation to the same extent according to its value as other real property is taxed.

(3) Assessments made upon domestic insurers pursuant to a law of another jurisdiction similar to this chapter, shall be excluded from the application of RCW 48.14.040 (retaliatory provision). [1971 ex.s. c 259 § 10.]

48.32A.110 Prohibited use of chapter. No person shall make use in any manner of the protection afforded under this chapter in the solicitation of insurance or annuity business. [1971 ex.s. c 259 § 11.]

48.32A.120 Recapture of excessive dividends to affiliates. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed or existing under such order shall have a right to recover, and upon request of the board or without such request shall take such action as he deems advisable to recover, on behalf of the insurer from any affiliate that controlled it the amount of distributions, other than stock dividends paid by the insurer on its capital stock, at any time during the five years preceding the petition for liquidation or rehabilitation of the insurer subject to the limitations of subsections (2) through (4) of this section.

(2) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate in control of the insurer at the time a distribution was paid shall be liable up to the amount of distribution he received. Any person who was an affiliate in control of the insurer at the time a distribution was declared shall be liable up to the amount of distribution he would have received if it had been paid immediately. If two persons are liable with respect to the same distribution they shall be jointly and severally liable.

(4) The maximum amount recoverable by the receiver under this section shall be the amount needed in excess of all other available assets to pay the contractual obligations of the insurer.

(5) If any person liable under subsection (3) of this section is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the

amount recovered from the insolvent affiliate. [1971 ex.s. c 259 § 12.]

48.32A.900 Short title. This chapter shall be known and may be cited as the Washington Life and Disability Insurance Guaranty Association Act. [1971 ex.s. c 259 § 13.]

48.32A.910 Construction—1971 ex.s. c 259. This chapter shall be liberally construed to effect the purpose stated in RCW 48.32A.010, which shall constitute an aid and guide to interpretation. [1971 ex.s. c 259 § 14.]

48.32A.920 Section headings not part of law. Section headings in this chapter do not constitute any part of the law. [1971 ex.s. c 259 § 15.]

48.32A.930 Severability—1971 ex.s. c 259. If any clause, sentence, paragraph, section or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment has been rendered. [1971 ex.s. c 259 § 17.]

Chapter 48.34

CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE

Sections

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48.34.110	Refunds—Credits—Charges to debtor.
48.34.120	Debtor's right to furnish and obtain own insurance.
48.34.900	Severability—1961 c 219.
48.34.910	Small loan act [Consumer finance act] not affected.

48.34.010 Declaration of purpose—Liberal construction. The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit accident and health insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed. [1961 c 219 § 1.]

48.34.020 Chapter part of insurance code—What insurance subject to chapter. (1) This chapter is a part of the insurance code.

(2) All life insurance and all accident and health insurance in connection with loans or other credit transactions shall be subject to the provisions of this chapter, except such insurance under an individual policy in connection with a loan or other credit transaction of more than ten years duration. Insurance shall not be subject to the provisions of this chapter where its issuance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor. [1969 ex.s. c 241 § 14; 1961 c 219 § 2.]

48.34.030 Definitions. For the purpose of this chapter: (1) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;

(2) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;

(3) "Creditor" means the lender of money or vendor or lessor of goods, services, properties, rights, or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any such lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or a director, officer, or employee of any of them or any other person in any way associated with any of them;

(4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, properties, rights, or privileges for which payment is arranged through a credit transaction;

(5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with the loan or other credit transaction. [1961 c 219 § 3.]

48.34.040 Authorized forms. Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

(1) Individual policies of life insurance issued to debtors on the term plan;

(2) Individual policies of accident and health insurance issued to debtors on a term plan, or disability benefit provisions in individual policies of credit life insurance;

(3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(4) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors, or disability benefit provisions in group credit life insurance policies to provide such coverage. [1961 c 219 § 4.]

48.34.050 Life—Limitation on amount under individual policy. The initial amount of credit life insurance under an individual policy shall not exceed the total amount repayable under the contract of indebtedness. Where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. [1961 c 219 § 5.]

48.34.060 Life—Limitation on amount repayable under group policy. The initial amount of credit life insurance under a group policy shall at no time exceed the amount owed by the debtor which is repayable in installments to the creditor. [1987 c 130 § 1; 1983 1st ex.s. c 32 § 23; 1977 c 61 § 2; 1967 ex.s. c 82 § 1; 1961 c 219 § 6.]

48.34.070 Accident and health—Limitation on amount. The total amount of periodic indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness; and the amount of such periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments. [1961 c 219 § 7.]

48.34.080 Commencement, termination date of term. The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor: *Provided*, That, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen days beyond the scheduled maturity date of indebtedness, except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in RCW 48.34.110. [1961 c 219 § 8.]

48.34.090 Policy or certificate—Contents—Delivery, copy of application or notice in lieu—Substitute insurer, premium, etc., on rejection. (1) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

(2) Each individual policy or group certificate of credit life insurance, and/or credit accident and health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the name or names of the debtor or in the case of a certificate under a group policy, the identity by name or otherwise of the debtor, the premium or amount of payment, if any, by the debtor separately for credit life

insurance and credit accident and health insurance, a description of the coverage including the amount and term thereof, and any exceptions, limitations and restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance exceeds the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate. With respect to any policy issued after September 8, 1975, credit life insurance shall not be subject to any exceptions or reductions other than for fraud, or for suicide occurring within two years of the effective date of the insurance.

(3) The individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as provided in subsections (4) and (5).

(4) If such individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer; the name or names of the debtor; the premium or amount of payment by the debtor, if any, separately for credit life insurance and credit accident and health insurance; the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for, or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument, or agreement, or the application for any such loan, sale or credit, unless the information required by this subsection is prominently set forth therein under a descriptive heading which shall be underlined and printed in capital letters. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in RCW 48.34.080.

(5) If the named insurer does not accept the risk, then the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance an appropriate refund shall be made. [1975 1st ex.s. c 266 § 13; 1961 c 219 § 9.]

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

48.34.100 Filing policies, notices, riders, etc.—Approval by commissioner—Preexisting policies—Forms. (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in

this state and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

(2) No such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, or riders shall be used in this state until approved by the commissioner pursuant to RCW 48.18.100 and RCW 48.18.110. In addition to any grounds for disapproval provided therein, the form shall be disapproved both as to credit life and credit accident and health insurance if the benefits provided therein are not reasonable in relation to the premium charged.

(3) If a group policy of credit life insurance or credit accident and health insurance has been delivered in this state before midnight, June 7, 1961, on the first anniversary date following such time the terms of the policy as they apply to persons newly insured thereafter shall be rewritten to conform with the provisions of this chapter.

(4) If a group policy has been or is delivered in another state before or after August 11, 1969, the forms to be filed by the insurer with the commissioner are the group certificates and notices of proposed insurance delivered or issued for delivery in this state. He shall approve them if:

(a) They provide the information that would be required if the group policy was delivered in this state; and

(b) The applicable premium rates or charges do not exceed those established by his rules or regulations. [1969 ex.s. c 241 § 15; 1961 c 219 § 10.]

48.34.110 Refunds—Credits—Charges to debtor. (1) Each individual policy, or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto. The formula to be used in computing such refund shall be filed with and approved by the commissioner.

(2) If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

(3) The amount charged to a debtor for any credit life or credit accident and health insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined. [1961 c 219 § 11.]

48.34.120 Debtor's right to furnish and obtain own insurance. When the credit life insurance or credit accident and health insurance is required in connection with any credit transaction, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state. [1961 c 219 § 12.]

48.34.900 Severability—1961 c 219. If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the chapter and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby. [1961 c 219 § 13.]

48.34.910 Small loan act [Consumer finance act] not affected. Nothing in this chapter shall be construed to permit any practice prohibited by chapter 31.08 RCW, nor is it intended that this chapter shall amend or repeal any provision of chapter 31.08 RCW, known as the "Small Loan Act". [1961 c 219 § 14.]

*Reviser's note: "Small Loan Act" changed to "consumer finance act" by 1979 c 18. See chapter 31.08 RCW.

Chapter 48.36A

FRATERNAL BENEFIT SOCIETIES

Sections

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48.36A.901 Effective date—1987 c 366.

48.36A.010 Fraternal benefit society defined. Any incorporated society, order, or supreme lodge, without capital stock, including one exempted under the provisions of RCW 48.36A.370(1)(b) whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society. [1987 c 366 § 1.]

48.36A.020 Lodge system—Lodges for children. (1) A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its laws, rules, and ritual. Subordinate lodges shall be required by the laws of the society to hold regular meetings at least once in each month in furtherance of the purposes of the society.

(2) A society may, at its option, organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges shall not be required of the children, nor shall they have a voice or vote in the management of the society. [1987 c 366 § 2.]

48.36A.030 Representative form of government. A society has a representative form of government when:

(1) It has a supreme governing body constituted in one of the following ways:

(a) The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than two-thirds of the votes and not less than the number of votes required to amend the society's laws. The assembly shall be elected and shall meet at least once every four years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws; or

(b) The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board shall constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board shall

meet at least quarterly to conduct the business of the society;

(2) The officers of the society are elected either by the supreme governing body or by the board of directors;

(3) Only benefit members are eligible for election to the supreme governing body and the board of directors; and

(4) Each voting member shall have one vote. No vote may be cast by proxy. [1987 c 366 § 3.]

48.36A.040 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Benefit contract" means the agreement for provision of benefits authorized by RCW 48.36A.160, as that agreement is described in RCW 48.36A.190(1).

(2) "Benefit member" means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

(3) "Certificate" means the document issued as written evidence of the benefit contract.

(4) "Premiums" means premiums, rates, dues or other required contributions by whatever name known, which are payable under the certificate.

(5) "Laws" means the society's articles of incorporation, constitution, and bylaws, however designated.

(6) "Rules" means all rules, regulations, or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.

(7) "Society" means fraternal benefit society, unless otherwise indicated.

(8) "Lodge" means subordinate member units of the society, known as camps, courts, councils, branches, or by any other designation. [1987 c 366 § 4.]

48.36A.050 Beneficial operations—Laws and rules. (1) A society shall operate for the benefit of members and their beneficiaries by:

(a) Providing benefits as specified in RCW 48.36A.160; and

(b) Operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members, which may also be extended to others.

These purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

(2) Every society may adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It may change, alter, add to, or amend such laws and rules and has such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society. [1987 c 366 § 5.]

48.36A.060 Membership classes, rights, grievances.

(1) A society shall specify in its laws or rules:

(a) Eligibility standards for each and every class of membership, provided that if benefits are provided on

the lives of children, the minimum age for adult membership shall be set at not less than age fifteen and not greater than age twenty-one;

(b) The process for admission to membership for each membership class; and

(c) The rights and privileges of each membership class, provided that only benefit members shall have the right to vote on the management of the insurance affairs of the society.

(2) A society may also admit social members who have no voice or vote in the management of the insurance affairs of the society.

(3) Membership rights in the society are personal to the member and are not assignable.

(4) A society may provide in its laws or rules for grievance or complaint procedures for members. [1987 c 366 § 6.]

48.36A.070 Location of office and meetings—Official publications, annual statement. (1) The principal office of any domestic society shall be located in this state. The meetings of its supreme governing body may be held in any state, district, province, or territory where the society has at least one subordinate lodge, or in such other location as determined by the supreme governing body, and all business transacted at the meetings is as valid in all respects as if the meetings were held in this state. The minutes of the proceedings of the supreme governing body and of the board of directors shall be in the English language.

(2) (a) A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Required reports, notices, and statements shall be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

(b) Not later than June 1st of each year, a synopsis of the society's annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society or, in lieu thereof, the synopsis may be published in the society's official publication. [1987 c 366 § 7.]

48.36A.080 Immunity of officers—Indemnification of person responsible—Insurance for liability. (1) The officers and members of the supreme governing body or any subordinate body of a society shall not be personally liable for any benefits provided by a society.

(2) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, the person in connection with or arising out of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that the person is or was a director, officer,

employee, or agent of the society or of any firm, corporation, or organization which the person served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed (a) in relation to any matter in such action, suit, or proceeding as to which the person shall finally be adjudged to be or have been guilty of breach of a duty as a director, officer, employee, or agent of the society; or (b) in relation to any matter in the action, suit, or proceeding, or threat thereof, which has been made the subject of a compromise settlement; unless in either case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that their conduct was unlawful. The determination whether the conduct of the person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in (a) or (b) of this subsection may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to the person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which the person may be entitled as a matter of law and shall inure to the benefit of the person's heirs, executors, and administrators.

(3) A society may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the society, or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization against any liability asserted against the person and incurred by the person in any capacity or arising out of the person's status as such, whether or not the society would have the power to indemnify the person against the liability under this section. [1987 c 366 § 8.]

48.36A.090 Nonwaiver provisions. The laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws of the society. Such provision shall be binding on the society and every member and beneficiary of a member. [1987 c 366 § 9.]

48.36A.100 Formation of domestic society—Procedures and requirements. A domestic society organized on or after January 1, 1988, shall be formed as follows, but not until it has surplus in the minimum amount of total capital and surplus required by RCW 48.05.340:

(1) Seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign, and

acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(a) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(b) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. The purposes shall not include more liberal powers than are granted by this chapter;

(c) The names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all the officers shall be elected by the supreme governing body, which election shall be held not later than one year from the date of issuance of the permanent certificate of authority.

(2) The articles of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with the commissioner, who may require further information as the commissioner deems necessary. The bond with sureties approved by the commissioner shall be in an amount, not less than three hundred thousand dollars nor more than one million five hundred thousand dollars as required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain, and file the articles of incorporation and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

(3) No preliminary certificate of authority granted under the provisions of this section shall be valid after one year from its date or after a further period, not exceeding one year, as may be authorized by the commissioner upon cause shown, unless the five hundred applicants required by subsection (4) of this section have been secured and the organization has been completed under this chapter. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business under this chapter.

(4) Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount collected. No society shall incur any liability other than for the return of the advance

premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:

(a) Actual bona fide applications for benefits have been secured on not less than five hundred applicants, and any necessary evidence of insurability has been furnished to and approved by the society;

(b) At least ten subordinate lodges have been established into which the five hundred applicants have been admitted;

(c) There has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted, and premiums therefor; and

(d) It has been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of the society, that at least five hundred applicants have each paid in cash at least one regular monthly premium and the total amount of collected premiums equals at least one hundred fifty thousand dollars. The advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within one year, the premiums shall be returned to the applicants.

(5) The commissioner may make such examination and require such further information as the commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of this chapter, the commissioner shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate of authority shall be prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall cause a record of the certificate of authority to be made. A certified copy of the record may be given in evidence with like effect as the original certificate of authority.

(6) Any incorporated society authorized to transact business in this state at the time this chapter becomes effective shall not be required to reincorporate. [1987 c 366 § 10.]

48.36A.110 Amendment of society's laws. (1) A domestic society may amend its laws in accordance with the provisions thereof by action of its supreme governing body at any regular or special meeting thereof or, if its laws so provide, by referendum. The referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within six months from the date of submission, a majority of the members voting shall have signified their consent to the amendment by one of the specified methods.

(2) No amendment to the laws of any domestic society shall take effect unless approved by the commissioner. The commissioner shall approve the amendment if the commissioner finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects, and purposes of the society. Unless the commissioner disapproves any amendment within sixty days after the filing of same, the amendment shall be considered approved. The approval or disapproval by the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case the commissioner disapproves the amendment, the reasons for the disapproval shall be stated in the written notice.

(3) Within ninety days from the approval by the commissioner, all amendments, or a synopsis thereof, shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that the amendments or synopsis thereof, have been furnished to the addressee.

(4) Every foreign or alien society authorized to do business in this state shall file with the commissioner a certified copy of all amendments of, or additions to, its laws within ninety days after their enactment.

(5) Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of their legal adoption. [1987 c 366 § 11.]

48.36A.120 Not-for-profit institutions authorized—Funeral homes prohibited. (1) A society may create, maintain, and operate, or establish organizations to operate, not-for-profit institutions to further the purposes permitted by RCW 48.36A.050(1)(b). The institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held or leased by the society for this purpose shall be reported in every annual statement.

(2) No society shall own or operate funeral homes or undertaking establishments. [1987 c 366 § 12.]

48.36A.130 Reinsurance. (1) A domestic society may, by a reinsurance agreement, transfer any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make such reinsurance and authorized to do business in this state, or if not so authorized, one which is approved by the commissioner, but no domestic society may reinsure substantially all of its insurance in force without the written permission of the commissioner. It may take credit for the reserves on the transferred risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a transferring society for reinsurance made, transferred, renewed, or otherwise becoming effective after January

1, 1988, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the transferring society under the contract or contracts reinsured without diminution because of the insolvency of the transferring society.

(2) Notwithstanding the limitation in subsection (1) of this section, a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under RCW 48.36A.140. [1987 c 366 § 13.]

48.36A.140 Consolidation and merger. (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the commissioner:

(a) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) A sworn statement by the president and secretary or corresponding officers of each society showing their financial condition on a date fixed by the commissioner but not earlier than December 31st next preceding the date of the contract;

(c) A certificate of the officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, such vote being conducted at a regular or special meeting of each such body, or, if the society's laws so permit, by mail; and

(d) Evidence that at least sixty days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

(2) If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate to that effect. Upon approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event, the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state or territory and a certificate of such approval is filed with the commissioner of this state or, if the laws of the state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of insurance of the state or territory and a certificate of such approval is filed with the commissioner of this state.

(3) Upon the consolidation or merger becoming effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every species of property, real, personal, or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and

the title to any real estate or interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after the consolidation or merger.

(4) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that the notice or document has been duly addressed and mailed, shall be prima facie evidence that the notice or document has been furnished to the addressees. [1987 c 366 § 14.]

48.36A.150 Conversion to mutual life insurance company. Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the insurance laws of this state for mutual life insurance companies. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of such plan, or if the society is organized under the direct election method pursuant to RCW 48.36A.030(1)(b), the plan of conversion shall be submitted by mail to the benefit members or the plan may be published in the official publication authorized by RCW 48.36A.070(2)(a). The affirmative vote of two-thirds of the benefit members voting thereon shall be necessary for the approval of the plan. No conversion shall take effect unless and until approved by the commissioner who may give approval if the commissioner finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society. [1987 c 366 § 15.]

48.36A.160 Contractual benefits. (1) A society may provide the following contractual benefits in any form:

- (a) Death benefits;
- (b) Endowment benefits;
- (c) Annuity benefits;
- (d) Temporary or permanent disability benefits;
- (e) Hospital, medical, or nursing benefits;
- (f) Monument or tombstone benefits to the memory of deceased members; and

(g) Such other benefits as authorized for life insurers and which are not inconsistent with this chapter.

(2) A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in subsection (1) of this section, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person. [1987 c 366 § 16.]

48.36A.170 Designation of beneficiary—Funeral benefits. (1) The owner of a benefit contract shall have the right at all times to change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically

requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that no revocable beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.

(2) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, provided the portion paid shall not exceed the sum of one thousand dollars.

(3) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds shall be payable, the amount of the benefit, except to the extent that funeral benefits may be paid under this section, shall be payable to the personal representative of the deceased insured, provided that if the owner of the certificate is other than the insured, the proceeds shall be payable to the owner. [1987 c 366 § 17.]

48.36A.180 Protection of benefits. No money or other benefit, charity, relief, or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society. [1987 c 366 § 18.]

48.36A.190 Benefit certificates—Impaired reserves. (1) Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision shall be void.

(2) Except as provided in RCW 48.36A.220, any changes, additions, or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate, shall bind the owner and the beneficiaries, and shall govern and control the benefit contract in all respects the same as though the changes, additions, or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

(3) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(4) Except as provided in RCW 48.36A.220, a society shall provide in its laws that if its reserves as to all or any class of certificates become impaired, its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board, and that if the payment is not made, either (a) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or (b) in lieu of or in combination with (a) of this subsection, the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(5) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(6) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from January 1, 1988, shall be approved by the commissioner and shall meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificates shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(7) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith.

Ownership rights prior to the transfer shall be specified in the certificate.

(8) A society may specify the terms and conditions on which benefit contracts may be assigned. [1987 c 366 § 19.]

48.36A.200 Paid-up nonforfeiture benefits and cash surrender values. (1) For certificates issued prior to one year after January 1, 1988, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall comply with the provisions of law applicable immediately prior to January 1, 1988.

(2) For certificates issued on or after one year from January 1, 1988, for which reserves are computed on the commissioner's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial table or the commissioner's 1958 standard ordinary mortality table, or the commissioner's 1980 standard mortality table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits based upon such tables.

(3) For annuity certificates issued on or after one year from January 1, 1988, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing annuities. [1987 c 366 § 20.]

48.36A.210 Authorized investments. A society shall invest its funds only in investments that are authorized by the laws of this state for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated, shall be deemed to have met the requirements of this section for the investment of funds. [1987 c 366 § 21.]

48.36A.220 Assets—Investment and disbursement. (1) All assets shall be held, invested, and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment on the surrender of any part thereof, except as provided in the benefit contract.

(2) A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

(3) A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to all the provisions of law regulating life insurers establishing such accounts and issuing such contracts, as provided in chapter 48.18A RCW. To the

extent the society deems it necessary in order to comply with any applicable federal or state laws, or any rules issued thereunder, the society may adopt special procedures for the conduct of the business and affairs of a separate account, may, for persons having beneficial interests therein, provide special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account, and may issue contracts on a variable basis to which RCW 48.36A.190 (2) and (4) shall not apply. [1987 c 366 § 22.]

48.36A.230 Chapter exclusive. Societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state unless they are expressly designated therein, or unless it is specifically made applicable by this chapter. [1987 c 366 § 23.]

48.36A.240 Funds tax exempt, exception. Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax, other than taxes on real estate and office equipment. [1987 c 366 § 24.]

48.36A.250 Valuation standards—Reserves. (1) Standards of valuation for certificates issued prior to one year after January 1, 1988, shall be those provided by the laws applicable immediately prior to January 1, 1988.

(2) The minimum standards of valuation for certificates issued on or after one year from January 1, 1988, shall be based on the following tables:

(a) For certificates of life insurance: The commissioner's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers;

(b) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits, and for noncancellable accident and health benefits: Such tables as are authorized for use by life insurers in this state.

All of the above shall be under valuation methods and standards, including interest assumptions, in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits.

(3) The commissioner may, in the commissioner's discretion, accept other standards for valuation if the commissioner finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner may, in the commissioner's discretion, vary the standards of mortality applicable

to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.

(4) Any society, with the consent of the commissioner of insurance of the state of domicile of the society and under the conditions, if any, which the commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves required by this section, but the contractual rights of any benefit member shall not be affected thereby. [1987 c 366 § 25.]

48.36A.260 Annual financial statement. (1) Every society transacting business in this state shall annually, on or before the first day of March, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a fee of ten dollars for filing. The statement shall be in general form and context as approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(2) As part of the required annual statement, each society shall, on or before the first day of March, file with the commissioner a valuation of its certificates in force on December 31st last preceding, provided the commissioner may, in the commissioner's discretion for cause shown, extend the time for filing the valuation for not more than two calendar months. The valuation shall be done in accordance with the standards specified in RCW 48.36A.250. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(3) A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars for each day during which the neglect continues, and, upon notice by the commissioner, its authority to do business in this state shall cease while the default continues. [1987 c 366 § 26.]

48.36A.270 Licenses and renewals—Fees—Existing societies. Societies which are now authorized to transact business in this state may continue the business until April 1, 1988. The authority of the societies and all societies licensed under this chapter, may be renewed annually, but in all cases to terminate on April 1st each year. However, a license so issued shall continue in full force and effect until the new license is issued or specifically refused. For each license or renewal the society shall pay the commissioner the fee established pursuant to RCW 48.14.010, subject to the retaliatory provision of RCW 48.14.040. A certified copy or duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter. [1987 c 366 § 27.]

48.36A.280 Examinations. (1) The commissioner, or any person the commissioner may appoint, may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized by chapter 48.03 RCW. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers shall also be applicable to the examination of societies.

(2) The expense of each examination and of each valuation, including the compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued. The payments shall be made upon receipt of statements furnished by the commissioner. [1987 c 366 § 28.]

48.36A.290 License required—Obtaining. No foreign or alien society shall transact business in this state without a license issued by the commissioner. Any society desiring admission to this state shall comply substantially with the requirements and limitations of this chapter applicable to domestic societies. A society may be licensed to transact business in this state upon filing with the commissioner:

(1) A duly certified copy of its articles of incorporation;

(2) A copy of its bylaws, certified by its secretary or corresponding officer;

(3) A power of attorney to the commissioner as prescribed in RCW 48.36A.410;

(4) A statement of its business under oath by its president and secretary, or corresponding officers, in a form prescribed by the commissioner, verified by an examination made by the supervising insurance official of its home state or other state, territory, province, or country, satisfactory to the commissioner;

(5) Certification from the proper official of its home state, territory, province, or country that the society is legally incorporated and licensed to transact business;

(6) Copies of its certificate forms; and

(7) Such other information as the commissioner may deem necessary;

and upon a showing that its assets are invested in accordance with the provisions of this chapter. [1987 c 366 § 29.]

48.36A.300 Deficiencies, noncompliance by domestic societies—Injunctions—Liquidation, receiver. (1) When the commissioner, upon investigation, finds that a domestic society:

(a) Has exceeded its powers;

(b) Has failed to comply with any provision of this chapter;

(c) Is not fulfilling its contracts in good faith;

(d) Has a membership of less than four hundred after an existence of one year or more; or

(e) Is conducting business fraudulently or in a manner hazardous to its members, creditors, the public, or the business;

the commissioner shall notify the society of the deficiency or deficiencies and state in writing the reasons for

the commissioner's dissatisfaction. The commissioner shall immediately issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected. After the notice the society shall have thirty days in which to comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of such findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of is corrected, or why other appropriate action should not be commenced against the society.

(2) If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the commissioner may present the facts to the attorney general who shall, if the attorney general deems the circumstances warrant, commence an action to enjoin the society from transacting business or other appropriate action.

(3) The court shall notify the officers of the society of a hearing. If after a full hearing it appears that the society should be enjoined, liquidated, or a receiver appointed, the court shall enter the necessary order. No society so enjoined shall have the authority to do business until:

(a) The commissioner finds that the violation complained of has been corrected;

(b) The costs of such action have been paid by the society if the court finds that the society was in default as charged;

(c) The court has dissolved its injunction; and

(d) The commissioner has reinstated the certificate of authority.

(4) If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto.

(5) No action under this section shall be maintained in any court of this state unless brought by the attorney general upon request of the commissioner. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner as the receiver.

(6) The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner of insurance, hearing by the court, injunction, and receivership, shall be applicable to a society which voluntarily discontinues business. [1987 c 366 § 30.]

48.36A.310 Deficiencies, noncompliance by foreign societies—Actions against license. (1) When the commissioner, upon investigation, finds that a foreign or alien society transacting or applying to transact business in this state:

(a) Has exceeded its powers;

(b) Has failed to comply with any of the provisions of this chapter;

(c) Is not fulfilling its contracts in good faith; or

(d) Is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public;

the commissioner shall notify the society of the deficiency or deficiencies and state in writing the reasons for the commissioner's dissatisfaction. The commissioner shall immediately issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected. After the notice the society shall have thirty days in which to comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of such findings of noncompliance and require the society to show cause on a date named why its license should not be suspended, revoked, or refused. If on such date the society does not present good and sufficient reasons why its authority to do business in this state should not be suspended, revoked, or refused, the commissioner may suspend or refuse the license of the society to do business in this state until satisfactory evidence is furnished to the commissioner that the suspension or refusal should be withdrawn or the commissioner may revoke the authority of the society to do business in this state.

(2) Nothing in this section shall prevent a society from continuing, in good faith, all contracts made in this state during the time the society was legally authorized to transact business herein. [1987 c 366 § 31.]

48.36A.320 Requirements for injunction. No application or petition for injunction against any domestic, foreign, or alien society, or lodge thereof, shall be maintained in any court of this state unless made by the attorney general upon request of the commissioner. [1987 c 366 § 32.]

48.36A.330 Agents. (1) Agents of societies shall be licensed in accordance with the applicable provisions of chapter 48.17 RCW regulating the licensing, revocation, suspension, or termination of licenses of resident and nonresident agents. Persons who are so authorized by a fraternal benefit society for a period of one year immediately prior to June 13, 1963, shall not be required to take and pass an examination as required by RCW 48.17.110.

(2) The following individuals shall not be deemed an agent of a fraternal benefit society within the provisions of subsection (1) of this section:

(a) Any regular salaried officer or employee of a licensed society who devotes substantially all of their services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(b) Any agent or representative of a society who devotes, or intends to devote, less than fifty percent of their time to the solicitation and procurement of insurance contracts for such society: *Provided*, That any person who in the preceding calendar year has solicited and

procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars shall be conclusively presumed to be devoting, or intending to devote, fifty percent of the person's time to the solicitation or procurement of insurance contracts for such society. [1987 c 366 § 33.]

48.36A.340 Unfair trade practices. (1) Except as provided in subsection (2) of this section, every society authorized to do business in this state shall be subject to the provisions of chapter 48.30 RCW relating to unfair trade practices.

(2) Nothing in chapter 48.30 RCW shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society. [1987 c 366 § 34.]

48.36A.350 Service of process upon commissioner. (1) Every society authorized to do business in this state shall:

(a) Appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served;

(b) Agree in writing that any lawful process against it which is served on the commissioner shall be of the same legal force and validity as if served upon the society; and

(c) Agree that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by said commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original.

(2) Service shall only be made upon the commissioner, or if absent, upon the person in charge of the commissioner's office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No service shall require a society to file its answer, pleading, or defense in less than forty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner provided in this section. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner the fee established pursuant to RCW 48.05.210. [1987 c 366 § 35.]

48.36A.360 Penalties. (1) Any person who wilfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society, shall upon conviction be fined not less than one hundred dollars nor more than five hundred dollars or imprisonment in the county jail not less than thirty days nor more than one year, or both.

(2) Any person who wilfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of false swearing and shall be subject to the penalties under RCW 9A.72.040.

(3) Any person who solicits membership for, or in any manner assists in procuring membership in, any society not licensed to do business in this state shall be guilty of a misdemeanor and upon conviction be fined not less than fifty dollars nor more than two hundred dollars.

(4) Any person guilty of a wilful violation of, or neglect or refusal to comply with, the provisions of this chapter for which a penalty is not otherwise prescribed, shall upon conviction, be subject to a fine not exceeding two hundred dollars. [1987 c 366 § 36.]

48.36A.370 Exemptions. (1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) Grand or subordinate lodges of Masons, Odd Fellows, Improved Order of Red Men, Fraternal Order of Eagles, Loyal Order of Moose, or Knights of Pythias, exclusive of the insurance department of the Supreme Lodge of Knights of Pythias, the Grand Aerie Fraternal Order of Eagles, and the Junior Order of United American Mechanics, exclusive of the beneficiary degree of insurance branch of the National Council Junior Order [of] United American Mechanics, or similar societies which do not issue insurance certificates;

(b) Orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies' societies or ladies' auxiliaries to such orders, societies, or associations;

(c) Any association of local lodges of a society now doing business in this state which provides death benefits not exceeding three hundred dollars to any one person, or disability benefit not exceeding three hundred dollars in any one year to any one person, or both; or any contracts of reinsurance business on such plan in this state;

(d) Domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house, or corporation;

(e) Domestic lodges, orders, or associations of a purely religious, charitable, and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred fifty dollars to any one person in any one year: *Provided*, That any such domestic order or society which has more than five hundred members and provides for death or disability benefits, and any such domestic lodge, order, or society which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all the requirements of this chapter.

The commissioner may require from any society such information as will enable the commissioner to determine whether the society is exempt from the provisions of this chapter.

(2) No society, which is exempt by the provisions of this section from the requirements of this chapter shall give or allow or promise to give or allow to any person any compensation for procuring new members.

(3) Any fraternal benefit society, heretofore organized and incorporated and operating as set forth in RCW 48.36A.010, 48.36A.020, and 48.36A.030, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay other death or sick benefits, may be licensed under the provisions of this chapter, and shall have all the privileges and shall be subject to all the provisions and regulations of this chapter, except that the provisions of this chapter requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits, shall not apply to such society.

(4) The commissioner may require from any society or association, by examination or otherwise, such information as will enable the commissioner to determine whether the society or association is exempt from the provisions of this chapter.

(5) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this state. [1987 c 366 § 37.]

48.36A.380 World War I societies. Any corporation, society, order, or voluntary association operating as set forth in RCW 48.36A.010, 48.36A.020, and 48.36A.030, organized during the war in which the United States entered on April 6, 1917, with the purposes of assisting the government of the United States in maintaining and increasing the production of commodities essential for the prosecution of that war, and of developing loyalty to the United States, or whose membership is limited to veterans of that war, may be licensed under the provisions of this chapter and shall have all the privileges and shall be subject to all the provisions and regulations of this chapter, except that the provisions of this chapter requiring death benefits of at least one thousand dollars, medical examinations, and valuations of benefit certificates, shall not apply to such society, but the society may provide benefits in case of death or disability resulting solely from accidents in an amount not exceeding one thousand dollars and may also provide for death or funeral benefits, or both, not exceeding one hundred dollars each, and for sick or disability benefits not exceeding five hundred dollars to any one person, in any one year. Any corporation, society, order, or voluntary association organized under the provisions of this section shall file with the insurance commissioner a copy of all its rates and policy forms. Rates and policy forms must be approved by the insurance commissioner before becoming effective. All rates and forms approved by the commissioner shall be observed by the society until amended rates or forms shall have been filed with and approved by the insurance commissioner. [1987 c 366 § 38.]

48.36A.390 Fraternal mutual insurers. (1) A domestic mutual property insurer which is affiliated with and is comprised exclusively of members of a specified fraternal society that conducts its business and secures its membership on the lodge system, having ritualistic work and ceremonies, is herein designated as a fraternal mutual insurer.

(2) Only fraternal mutual property insurers which were authorized insurers immediately prior to October 1, 1947, may hereafter be so authorized.

(3) A fraternal mutual insurer shall be subject to the applicable provisions of this title governing domestic mutual insurers except only as to the provisions relative to taxes, fees, and licenses. The bylaws of such insurer shall be as adopted or amended by majority vote of its members present at a duly held meeting of its members, and a copy thereof shall be filed with the commissioner. Such an insurer shall pay for its annual license and filing its annual statement, the sum of ten dollars. Such an insurer shall pay the expense of examinations of it by the commissioner. The payment shall be made upon receipt of statements furnished by the commissioner.

(4) A fraternal mutual insurer may insure corporations, associations, and firms owned by and affiliated with such society and operated for the benefit of its members, and may insure corporations and firms a majority of whose shareholders or members are members of such society.

(5) A fraternal mutual insurer shall participate in and accept its equitable share of insurance to be issued to applicants under any assigned risk plan operating pursuant to RCW 48.22.020, and may participate in and accept its equitable share of insurance to be issued to applicants under any similar plan lawfully existing in any state in which the insurer is authorized to transact insurance, notwithstanding that the applicants are not otherwise qualified for insurance under subsection (4) of this section. Applicants who are not qualified by membership or otherwise for acceptance by the insurer, shall be so assigned to the insurer except to make up the deficiency, if any, between the number of qualified applicants available for assignment and the maximum quota of applicants to be assigned to the insurer within the current period.

(6) A fraternal mutual insurer doing business on the assessment premium plan:

(a) Shall be exempt also from the provisions of this chapter governing financial qualifications;

(b) Shall not be authorized to transact any kind of insurance other than property insurance, nor have authority to accept reinsurance.

(7) A fraternal mutual insurer doing business on the cash premium plan:

(a) May be authorized to transact additional kinds of insurance, other than life or title insurance, subject to the same requirements as to surplus funds and reserves as apply to domestic mutual insurers on the cash premium plan;

(b) May accept reinsurance only of such kinds of insurance as it is authorized to transact direct and only from insurers likewise affiliated with and composed

solely of the members of the same designated fraternal society. [1987 c 366 § 39.]

48.36A.400 Fraternal mutual life insurers. (1) A mutual life insurer which is affiliated with and insures exclusively members of a specified fraternal society, which society conducts its business and secures its membership on the lodge system, having ritualistic work and ceremonies, is herein designated as a fraternal mutual life insurer.

(2) Such an insurer shall be subject to the applicable provisions of this title governing mutual life insurers except only as to the provisions relative to annual meeting, taxes, fees, and licenses. Such an insurer shall pay for its annual license and filing its annual statement, the sum of ten dollars. Such an insurer shall pay the expense of examinations of it by the commissioner, upon statement furnished by the commissioner. [1987 c 366 § 40.]

48.36A.410 Review of commissioner's decisions and findings. All decisions and findings of the commissioner made under the provisions of this chapter shall be subject to review as provided in chapter 34.05 RCW. [1987 c 366 § 41.]

48.36A.900 Severability—1987 c 366. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1987 c 366 § 43.]

48.36A.901 Effective date—1987 c 366. This act shall take effect January 1, 1988. [1987 c 366 § 45.]

Chapter 48.38

CHARITABLE GIFT ANNUITY BUSINESS

Sections	
48.38.010	Certificate of exemption—Qualification for—Application, contents—"Qualified actuary" defined.
48.38.020	Reserve fund—Minimum contents—Revocation of certificate upon violation.
48.38.030	Charitable annuity contract or policy form—Contents.
48.38.040	Certificate holder as exempt from title provisions.
48.38.050	Grounds for denial, revocation, or suspension of certificate of exemption.
48.38.060	Hearings and appeals provisions inapplicable.
48.38.070	Enforcement powers and duties.

48.38.010 Certificate of exemption—Qualification for—Application, contents—"Qualified actuary" defined. The commissioner may grant a certificate of exemption to any insurer or educational, religious, charitable, or scientific institution conducting a charitable gift annuity business:

(1) Which is organized and operated exclusively as, or for the purpose of aiding, an educational, religious, charitable, or scientific institution which is organized as a nonprofit organization without profit to any person, firm, partnership, association, corporation, or other entity;

(2) Which possesses a current tax exempt status under the laws of the United States;

(3) Which serves such purpose by issuing charitable gift annuity contracts only for the benefit of such educational, religious, charitable, or scientific institution;

(4) Which appoints the insurance commissioner as its true and lawful attorney upon whom may be served lawful process in any action, suit, or proceeding in any court, which appointment shall be irrevocable, shall bind the insurer or institution or any successor in interest, shall remain in effect as long as there is in force in this state any contract made or issued by the insurer or institution, or any obligation arising therefrom, and shall be processed in accordance with RCW 48.05.210;

(5) Which is fully and legally organized and qualified to do business and has been actively doing business under the laws of the state of its domicile for a period of at least three years prior to its application for a certificate of exemption;

(6) Which files with the insurance commissioner its application for a certificate of exemption showing:

(a) Its name, location, and organization date;

(b) The kinds of charitable annuities it proposes to offer;

(c) A statement of the financial condition, management, and affairs of the organization and any affiliate thereof, as that term is defined in RCW 48.31A.010, on a form satisfactory to, or furnished by the insurance commissioner;

(d) Such other documents, stipulations, or information as the insurance commissioner may reasonably require to evidence compliance with the provisions of this chapter;

(7) Which subjects itself and any affiliate thereof, as that term is defined in RCW 48.31A.010, to periodic examinations as may be deemed necessary by the insurance commissioner;

(8) Which files with the insurance commissioner for the commissioner's advance approval a copy of any policy or contract form to be offered or issued to residents of this state. The grounds for disapproval of the policy or contract form shall be those set forth in RCW 48.18-.110; and

(9) Which:

(a) Files with the insurance commissioner on or before March 1 of each year a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, including the annual statement or other such financial materials as may be requested relating to any affiliate, as that term is defined in RCW 48.31A.010; and

(b) Coincident with the filing of its annual statement, pays an annual filing fee of twenty-five dollars plus five dollars for each charitable gift annuity contract written for residents of this state during the previous calendar year; and

(c) Which includes on or attaches to the first page of the annual statement the statement of a qualified actuary setting forth the actuary's opinion relating to annuity reserves and other actuarial items. "Qualified actuary" as used in this subsection means a member in

good standing of the American academy of actuaries or a person who has otherwise demonstrated actuarial competence to the satisfaction of the insurance regulatory official of the domiciliary state. [1979 c 130 § 6.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.020 Reserve fund—Minimum contents—Revocation of certificate upon violation. (1) Upon granting to such insurer or institution under RCW 48.38.010 a certificate of exemption to conduct a charitable gift annuity business, the insurance commissioner shall require it to establish and maintain a reserve fund adequate to meet the future payments under its charitable gift annuity contracts and, in any event, the reserve fund shall not be less than an amount computed in accordance with the standard of valuation based on the 1971 individual annuity mortality table, or any modification of this table approved by the insurance commissioner, with six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity contracts.

(2) For any failure on its part to establish and maintain the reserve fund, the insurance commissioner shall revoke its certificate of exemption. [1979 c 130 § 7.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.030 Charitable annuity contract or policy form—Contents. Each charitable annuity contract or policy form shall include the following information:

(1) The value of the property to be transferred;

(2) The amount of the annuity to be paid to the transferor or the transferor's nominee;

(3) The manner in which and the intervals at which payment is to be made;

(4) The age of the person during whose life payment is to be made; and

(5) The reasonable value as of the date of the agreement of the benefits thereby created. This value shall not exceed by more than fifteen percent the net single premium for the benefits, determined in accordance with the standard of valuation set forth in RCW 48.38.020(1). [1979 c 130 § 8.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.040 Certificate holder as exempt from title provisions. An insurer or institution holding a certificate of exemption under this chapter shall be exempt from all other provisions of this title except as specifically enumerated in this chapter by reference. [1979 c 130 § 9.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.050 Grounds for denial, revocation, or suspension of certificate of exemption. The insurance commissioner may refuse to grant, or may revoke or suspend, a certificate of exemption if the insurance commissioner finds that the insurer or institution does not meet the requirements of this chapter or if the insurance commissioner finds that the insurer or institution has violated RCW 48.01.030 or any provisions of chapter 48.30 RCW. [1979 c 130 § 10.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.060 Hearings and appeals provisions inapplicable. For purposes of this chapter, the provisions of chapter 48.04 RCW are applicable. [1979 c 130 § 11.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.070 Enforcement powers and duties. For the purposes of this chapter, the insurance commissioner has the same powers and duties of enforcement as are provided in RCW 48.02.080. [1979 c 130 § 12.]

Severability—1979 c 130: See note following RCW 28B.10.485.

Chapter 48.41

HEALTH INSURANCE COVERAGE ACCESS ACT

Sections

48.41.010	Short title.
48.41.020	Intent.
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48.41.100	Eligibility for coverage.
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48.41.120	Deductibles—Coinsurance—Carryover.
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48.41.170	Required rule-making.
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48.41.200	Rates—Standard risk and maximum.
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48.41.900	Federal supremacy.
48.41.910	Severability—1987 c 431.

48.41.010 Short title. This chapter shall be known and may be cited as the "Washington state health insurance coverage access act". [1987 c 431 § 1.]

48.41.020 Intent. It is the purpose and intent of the legislature to provide access to health insurance coverage to all residents of Washington who are denied adequate health insurance for any reason. It is the intent of the legislature that adequate levels of health insurance coverage be made available to residents of Washington who are otherwise considered uninsurable or who are underinsured. It is the intent of the Washington state health insurance coverage access act to provide a mechanism to insure the availability of comprehensive health insurance to persons unable to obtain such insurance coverage on either an individual or group basis directly under any health plan. [1987 c 431 § 2.]

48.41.030 Definitions. As used in this chapter, the following terms have the meaning indicated, unless the context requires otherwise:

(1) "Accounting year" means a twelve-month period determined by the board for purposes of record-keeping and accounting. The first accounting year may be more or less than twelve months and, from time to time in subsequent years, the board may order an accounting year of other than twelve months as may be required for orderly management and accounting of the pool.

(2) "Administrator" means the entity chosen by the board to administer the pool under RCW 48.41.080.

(3) "Board" means the board of directors of the pool.

(4) "Commissioner" means the insurance commissioner.

(5) "Health care facility" has the same meaning as in RCW 70.38.025.

(6) "Health care provider" means any physician, facility, or health care professional, who is licensed in Washington state and entitled to reimbursement for health care services.

(7) "Health care services" means services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(8) "Health insurance" means any group or individual disability insurance policy, health care service contract, and health maintenance agreement, except those contracts entered into for the provision of health care services pursuant to Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term care, long-term care, dental, vision, accident, fixed indemnity, disability income contracts, civilian health and medical program for the uniform services (CHAMPUS), 10 U.S.C. 55, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of the worker's compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(9) "Health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under this pool, have access to hospital and medical benefits or reimbursement including any group or individual disability insurance policy; health care service contract; health maintenance agreement; uninsured arrangements of group or group-type contracts including employer self-insured, cost-plus, or other benefit methodologies not involving insurance or not governed by Title 48 RCW; coverage under group-type contracts which are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits. This term includes coverage through "health insurance" as defined under this section, and specifically excludes those types of programs excluded under the definition of "health insurance" in subsection (8) of this section.

(10) "Insured" means any individual resident of this state who is eligible to receive benefits from any member, or other health plan.

(11) "Medical assistance" means coverage under Title XIX of the federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter 74.09 RCW.

(12) "Medicare" means coverage under Title XVIII of the Social Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

(13) "Member" means any commercial insurer which provides disability insurance, any health care service contractor, and any health maintenance organization licensed under Title 48 RCW. "Member" shall also mean, as soon as authorized by federal law, employers and other entities, including a self-funding entity and employee welfare benefit plans that provide health plan benefits in this state on or after May 18, 1987. "Member" does not include any insurer, health care service contractor, or health maintenance organization whose products are exclusively dental products or those products excluded from the definition of "health insurance" set forth in subsection (8) of this section.

(14) "Plan of operation" means the pool, including articles, by-laws, and operating rules, adopted by the board pursuant to RCW 48.41.050.

(15) "Pool" means the Washington state health insurance pool as created in RCW 48.41.040.

(16) "Substantially equivalent health plan" means a "health plan" as defined in subsection (9) of this section which, in the judgment of the board or the administrator, offers persons including dependents or spouses covered or making application to be covered by this pool an overall level of benefits deemed approximately equivalent to the minimum benefits available under this pool. [1989 c 121 § 1; 1987 c 431 § 3.]

48.41.040 Health insurance pool—Creation, membership, organization, operation, rules. (1) There is hereby created a nonprofit entity to be known as the Washington state health insurance pool. All members in this state on or after May 18, 1987, shall be members of the pool. When authorized by federal law, all self-insured employers shall also be members of the pool.

(2) Pursuant to chapter 34.05 RCW the commissioner shall, within ninety days after May 18, 1987, give notice to all members of the time and place for the initial organizational meetings of the pool. A board of directors shall be established, which shall be comprised of nine members. The commissioner shall select three members of the board who shall represent (a) the general public, (b) health care providers, and (c) health insurance agents. The remaining members of the board shall be selected by election from among the members of the pool. The elected members shall, to the extent possible, include at least one representative of health care service contractors, one representative of health maintenance organizations, and one representative of commercial insurers which provides disability insurance. When self-insured organizations become eligible for participation in the pool, the membership of the board shall be increased

to eleven and at least one member of the board shall represent the self-insurers.

(3) The original members of the board of directors shall be appointed for intervals of one to three years. Thereafter, all board members shall serve a term of three years. Board members shall receive no compensation, but shall be reimbursed for all travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The board shall submit to the commissioner a plan of operation for the pool and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing pursuant to chapter 34.05 RCW, approve the plan of operation if it is determined to assure the fair, reasonable, and equitable administration of the pool and provides for the sharing of pool losses on an equitable, proportionate basis among the members of the pool. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this chapter must be made available. If the board fails to submit a plan of operation within one hundred eighty days after the appointment of the board or any time thereafter fails to submit acceptable amendments to the plan, the commissioner shall, within ninety days after notice and hearing pursuant to chapters 34.05 and 48.04 RCW, adopt such rules as are necessary or advisable to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the board and approved by the commissioner. [1989 c 121 § 2; 1987 c 431 § 4.]

48.41.050 Operation plan—Contents. The plan of operation submitted by the board to the commissioner shall:

(1) Establish procedures for the handling and accounting of assets and moneys of the pool;

(2) Establish regular times and places for meetings of the board of directors;

(3) Establish procedures for records to be kept of all financial transactions and for an annual fiscal reporting to the commissioner;

(4) Contain additional provisions necessary and proper for the execution of the powers and duties of the pool;

(5) Establish procedures for the collection of assessments from all members to provide for claims paid under the plan and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made;

(6) Establish the amount of assessment pursuant to RCW 48.41.060, which shall occur after March 1st of each calendar year, and which shall be due and payable within thirty days of the receipt of the assessment notice;

(7) Select an administrator in accordance with RCW 48.41.080;

(8) Develop and implement a program to publicize the existence of the plan, the eligibility requirements and procedures for enrollment, and to maintain public awareness of the plan; and

(9) Establish procedures under which applicants and participants may have grievances reviewed by an impartial body and reported to the board. [1987 c 431 § 5.]

48.41.060 Board powers. The board shall have the general powers and authority granted under the laws of this state to insurance companies licensed to transact the kinds of insurance defined under this title. In addition thereto, the board may:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(2) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(3) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, agent referral fees, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices;

(4) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year;

(5) Issue policies of insurance in accordance with the requirements of this chapter;

(6) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(7) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant. [1989 c 121 § 3; 1987 c 431 § 6.]

Report on implementation of 1987 c 431: "The board shall report to the commissioner and the appropriate committees of the legislature by April 1, 1990, on the implementation of *this act. The report shall include information regarding enrollment, coverage utilization, cost, and any problems with the program and suggest remedies." [1987 c 431 § 26.]

***Reviser's note:** This act [1987 c 431] consisted of chapter 48.41 RCW and RCW 48.14.022 and 82.04.4329.

48.41.070 Examination and reports. The pool shall be subject to examination by the commissioner as provided under chapter 48.03 RCW. The board of directors shall submit to the commissioner, not later than one

hundred twenty days after the end of each accounting year, a financial report for the year in a form approved by the commissioner. The board of directors shall further report to the appropriate standing committees of each house of the legislature by March 1st of each year. [1989 c 121 § 4; 1987 c 431 § 7.]

48.41.080 Pool administrator—Selection, term, duties, pay. The board shall select an administrator from the membership of the pool whether domiciled in this state or another state through a competitive bidding process to administer the pool.

(1) The board shall evaluate bids based upon criteria established by the board, which shall include:

(a) The administrator's proven ability to handle accident and health insurance;

(b) The efficiency of the administrator's claim-paying procedures;

(c) An estimate of the total charges for administering the plan; and

(d) The administrator's ability to administer the pool in a cost-effective manner.

(2) The administrator shall serve for a period of three years subject to removal for cause. At least six months prior to the expiration of each three-year period of service by the administrator, the board shall invite all interested parties, including the current administrator, to submit bids to serve as the administrator for the succeeding three-year period. Selection of the administrator for this succeeding period shall be made at least three months prior to the end of the current three-year period.

(3) The administrator shall perform such duties as may be assigned by the board including:

(a) All eligibility and administrative claim payment functions relating to the pool;

(b) Establishing a premium billing procedure for collection of premiums from insured persons. Billings shall be made on a periodic basis as determined by the board, which shall not be more frequent than a monthly billing;

(c) Performing all necessary functions to assure timely payment of benefits to covered persons under the pool including:

(i) Making available information relating to the proper manner of submitting a claim for benefits to the pool, and distributing forms upon which submission shall be made; and

(ii) Evaluating the eligibility of each claim for payment by the pool;

(d) Submission of regular reports to the board regarding the operation of the pool. The frequency, content, and form of the report shall be as determined by the board;

(e) Following the close of each accounting year, determination of net paid and earned premiums, the expense of administration, and the paid and incurred losses for the year and reporting this information to the board and the commissioner on a form as prescribed by the commissioner.

(4) The administrator shall be paid as provided in the contract between the board and the administrator for its

expenses incurred in the performance of its services. [1989 c 121 § 5; 1987 c 431 § 8.]

48.41.090 Financial participation in pool—Computation, deficit assessments. (1) Following the close of each accounting year, the pool administrator shall determine the net premium (premiums less administrative expense allowances), the pool expenses of administration, and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(2)(a) Each member's proportion of participation in the pool shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the member with the commissioner; and shall be determined by multiplying the total cost of pool operation by a fraction, the numerator of which equals that member's total number of resident insured persons, including spouse and dependents under the member's health plan in the state during the preceding calendar year, and the denominator of which equals the total number of resident insured persons including spouses and dependents insured under all health plans in the state by pool members.

(b) Any deficit incurred by the pool shall be recouped by assessments among members apportioned under this subsection pursuant to the formula set forth by the board among members.

(3) The board may abate or defer, in whole or in part, the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. If an assessment against a member is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in subsection (2) of this section. The member receiving such abatement or deferment shall remain liable to the pool for the deficiency.

(4) If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims. [1989 c 121 § 6; 1987 c 431 § 9.]

48.41.100 Eligibility for coverage. (1) Any individual person who is a resident of this state is eligible for coverage upon providing evidence of rejection for medical reasons, a requirement of restrictive riders, an up-rated premium, or a preexisting conditions limitation on health insurance, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk, by at least one member within six months of the date of application. Evidence of rejection may be waived in accordance with rules adopted by the board.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person who is at the time of pool application eligible for medical assistance;

(b) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums;

(c) Any person on whose behalf the pool has paid out five hundred thousand dollars in benefits;

(d) Inmates of public institutions and persons whose benefits are duplicated under public programs.

(3) Any person whose health insurance coverage is involuntarily terminated for any reason other than nonpayment of premium may apply for coverage under the plan. [1989 c 121 § 7; 1987 c 431 § 10.]

48.41.110 Policy coverage—Eligible expenses, cost containment, limits—Explanatory brochure. (1) The administrator shall prepare a brochure outlining the benefits and exclusions of the pool policy in plain language. After approval by the board of directors, such brochure shall be made reasonably available to participants or potential participants. The health insurance policy issued by the pool shall pay only usual, customary, and reasonable charges for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of illnesses, injuries, and conditions which are not otherwise limited or excluded. Eligible expenses are the usual, customary, and reasonable charges for the health care services and items for which benefits are extended under the pool policy. Such benefits shall at minimum include, but not be limited to, the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, but limited to a total of one hundred eighty inpatient days in a calendar year, and limited to thirty days inpatient care for mental and nervous conditions, or alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) The first twenty outpatient professional visits for the diagnosis or treatment of one or more mental or nervous conditions or alcohol, drug, or chemical dependency or abuse rendered during a calendar year by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not more than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

(g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;

(h) Oxygen;

(i) Anesthesia services;

(j) Prostheses, other than dental;

(k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;

(l) Diagnostic x-rays and laboratory tests;

(m) Oral surgery limited to the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;

(n) Services of a physical therapist and services of a speech therapist;

(o) Hospice services;

(p) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury; and

(q) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

(2) The board shall design and employ cost containment measures and requirements such as, but not limited to, preadmission certification and concurrent inpatient review which may make the pool more cost-effective.

(3) The pool benefit policy may contain benefit limitations, exceptions, and reductions that are generally included in health insurance plans and are approved by the insurance commissioner; however, no limitation, exception, or reduction may be approved that would exclude coverage for any disease, illness, or injury. [1987 c 431 § 11.]

48.41.120 Deductibles—Coinsurance—Carry-over. (1) Subject to the limitation provided in subsection (3) of this section, a pool policy offered in accordance with this chapter shall impose a deductible. Deductibles of five hundred dollars and one thousand dollars on a per person per calendar year basis shall initially be offered. The board may authorize deductibles in other amounts. The deductible shall be applied to the first five hundred dollars, one thousand dollars, or other authorized amount of eligible expenses incurred by the covered person.

(2) Subject to the limitations provided in subsection (3) of this section, a mandatory coinsurance requirement shall be imposed at the rate of twenty percent of eligible expenses in excess of the mandatory deductible.

(3) The maximum aggregate out of pocket payments for eligible expenses by the insured in the form of deductibles and coinsurance shall not exceed in a calendar year:

(a) One thousand five hundred dollars per individual, or three thousand dollars per family, per calendar year for the five hundred dollar deductible policy;

(b) Two thousand five hundred dollars per individual, or five thousand dollars per family per calendar year for the one thousand dollar deductible policy; or

(c) An amount authorized by the board for any other deductible policy.

(4) Eligible expenses incurred by a covered person in the last three months of a calendar year, and applied toward a deductible, shall also be applied toward the deductible amount in the next calendar year. [1989 c 121 § 8; 1987 c 431 § 12.]

48.41.130 Policy forms—Double coverage prohibited. All policy forms issued by the pool shall conform in substance to prototype forms developed by the pool, and shall in all other respects conform to the requirements of this chapter, and shall be filed with and approved by the commissioner before they are issued. The pool shall not issue a pool policy to any individual who, on the effective date of the coverage applied for, already has or would have coverage substantially equivalent to a pool policy as an insured or covered dependent, or who would be eligible for such coverage if he elected to obtain it at a lesser premium rate. [1987 c 431 § 13.]

48.41.140 Coverage for children, unmarried dependents—Preexisting condition exclusion. (1) Coverage shall provide that health insurance benefits are applicable to children of the person in whose name the policy is issued including adopted and newly born natural children. Coverage shall also include necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for the child, the policy may require that notification of the birth or adoption of a child and payment of the required premium must be furnished to the pool within thirty-one days after the date of birth or adoption in order to have the coverage continued beyond the thirty-one day period. For purposes of this subsection, a child is deemed to be adopted, and benefits are payable, when the child is physically placed for purposes of adoption under the laws of this state with the person in whose name the policy is issued; and, when the person in whose name the policy is issued assumes financial responsibility for the medical expenses of the child. For purposes of this subsection, "newly born" means, and benefits are payable, from the moment of birth.

(2) A pool policy shall provide that coverage of a dependent, unmarried person shall terminate when the person becomes nineteen years of age: *Provided*, That coverage of such person shall not terminate at age nineteen while he or she is and continues to be both (a) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (b) chiefly dependent upon the person in whose name the policy is issued for support and maintenance, provided proof of such incapacity and dependency is furnished to the pool by the policy holder within thirty-one days of the dependent's attainment of age nineteen and subsequently as may be required by the pool but not more

frequently than annually after the two-year period following the dependent's attainment of age nineteen.

(3) A pool policy may contain provisions under which coverage is excluded during a period of six months following the effective date of coverage as to a given covered individual for preexisting conditions, as long as medical advice or treatment was recommended or received within a period of six months before the effective date of coverage.

These preexisting condition exclusions shall be waived to the extent to which similar exclusions have been satisfied under any prior health insurance which was for any reason other than nonpayment of premium involuntarily terminated, if the application for pool coverage is made not later than thirty days following the involuntary termination. In that case, with payment of appropriate premium, coverage in the pool shall be effective from the date on which the prior coverage was terminated. [1987 c 431 § 14.]

48.41.150 Medical supplement policy. (1) The board shall offer a medical supplement policy for persons receiving medicare parts A and B. The supplement policy shall provide benefits of one hundred percent of the deductible and copayment required under medicare and eighty percent of the charges for covered services under this chapter that are not paid by medicare. The coverage shall include a limitation of one thousand dollars per person on total annual out-of-pocket expenses for the covered services.

(2) If federal law is adopted that addresses this subject, the board shall offer a policy that is consistent with that federal law. [1989 c 121 § 9; 1987 c 431 § 15.]

48.41.160 Renewal, termination, dependents' coverage—Rate changes—Continuation. (1) A pool policy offered under this chapter shall contain provisions under which the pool is obligated to renew the policy until the day on which the individual in whose name the policy is issued first becomes eligible for medicare coverage. At that time, coverage of dependents shall terminate if such dependents are eligible for coverage under a different health plan. Dependents who become eligible for medicare prior to the individual in whose name the policy is issued, shall receive benefits in accordance with RCW 48.41.150.

(2) The pool may not change the rates for pool policies except on a class basis, with a clear disclosure in the policy of the pool's right to do so.

(3) A pool policy offered under this chapter shall provide that, upon the death of the individual in whose name the policy is issued, every other individual then covered under the policy may elect, within a period specified in the policy, to continue coverage under the same or a different policy. [1987 c 431 § 16.]

48.41.170 Required rule-making. The commissioner shall adopt rules pursuant to chapter 34.05 RCW that:

(1) Provide for disclosure by the member of the availability of insurance coverage from the pool; and

(2) Implement this chapter. [1987 c 431 § 17.]

48.41.180 Offer of coverage to eligible persons. (1) Commencing with May 18, 1987, every member shall provide a notice and an application for coverage by the pool to any person who receives a rejection of coverage for health insurance or health care services, or has any health condition limited or excluded. The notice shall state that the person is eligible to apply for health insurance provided by the pool.

(2) Members of the pool shall provide the brochure outlining the benefits and exclusions of the pool policy to any person who is rejected by a member or who is offered a policy containing restrictive riders, up-rated premiums, or a preexisting conditions limitation on a health insurance plan. [1987 c 431 § 18.]

48.41.190 Civil and criminal immunity. Neither the participation by members, the establishment of rates, forms, or procedures for coverages issued by the pool, nor any other joint or collective action required by this chapter or the state of Washington shall be the basis of any legal action, civil or criminal liability or penalty against the pool, any member of the board of directors, or members of the pool either jointly or separately. [1989 c 121 § 10; 1987 c 431 § 19.]

48.41.200 Rates—Standard risk and maximum. The pool shall determine the standard risk rate by calculating the average group standard rate for groups comprised of up to ten persons charged by the five largest members offering coverages in the state comparable to the pool coverage. In the event five members do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated experience and expenses for such coverage. Maximum rates for pool coverage shall be one hundred fifty percent of the rates established as applicable for group standard risks in groups comprised of up to ten persons. All rates and rate schedules shall be submitted to the commissioner for approval. [1987 c 431 § 20.]

48.41.210 Last payor of benefits. It is the express intent of this chapter that the pool be the last payor of benefits whenever any other benefit is available.

(1) Benefits otherwise payable under pool coverage shall be reduced by all amounts paid or payable through any other health insurance, or health benefit plans, including but not limited to self-insured plans and by all hospital and medical expense benefits paid or payable under any worker's compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(2) The administrator or the pool shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not for covered expenses. Benefits due from the pool may be reduced or refused as a set-off against any amount recoverable under this subsection. [1987 c 431 § 21.]

48.41.900 Federal supremacy. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1987 c 431 § 22.]

48.41.910 Severability—1987 c 431. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1987 c 431 § 25.]

Chapter 48.42

PERSONAL COVERAGE, GENERAL AUTHORITY (Formerly: Health care coverage, general authority)

Sections

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48.42.080	Mandated health coverage—Guidelines for assessing impact.
48.42.090	Prenatal testing—Limitation on changes to coverage.

48.42.010 Personal coverage, authority of commissioner. Notwithstanding any other provision of law, and except as provided in this chapter, any person or other entity which provides coverage in this state for life insurance, annuities, loss of time, medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, the providing of services, or otherwise, shall be subject to the authority of the state insurance commissioner, unless the person or other entity shows that while providing the services it is subject to the jurisdiction and regulation of another agency of this state, any subdivisions thereof, or the federal government. [1985 c 264 § 15; 1983 c 36 § 1.]

48.42.020 Showing regulation by other agency, how done. A person or entity may show that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, by providing to the insurance commissioner the appropriate certificate, license, or other document issued by

the other governmental agency which permits or qualifies it to provide the coverage as defined in RCW 48.42.010. [1983 c 36 § 2.]

48.42.030 Examination by commissioner—When required, scope of. Any person or entity which is unable to show under RCW 48.42.020 that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, shall submit to an examination by the insurance commissioner to determine the organization and solvency of the person or the entity, and to determine whether or not such person or entity complies with the applicable provisions of this title. [1983 c 36 § 3.]

48.42.040 Application of this title to otherwise unregulated entities. Any person or entity unable to show that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, shall be subject to all appropriate provisions of this title regarding the conduct of its business. [1983 c 36 § 4.]

48.42.050 Notice to purchasers by uninsured production agency—Notice to production agency by administrator of coverage. Any production agency or administrator which advertises, sells, transacts, or administers the coverage in this state described in RCW 48.42.010 and which is required to submit to an examination by the insurance commissioner under RCW 48.42.030, shall, if the coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer or health care service contractor or health maintenance organization agreement, advise every purchaser, prospective purchaser, and covered person of the lack of insurance or other coverage.

Any administrator which advertises or administers the coverage in this state described in RCW 48.42.010 and which is subject to an examination by the insurance commissioner under RCW 48.42.030 shall advise any production agency of the elements of the coverage, including the amount of "stop-loss" insurance in effect. [1983 c 36 § 5.]

48.42.060 Mandated health coverage—Legislative finding. The legislature takes notice of the increasing number of proposals for the mandating of certain health coverages or offering of health coverages by insurance carriers, health care service contractors, and health maintenance organizations as a component of individual or group policies. Improved access to these health care services to segments of the population which desire them can provide beneficial social and health consequences which may be in the public interest.

However, the cost ramifications of expanding health coverages is resulting in a growing concern. The way that such coverages are structured and the steps taken to create incentives to provide cost-effective services or to take advantage of cost off-setting features of services can significantly influence the cost impact of mandating particular coverages.

The merits of a particular coverage mandate must be balanced against a variety of consequences which may go far beyond the immediate impact upon the cost of insurance coverage. The legislature hereby finds and declares that a systematic review of proposed mandated or mandatorily offered health coverage, which explores all the ramifications of such proposed legislation, will assist the legislature in determining whether mandating a particular coverage or offering is in the public interest. This chapter provides for a set of guidelines which should be addressed in the consideration of all such mandated coverage proposals coming before the legislature. [1984 c 56 § 1.]

48.42.070 Mandated health coverage—Reports and recommendations. Every person or organization which seeks sponsorship of a legislative proposal which would mandate a health coverage or offering of a health coverage by an insurance carrier, health care service contractor, or health maintenance organization as a component of individual or group policies, shall submit a report to the legislative committees having jurisdiction, assessing both the social and financial impacts of such coverage, including the efficacy of the treatment or service proposed, according to the guidelines enumerated in RCW 48.42.080. Copies of the report shall be sent to the state department of health for review and comment. The state department of health shall make recommendations based on the report to the extent requested by the legislative committees. [1989 1st ex.s. c 9 § 221; 1987 c 150 § 79; 1984 c 56 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1987 c 150: See RCW 18.122.901.

48.42.080 Mandated health coverage—Guidelines for assessing impact. Guidelines for assessing the impact of proposed mandated or mandatorily offered health coverage to the extent that information is available, shall include, but not be limited to, the following:

(1) The social impact: (a) To what extent is the treatment or service generally utilized by a significant portion of the population? (b) To what extent is the insurance coverage already generally available? (c) If coverage is not generally available, to what extent does the lack of coverage result in persons avoiding necessary health care treatments? (d) If the coverage is not generally available, to what extent does the lack of coverage result in unreasonable financial hardship? (e) What is the level of public demand for the treatment or service? (f) What is the level of public demand for insurance coverage of treatment or service? (g) What is the level of interest of collective bargaining agents in negotiating privately for inclusion of this coverage in group contracts?

(2) The financial impact: (a) To what extent will the coverage increase or decrease the cost of treatment or service? (b) To what extent will the coverage increase the appropriate use of the treatment or service? (c) To what extent will the mandated treatment or service be a substitute for more expensive treatment or service? (d)

To what extent will the coverage increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders? (e) What will be the impact of this coverage on the total cost of health care? [1984 c 56 § 3.]

48.42.090 Prenatal testing—Limitation on changes to coverage. The carrier or provider of any group disability contract, health care services contract or health maintenance agreement shall not cancel, reduce, limit or otherwise alter or change the coverage provided solely on the basis of the result of any prenatal test. [1988 c 276 § 9.]

Chapter 48.44

HEALTH CARE SERVICES

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48.44.010 Definitions. For the purposes of this chapter:

(1) "Health care services" means and includes medical, surgical, dental, chiropractic, hospital, optometric, podiatric, pharmaceutical, ambulance, custodial, mental health, and other therapeutic services.

(2) "Provider" means any person lawfully licensed or authorized by the state of Washington to render any health care services.

(3) "Health care service contractor" means any corporation, cooperative group, or association, which is sponsored by or otherwise intimately connected with a provider or group of providers, who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any health care services.

(4) "Participant" means a provider, who or which has contracted in writing with a health care service contractor to accept payment from and to look solely to such

contractor according to the terms of the subscriber contract for any health care services rendered to a person who has previously paid, or on whose behalf prepayment has been made, to such contractor for such services. [1986 c 223 § 1. Prior: 1983 c 286 § 3; 1983 c 154 § 3; 1980 c 102 § 10; 1965 c 87 § 1; 1961 c 197 § 1; 1947 c 268 § 1; Rem. Supp. 1947 § 6131-10.]

Severability—1983 c 286: See note following RCW 48.44.309.

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.011 Agent—Definition—License required—Application, issuance, renewal, fees—Penalties involving license. (1) Agent, as used in this chapter, means any person appointed or authorized by a health care service contractor to solicit applications for health care service contracts on its behalf.

(2) No person shall act as or hold himself out to be an agent of a health care service contractor unless licensed as a disability insurance agent by this state and appointed by the health care service contractor on whose behalf solicitations are to be made.

(3) Applications, appointments, and qualifications for licenses, the renewal thereof, the fees and issuance of a license, and the renewal thereof shall be in accordance with the provisions of chapter 48.17 RCW that are applicable to a disability insurance agent.

(4) A person holding a valid license in this state as a health care service contractor agent on July 24, 1983, is not required to requalify by an examination for the renewal of the license.

(5) The commissioner may revoke, suspend, or refuse to issue or renew any agent's license, or levy a fine upon the licensee, in accordance with those provisions of chapter 48.17 RCW that are applicable to a disability insurance agent. [1983 c 202 § 1; 1969 c 115 § 7.]

48.44.015 Registration by health care service contractors required—Penalty. (1) No person shall in this state, by mail or otherwise, act as or hold himself out to be a health care service contractor, as defined in RCW 48.44.010 without being duly registered therefor with the commissioner.

(2) The issuance, sale or offer for sale in this state of securities of its own issue by any health care service contractor domiciled in this state other than the memberships and bonds of a nonprofit corporation shall be subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health care service contractors were domestic insurers.

(3) Any person violating any provision of subsection (1) or (2) of this section shall be liable to a fine of not to exceed one thousand dollars and imprisonment for not to exceed six months for each instance of such violation. [1983 c 202 § 2; 1969 c 115 § 6.]

48.44.020 Agreement for services—Examination of contract forms by commissioner—Grounds for disapproval. (1) Any health care service contractor may enter into agreements with or for the benefit of persons or groups of persons which require prepayment for

health care services by or for such persons in consideration of such health care service contractor providing one or more health care services to such persons and such activity shall not be subject to the laws relating to insurance if the health care services are rendered by the health care service contractor or by a participant.

(2) The commissioner may on examination, subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, disapprove any contract form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(b) If it has any title, heading or other indication of its provisions which is misleading; or

(c) If purchase of health care services thereunder is being solicited by deceptive advertising; or

(d) If, the benefits provided therein are unreasonable in relation to the amount charged for the contract;

(e) If it contains unreasonable restrictions on the treatment of patients;

(f) If it violates any provision of this chapter;

(g) If it fails to conform to minimum provisions or standards required by regulation made by the commissioner pursuant to chapter 34.05 RCW;

(h) If any contract for health care services with any state agency, division, subdivision, board or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law. [1986 c 223 § 2; 1985 c 283 § 1; 1983 c 286 § 4; 1973 1st ex.s. c 65 § 1; 1969 c 115 § 1; 1961 c 197 § 2; 1947 c 268 § 2; Rem. Supp. 1947 § 6131-11.]

Severability—1983 c 286: See note following RCW 48.44.309.

48.44.026 Payment for certain health care services.

Checks in payment for claims pursuant to any health care service contract for health care services provided by persons licensed or regulated under chapters 18.22, 18.25, 18.29, 18.32, 18.53, 18.57, 18.64, 18.71, 18.73, 18.74, 18.83, or 18.88 RCW, where the provider is not a participant under a contract with the health care service contractor, shall be made out to both the provider and the insured with the provider as the first named payee, jointly, to require endorsement by each: *Provided*, That payment shall be made in the single name of the insured if the insured as part of his or her claim furnishes evidence of prepayment to the health care service provider: *And provided further*, That nothing in this section shall preclude a health care service contractor from voluntarily issuing payment in the single name of the provider. [1989 c 122 § 1; 1984 c 283 § 1; 1982 c 168 § 1.]

48.44.030 Underwriting of indemnity by insurance policy, bond, securities, or cash deposit. If any of the health care services which are promised in any such agreement are not to be performed by the health care service contractor, or by a participant, such activity shall not be subject to the laws relating to insurance, provided

provision is made for reimbursement or indemnity of the persons who have previously paid, or on whose behalf prepayment has been made, for such services. Such reimbursement or indemnity shall either be underwritten by an insurance company authorized to write accident, health and disability insurance in the state or guaranteed by a surety company authorized to do business in this state, or guaranteed by a deposit of cash or securities eligible for investment by insurers pursuant to chapter 48.13 RCW, with the insurance commissioner, as hereinafter provided. If the reimbursement or indemnity is underwritten by an insurance company, the contract or policy of insurance may designate the health care service contractor as the named insured, but shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services. If the reimbursement or indemnity is guaranteed by a surety company, the surety bond shall designate the state of Washington as the named obligee, but shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services, and shall be in such amount as the insurance commissioner shall direct, but in no event in a sum greater than the amount of one hundred fifty thousand dollars or the amount necessary to cover incurred but unpaid reimbursement or indemnity benefits as reported in the last annual statement filed with the insurance commissioner, and adjusted to reflect known or anticipated increases or decreases during the ensuing year, plus an amount of unearned prepayments applicable to reimbursement or indemnity benefits satisfactory to the insurance commissioner, whichever amount is greater. A copy of such insurance policy or surety bond, as the case may be, and any modification thereof, shall be filed with the insurance commissioner. If the reimbursement or indemnity is guaranteed by a deposit of cash or securities, such deposit shall be in such amount as the insurance commissioner shall direct, but in no event in a sum greater than the amount of one hundred fifty thousand dollars or the amount necessary to cover incurred but unpaid reimbursement or indemnity benefits as reported in the last annual statement filed with the insurance commissioner, and adjusted to reflect known or anticipated increases or decreases during the ensuing year, plus an amount of unearned prepayments applicable to reimbursement or indemnity benefits satisfactory to the insurance commissioner, whichever amount is greater. Such cash or security deposit shall be held in trust by the insurance commissioner and shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services. [1986 c 223 § 3; 1981 c 339 § 22; 1969 c 115 § 2; 1961 c 197 § 3; 1947 c 268 § 3; Rem. Supp. 1947 § 6131-12.]

48.44.040 Registration with commissioner—Fee.

Every health care service contractor who or which enters into agreements which require prepayment for health care services shall register with the insurance commissioner on forms to be prescribed and provided by him. Such registrants shall state their name, address, type of

organization, area of operation, type or types of health care services provided, and such other information as may reasonably be required by the insurance commissioner and shall file with such registration a copy of all contracts being offered and a schedule of all rates charged. No registrant shall change any rates, modify any contract, or offer any new contract, until he has filed a copy of the changed rate schedule, modified contract, or new contract with the insurance commissioner. The insurance commissioner shall charge a fee of ten dollars for the filing of each original registration statement and may require each registrant to file a current reregistration statement annually thereafter. [1947 c 268 § 4; Rem. Supp. 1947 § 6131-13.]

48.44.050 Rules and regulations. The insurance commissioner shall make reasonable regulations in aid of the administration of this chapter which may include, but shall not be limited to regulations concerning the maintenance of adequate insurance, bonds, or cash deposits, information required of registrants, and methods of expediting speedy and fair payments to claimants. [1947 c 268 § 5; Rem. Supp. 1947 § 6131-14.]

48.44.060 Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a gross misdemeanor. [1947 c 268 § 6; Rem. Supp. 1947 § 6131-15.]

48.44.070 Contracts to be filed with commissioner. Forms of contracts between health care service contractors and participants shall be filed with the insurance commissioner prior to use. [1965 c 87 § 2; 1961 c 197 § 4.]

48.44.080 Master lists of contractor's participants—Filing with commissioner—Notice of termination or participation. Every health care service contractor shall file with its annual statement with the insurance commissioner a master list of the participants with whom or with which such health care service contractor has executed contracts of participation, certifying that each such participant has executed such contract of participation. The health care service contractor shall on the first day of each month notify the insurance commissioner in writing in case of the termination of any such contract, and of any participant who has entered into a participating contract during the preceding month. [1986 c 223 § 4; 1965 c 87 § 3; 1961 c 197 § 5.]

48.44.090 Refusal to register corporate, etc., contractor if name confusing with existing contractor or insurance company. The insurance commissioner shall refuse to accept the registration of any corporation, cooperative group, or association seeking to act as a health care service contractor if, in his discretion, the insurance commissioner deems that the name of the corporation, cooperative group, or association would be confused with the name of an existing registered health care service contractor or authorized insurance company. [1961 c 197 § 6.]

48.44.095 Annual financial statement—Filing—Penalty for failure to file. (1) Every health care service contractor shall annually, within one hundred twenty days of the closing date of its fiscal year, file with the commissioner a statement verified by at least two of the principal officers of the health care service contractor showing its financial condition as of the closing date of its fiscal year. The statement shall be in such form as is furnished or prescribed by the commissioner. The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed.

(2) The commissioner may suspend or revoke the certificate of registration of any health care service contractor failing to file its annual statement when due or during any extension of time therefor which the commissioner, for good cause, may grant. [1983 c 202 § 3; 1969 c 115 § 5.]

48.44.100 Filing inaccurate financial statement prohibited. No person shall knowingly file with any public official or knowingly make, publish, or disseminate any financial statement of a health care service contractor which does not accurately state the health care service contractor's financial condition. [1961 c 197 § 7.]

48.44.110 False representation, advertising. No person shall knowingly make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a health care service contractor, or relative to the business of a health care service contractor or to any person engaged therein. [1961 c 197 § 8.]

48.44.120 Misrepresentations of contract terms, benefits, etc. No person shall knowingly make, issue, or circulate, or cause to be made, issued, or circulated, a misrepresentation of the terms of any contract, or the benefits or advantages promised thereby, or use the name or title of any contract or class of contract misrepresenting the nature thereof. [1961 c 197 § 9.]

48.44.130 Future dividends or refunds—When permissible. No health care service contractor nor any individual acting on behalf thereof shall guarantee or agree to the payment of future dividends or future refunds of unused charges or savings in any specific or approximate amounts or percentages in respect to any contract being offered to the public, except in a group contract containing an experience refund provision. [1961 c 197 § 10.]

48.44.140 Misleading comparisons to terminate or retain contract. No health care service contractor nor any person representing a health care service contractor shall by misrepresentation or misleading comparisons induce or attempt to induce any member of any health care service contractor to terminate or retain a contract or membership. [1961 c 197 § 11.]

48.44.145 Examination of contractors—Duties of contractor, powers of commissioner—Independent audit reports. (1) The commissioner may make an examination of the operations of any health care service contractor as often as he deems necessary in order to carry out the purposes of this chapter.

(2) Every health care service contractor shall submit its books and records relating to its operation for financial condition and market conduct examinations and in every way facilitate them. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health care service contractor.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health care service contractor in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his report of the examination.

(4) Whenever any health care service contractor applies for initial admission, the commissioner may make, or cause to be made, an examination of the applicant's business and affairs. Whenever such an examination is made, all of the provisions of chapter 48.03 RCW not inconsistent with this chapter shall be applicable. In lieu of making an examination himself the commissioner may, in the case of a foreign health care service contractor, accept an examination report of the applicant by the regulatory official in its state of domicile. [1986 c 296 § 8; 1983 c 63 § 1; 1969 c 115 § 12.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

48.44.150 Certificate of registration not an endorsement—Display in solicitation prohibited. The granting of a certificate of registration to a health care service contractor is permissive only, and shall not constitute an endorsement by the insurance commissioner of any person or thing related to the health care service contractor, and no person shall advertise or display a certificate of registration for use as an inducement in any solicitation. [1961 c 197 § 12.]

48.44.160 Revocation, suspension, refusal of registration—Hearing—Cease and desist orders, injunctive action—Grounds. The insurance commissioner may, subject to a hearing if one is demanded pursuant to chapters 48.04 and 34.05 RCW, revoke, suspend, or refuse to accept or renew registration from any health care service contractor, or he may issue a cease and desist order, or bring an action in any court of competent jurisdiction to enjoin a health care service contractor from doing further business in this state, if such health care service contractor:

(1) Fails to comply with any provision of chapter 48.44 RCW or any proper order or regulation of the commissioner.

(2) Is found by the commissioner to be in such financial condition that its further transaction of business in

this state would jeopardize the payment of claims and refunds to subscribers.

(3) Has refused to remove or discharge a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude, after written request by the commissioner for such removal, and expiration of a reasonable time therefor as specified in such request.

(4) Usually compels claimants under contracts either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due.

(5) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another health care contractor which operates in this state without having registered therefor, except as is permitted by this chapter.

(6) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(7) Fails to pay any final judgment rendered against it in this state upon any contract, bond, recognizance, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(8) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in health care contracting or related managerial experience as to make the operation hazardous to the subscribing public; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, or other business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders, or investors or creditors or subscribers or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance. [1988 c 248 § 19; 1973 1st ex.s. c 65 § 2; 1969 c 115 § 3; 1961 c 197 § 13.]

48.44.164 Notice of suspension, revocation, or refusal to be given contractor—Authority of agents. Upon the suspension, revocation or refusal of a health care service contractor's registration, the commissioner shall give notice thereof to such contractor and shall likewise suspend, revoke or refuse the authority of its agents to represent it in this state and give notice thereof to the agents. [1969 c 115 § 10.]

48.44.166 Fine in addition to or in lieu of suspension, revocation, or refusal. After hearing or upon stipulation by the registrant and in addition to or in lieu of the suspension, revocation or refusal to renew any registration of a health care service contractor the commissioner may levy a fine against the party involved for each offense in an amount not less than fifty dollars and not more than

ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the registration of the registrant, if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1983 c 202 § 4; 1969 c 115 § 11.]

48.44.170 Hearings and appeals. For the purposes of this chapter, the insurance commissioner shall be subject to and may avail himself of the provisions of chapter 48.04 RCW, which relate to hearings and appeals. [1961 c 197 § 14.]

48.44.180 Enforcement. For the purposes of this chapter, the insurance commissioner shall have the same powers and duties of enforcement as are provided in RCW 48.02.080. [1961 c 197 § 15.]

48.44.200 Individual health care service plan contracts—Coverage of dependent child not to terminate because of developmental disability or physical handicap. An individual health care service plan contract, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the health care service plan corporation by the subscriber within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the corporation but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1977 ex.s. c 80 § 33; 1969 ex.s. c 128 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

48.44.210 Group health care service plan contracts—Coverage of dependent child not to terminate because of developmental disability or physical handicap. A group health care service plan contract, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to

terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the health care service plan corporation by the employee or member within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the corporation, but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1977 ex.s. c 80 § 34; 1969 ex.s. c 128 § 2.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

48.44.212 Coverage of dependent children to include newborn infants and congenital anomalies from moment of birth—Notification period. (1) Any health care service plan contract under this chapter delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for dependent children of the insured or covered group member, shall provide coverage for newborn infants of the insured or covered group member from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium must be furnished to the contractor. The notification period shall be no less than sixty days from the date of birth. This subsection applies to policies issued or renewed on or after January 1, 1984. [1984 c 4 § 1; 1983 c 202 § 5; 1974 ex.s. c 139 § 3.]

48.44.220 Discrimination prohibited. No health care service contractor shall deny coverage to any person solely on account of race, religion, national origin, or the presence of any sensory, mental, or physical handicap. Nothing in this section shall be construed as limiting a health care service contractor's authority to deny or otherwise limit coverage to a person when the person because of a medical condition does not meet the essential eligibility requirements established by the health care service contractor for purposes of determining coverage for any person.

No health care service contractor shall refuse to provide reimbursement or indemnity to any person for covered health care services for reasons that the health care services were provided by a holder of a license under chapter 18.22 RCW. [1983 c 154 § 4; 1979 c 127 § 1; 1969 c 115 § 4.]

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.225 Podiatrists not excluded. A health care service contractor which provides foot care services shall

not exclude any individual doctor who is licensed to perform podiatric health care services from being a participant for reason that the doctor is licensed under chapter 18.22 RCW. Rejections of requests by doctors to be participants must be in writing stating the cause for the rejection. [1983 c 154 § 5.]

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.230 Individual health service plan contract—Return within ten days of delivery—Refunds—Void from beginning—Notice required. Every subscriber of an individual health care service plan contract issued after September 1, 1973, may return the contract to the health care service contractor or the agent through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the contract, he is not satisfied with it for any reason, and the health care service contractor shall refund promptly any fee paid for such contract. Upon such return of the contract it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. Notice of the substance of this section shall be printed on the face of each such contract or be attached thereto. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. [1983 1st ex.s. c 32 § 11; 1973 1st ex.s. c 65 § 4.]

48.44.240 Chemical dependency benefits—Provisions of group contracts delivered or renewed after January 1, 1988. Each group contract for health care services which is delivered or issued for delivery or renewed, on or after January 1, 1988, shall contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by an alcoholism or drug treatment facility which is an "approved treatment facility" under *RCW 69.54.030 or **70.96A.020(2). [1987 c 458 § 16; 1975 1st ex.s. c 266 § 14; 1974 ex.s. c 119 § 4.]

Reviser's note: *(1) RCW 69.54.030 was repealed by 1989 c 270 § 35.

***(2) RCW 70.96A.020 was amended twice during the 1989 session, by 1989 c 270 and c 271, both changing the definition "approved treatment facility."

Effective date—**Severability**—1987 c 458: See notes following RCW 48.21.160.

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

Legislative declaration—1974 ex.s. c 119: See RCW 48.21.160.
Chemical dependency benefits, rules: RCW 48.21.197.

48.44.241 Chemical dependency benefits—RCW 48.21.160 through 48.21.190, 48.44.240 inapplicable, when. See RCW 48.21.190.

48.44.245 "Chemical dependency" defined. For the purposes of RCW 48.44.240, "chemical dependency" means an illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent

the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. [1987 c 458 § 17.]

Effective date—**Severability**—1987 c 458: See notes following RCW 48.21.160.

48.44.250 Payment of premium by employee in event of suspension of compensation due to labor dispute. Any employee whose compensation includes a health care services contract providing health care services expenses, the premiums for which are paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the premiums as they become due directly to the contract holder whenever the employee's compensation is suspended or terminated directly or indirectly as the result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the health care services contract provides. During that period of time such contract may not be altered or changed. Nothing in this section shall be deemed to impair the right of the health care service contractor to make normal decreases or increases of the premium rate upon expiration and renewal of the contract, in accordance with the provisions of the contract. Thereafter, if such health care services coverage is no longer available, then the employee shall be given the opportunity to purchase an individual health care services contract at a rate consistent with rates filed by the health care service contractor with the commissioner. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the contract holder in writing, by mail addressed to the address last of record with the contract holder, that the employee may pay the premiums to the contract holder as they become due as provided in this section.

Payment of the premiums must be made when due or the coverage may be terminated by the health care service contractor.

The provisions of any health care services contract contrary to provisions of this section are void and unenforceable after May 29, 1975. [1982 c 149 § 1; 1975 1st ex.s. c 117 § 3.]

Severability—1975 1st ex.s. c 117: See note following RCW 48.21.075.

48.44.260 Notice of reason for cancellation, restrictions based on handicaps. Every authorized health care service contractor, upon canceling, denying, or refusing to renew any individual health care service contract, shall, upon written request, directly notify in writing the applicant or insured, as the case may be, of the reasons for the action by the health care service contractor. Any benefits, terms, rates, or conditions of such a contract which are restricted, excluded, modified, increased, or

reduced because of the presence of a sensory, mental, or physical handicap shall, upon written request, be set forth in writing and supplied to the insured. The written communications required by this section shall be phrased in simple language which is readily understandable to a person of average intelligence, education, and reading ability. [1979 c 133 § 3.]

48.44.270 Immunity from libel or slander. With respect to health care service contracts as defined in RCW 48.44.260, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, the commissioner's agents, or members of the commissioner's staff, or against any health care service contractor, its authorized representative, its agents, its employees, furnishing to the health care service contractor information as to reasons for cancellation or refusal to issue or renew, for libel or slander on the basis of any statement made by any of them in any written notice of cancellation or refusal to issue or renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to issue or renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith. [1979 c 133 § 4.]

48.44.290 Registered nurses. Notwithstanding any provision of this chapter, for any health care service contract thereunder which is entered into or renewed after July 26, 1981, benefits shall not be denied under such contract for any health care service performed by a holder of a license issued pursuant to chapter 18.88 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent that they do not impair the obligation of any existing contract. [1986 c 223 § 6; 1981 c 175 § 1.]

48.44.299 Legislative finding. The legislature finds and declares that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired by prepaid agreements which provide benefits, reimbursement, or indemnity by health care service contractors, whether for profit or for non-profit, which do not provide parity of reimbursement among licensed health care providers performing the same health care services. It is further the intent of the legislature not to mandate the providing of any health care benefit, but rather to require parity of reimbursement for the same health care services performed by all licensees who perform such services within the scope of their respective licenses thereby assuring the people of the state access to health care services of their choice. [1983 c 154 § 1.]

Severability—1983 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 154 § 6.]

48.44.300 Podiatry—Benefits not to be denied. Benefits shall not be denied under a contract for any health care service performed by a holder of a license issued under chapter 18.22 RCW if (1) the service performed was within the lawful scope of the person's license, and (2) the contract would have provided benefits if the service had been performed by a holder of a license issued under chapter 18.71 RCW. There shall not be imposed upon one class of doctors providing health care services as defined by this chapter any requirement that is not imposed upon all other doctors providing the same or similar health care services within the scope of their license.

The provisions of this section are intended to be procedural to the extent that they do not impair the obligation of any existing contract. [1986 c 223 § 7; 1983 c 154 § 2.]

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.309 Legislative finding. The legislature finds and declares that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired. The legislature further finds that there is a heavy reliance by the public upon prepaid health care service agreements and insurance, whether profit or non-profit, as the only effective manner in which the large majority of the people can obtain access to quality health care. Further, the legislature finds that health care service agreements may be anticompetitive because of the exclusion of other licensed forms of health care and that because of the high costs of health care, there is a need for competition to reduce these costs. It is, therefore, declared to be in the public interest that these contracts as a form of insurance be regulated under the police power of the state to assure that all the people have the greatest access to health care services. [1983 c 286 § 1.]

Severability—1983 c 286: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 286 § 5.]

48.44.310 Chiropractic care, coverage required, exceptions. (1) Each group contract for comprehensive health care service which is entered into, or renewed, on or after September 8, 1983, between a health care service contractor and the person or persons to receive such care shall offer coverage for chiropractic care on the same basis as any other care.

(2) A patient of a chiropractor shall not be denied benefits under a contract because the practitioner is not licensed under chapter 18.57 or 18.71 RCW.

(3) This section shall not apply to a group contract for comprehensive health care services entered into in accordance with a collective bargaining agreement between management and labor representatives. Benefits for chiropractic care shall be offered by the employer in good

faith on the same basis as any other care as a subject for collective bargaining for group contracts for health care services. [1986 c 223 § 8; 1983 c 286 § 2.]

Severability—1983 c 286: See note following RCW 48.44.309.

48.44.320 Home health care, hospice care, optional coverage required—Standards, limitations, restrictions—Rules—Medicare supplemental contracts excluded. (1) Every health care service contractor entering into or renewing a group health care service contract governed by this chapter shall offer optional coverage for home health care and hospice care for persons who are homebound and would otherwise require hospitalization. Such optional coverage need only be offered in conjunction with a policy that provides payment for hospitalization as a part of health care coverage.

(2) Home health care and hospice care coverage offered under subsection (1) of this section shall conform to the following standards, limitations, and restrictions in addition to those set forth in chapters 70.126 and 70.127 RCW:

(a) The coverage may include reasonable deductibles, coinsurance provisions, and internal maximums;

(b) The coverage should be structured to create incentives for the use of home health care and hospice care as an alternative to hospitalization;

(c) The coverage may contain provisions for utilization review and quality assurance;

(d) The coverage may require that home health agencies and hospices have written treatment plans approved by a physician licensed under chapter 18.57 or 18.71 RCW, and may require such treatment plans to be reviewed at designated intervals;

(e) The coverage shall provide benefits for, and restrict benefits to, services rendered by home health and hospice agencies licensed under chapter 70.127 RCW;

(f) Hospice care coverage shall provide benefits for terminally ill patients for an initial period of care of not less than six months and may provide benefits for an additional six months of care in cases where the patient is facing imminent death or is entering remission if certified in writing by the attending physician;

(g) Home health care coverage shall provide benefits for a minimum of one hundred thirty health care visits per calendar year. However, a visit of any duration by an employee of a home health agency for the purpose of providing services under the plan of treatment constitutes one visit;

(h) The coverage may be structured so that services or supplies included in the primary contract are not duplicated in the optional home health and hospice coverage.

(3) The insurance commissioner shall adopt any rules necessary to implement this section.

(4) The requirements of this section shall not apply to contracts or policies governed by chapter 48.66 RCW.

(5) An insurer, as a condition of reimbursement, may require compliance with home health and hospice certification regulations established by the United States department of health and human services. [1989 1st ex.s. c

9 § 222; 1988 c 245 § 33; 1984 c 22 § 3; 1983 c 249 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

Home health care, hospice care, rules: Chapter 70.126 RCW.

48.44.325 Mammograms—Insurance coverage.

Each health care service contract issued or renewed after January 1, 1990, that provides benefits for hospital or medical care shall provide benefits for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the board of nursing pursuant to chapter 18.88 RCW or physician's assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard contract provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of a contractor to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1989 c 338 § 3.]

48.44.330 Reconstructive breast surgery. (1) Each contract for health care entered into or renewed after July 24, 1983, between a health care services contractor and the person or persons to receive the care shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Each contract for health care entered into or renewed after January 1, 1986, between a health care services contractor and the person or persons to receive the care shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast has been performed. [1985 c 54 § 7; 1983 c 113 § 3.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.44.335 Mastectomy, lumpectomy. No health care service contractor under this chapter may refuse to issue any contract or cancel or decline to renew the contract solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 3.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.44.340 Mental health treatment, optional supplemental coverage—Waiver. (1) Each health care service contractor providing hospital or medical services or benefits in this state under group contracts for health care services under this chapter which are issued, delivered, or renewed in this state on or after July 1, 1986, shall offer optional supplemental coverage for mental health treatment for the insured and the insured's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by: (a) A physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83 RCW; (c) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (d) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer, health care service contractor, or health maintenance organization providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW.

(3) The group contract for health care services may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the health care service contractor.

(4) This section shall not apply to a group health care service contract that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987. [1987 c 283 § 4; 1986 c 184 § 3; 1983 c 35 § 2.]

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Legislative intent—Effective date—Severability—1986 c 184: See notes following RCW 48.21.240.

Effective date—Severability—1983 c 35: See notes following RCW 48.21.240.

48.44.344 Benefits for prenatal diagnosis of congenital disorders—Contracts entered into or renewed on or after January 1, 1990. On or after January 1, 1990, every group health care services contract entered into or renewed that covers hospital, medical, or surgical expenses on a group basis, and which provides benefits for pregnancy, childbirth, or related medical conditions to enrollees of such groups, shall offer benefits for prenatal

diagnosis of congenital disorders of the fetus by means of screening and diagnostic procedures during pregnancy to such enrollees when those services are determined to be medically necessary by the health care service contractor in accord with standards set in rule by the board of health. Every group health care services contractor shall communicate the availability of such coverage to all group health care service contract holders and to all groups with whom they are negotiating. [1988 c 276 § 7.]

Prenatal testing—Limitation on changes to coverage: RCW 48.42.090.

48.44.350 Financial interests of health care service contractors, restricted—Exceptions, regulations. (1) No person having any authority in the investment or disposition of the funds of a health care service contractor and no officer or director of a health care service contractor shall accept, except for the health care service contractor, or be the beneficiary of any fee, brokerage, gift, commission, or other emolument because of any sale of health care service agreements or any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the health care service contractor, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the health care service contractor directly upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the health care service contractor's funds under this title.

(2) The commissioner may, by regulations, from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the health care service contractor, or to a corporation or firm in which the director is interested, for necessary services performed or sales or purchases made to or for the health care service contractor in the ordinary course of the health care service contractor's business and in the usual private professional or business capacity of the director or the corporation or firm. [1986 c 223 § 9; 1983 c 202 § 6.]

48.44.360 Continuation option to be offered. Every health care service contractor that issues group contracts providing group coverage for hospital or medical expense shall offer the contract holder an option to include a contract provision granting a person who becomes ineligible for coverage under the group contract, the right to continue the group benefits for a period of time and at a rate agreed upon. The contract provision shall provide that when such coverage terminates, the covered person may convert to a contract as provided in RCW 48.44-.370. [1984 c 190 § 5.]

Legislative intent—Application—Severability—1984 c 190: See notes following RCW 48.21.250.

48.44.370 Conversion contract to be offered—Exceptions, conditions. (1) Except as otherwise provided by

this section, any group health care service contract entered into or renewed on or after January 1, 1985, that provides benefits for hospital or medical expenses shall contain a provision granting a person covered by the group contract the right to obtain a conversion contract from the contractor upon termination of the person's eligibility for coverage under the group contract.

(2) A contractor need not offer a conversion contract to:

(a) A person whose coverage under the group contract ended when the person's employment or membership was terminated for misconduct: *Provided*, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal Medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion contract, a person must submit a written application and the first premium payment for the conversion contract not later than thirty-one days after the date the person's eligibility for group coverage terminates. The conversion contract shall become effective, without lapse of coverage, immediately following termination of coverage under the group contract.

(4) If a health care service contractor or group contract holder does not renew, cancels, or otherwise terminates the group contract, the health care service contractor shall offer a conversion contract to any person who was covered under the terminated contract unless the person is eligible to obtain group hospital or medical expense coverage within thirty-one days after such nonrenewal, cancellation, or termination of the group contract.

(5) The health care service contractor shall determine the premium for the conversion contract in accordance with the contractor's table of premium rates applicable to the age and class of risk of each person to be covered under the contract and the type and amount of benefits provided. [1984 c 190 § 6.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.44.380 Conversion contract—Restrictions and requirements. (1) A health care service contractor shall not require proof of insurability as a condition for issuance of the conversion contract.

(2) A conversion contract may not contain an exclusion for preexisting conditions except to the extent that a waiting period for a preexisting condition has not been satisfied under the group contract.

(3) A health care service contractor must offer at least three contract benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible and a lifetime benefit maximum of two hundred fifty thousand dollars per person;

(b) A comprehensive medical plan with a five hundred dollar deductible and a lifetime benefit maximum of five hundred thousand dollars per person; and

(c) A basic medical plan with a one thousand dollar deductible and a lifetime maximum of seventy-five thousand dollars per person.

(4) The insurance commissioner may revise the deductibles and lifetime benefit amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion contracts.

(6) The commissioner shall adopt rules to establish specific standards for conversion contract provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms. [1984 c 190 § 7.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.44.390 Modification of basis of agreement, endorsement required. If an individual health care service agreement is issued on any basis other than as applied for, an endorsement setting forth such modification must accompany and be attached to the agreement. No agreement shall be effective unless the endorsement is signed by the applicant, and a signed copy thereof returned to the health care service contractor. [1986 c 223 § 10.]

48.44.400 Continuance provisions for former family members. After July 1, 1986, or on the next renewal date of the agreement, whichever is later, every health care service agreement issued, amended, or renewed for an individual and his or her dependents shall contain provisions to assure that the covered spouse and/or dependents, in the event that any cease to be a qualified family member by reason of termination of marriage or death of the principal enrollee, shall have the right to continue the health care service agreement without a physical examination, statement of health, or other proof of insurability. [1986 c 223 § 11.]

48.44.410 Nontermination for change in health of covered person. No health care service contractor shall terminate any person covered under a health care service contract because of a change in the physical or mental condition or health of such person: *Provided*, That, after approval of the insurance commissioner, a health care service contractor may discharge its obligation to continue coverage for such person by obtaining coverage

with another health care service contractor, or with an insurer which is comparable in terms of premiums and benefits. [1986 c 223 § 12.]

48.44.420 Coverage for adopted children. (1) Any health care service contract under this chapter delivered or issued for delivery in this state, which provides coverage for dependent children, as defined in the contract of the subscriber, shall cover adoptive children placed with the subscriber on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the health care services contractor. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 4.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.44.430 Cancellation of rider. Upon application by a subscriber, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the subscriber during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the subscriber from that condition, such agreement not to be unreasonably withheld. The option of the subscriber to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 3.]

48.44.440 Phenylketonuria. (1) The legislature finds that:

(a) Phenylketonuria is a rare inherited genetic disorder.

(b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.

(c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.

(d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.

(e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any contract for health care services delivered or issued for delivery or renewed in this state on or after September 1, 1988, shall provide coverage for the formulas necessary for the treatment of phenylketonuria. [1988 c 173 § 3.]

48.44.450 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each employer-sponsored group contract for comprehensive health care service which is entered into, or renewed, on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. Nothing in this section shall prohibit a health care service contractor from requiring that covered services be delivered by a provider who participates by contract with the health care service contractor unless no participating provider is available to deliver covered services. Nothing in this section shall prohibit a health care service contractor from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the health care service contractor. Benefits shall be payable for services for the maintenance of a covered individual in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be payable to restore and improve function.

(4) It is the intent of this section that employers purchasing comprehensive group coverage including the benefits required by this section, together with the health care service contractor, retain authority to design and employ utilization and cost controls. Therefore, benefits delivered under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the employer purchasing coverage and the health care service contractor. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available or may limit the number of services delivered as agreed by the employer purchasing coverage and the health care service contractor. [1989 c 345 § 1.]

48.44.460 Temporomandibular joint disorders—Insurance coverage. (1) Except as provided in this section, a group health care service contract entered into or renewed after December 31, 1989, shall offer optional coverage for the treatment of temporomandibular joint disorders.

(a) Health care service contractors offering medical coverage only may limit benefits in such coverages to

medical services related to treatment of temporomandibular joint disorders. Health care service contractors offering dental coverage only may limit benefits in such coverage to dental services related to treatment of temporomandibular joint disorders. No health care service contractor offering medical coverage only may define all temporomandibular joint disorders as purely dental in nature, and no health care service contractor offering dental coverage only may define all temporomandibular joint disorders as purely medical in nature.

(b) Health care contractors offering optional temporomandibular joint disorder coverage as provided in this section may, but are not required to, offer lesser or no temporomandibular joint disorder coverage as part of their basic group disability contract.

(c) Benefits and coverage offered under this section may be subject to negotiation to promote broad flexibility in potential benefit coverage. This flexibility shall apply to services to be reimbursed, determination of treatments to be considered medically necessary, systems through which services are to be provided, including referral systems and use of other providers, and related issues.

(2) Unless otherwise directed by law, the insurance commissioner shall adopt rules, to be implemented on January 1, 1993, establishing minimum benefits, terms, definitions, conditions, limitations, and provisions for the use of reasonable deductibles and copayments.

(3) A contractor need not make the offer of coverage required by this section to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefit statutes under Title 48 RCW that does not provide coverage for temporomandibular joint disorders. [1989 c 331 § 3.]

Legislative finding—Effective date—1989 c 331: See notes following RCW 48.21.320.

Chapter 48.46

HEALTH MAINTENANCE ORGANIZATIONS

Sections

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48.46.010 Legislative declaration—Purpose. In affirmation of the declared principle that health care is a right of every citizen of the state, the legislature expresses its concern that the present high costs of health care in Washington may be preventing or inhibiting a large segment of the people from obtaining access to quality health care services.

The legislature declares that the establishment of qualified prepaid group and individual practice health care delivery systems should be encouraged in order to provide all citizens of the state with the freedom of choice between competitive, alternative health care delivery systems necessary to realize their right to health. It is the purpose and policy of this chapter to provide for the development and registration of prepaid group and individual practice health care plans as health maintenance organizations, which the legislature declares to be in the interest of the health, safety and welfare of the people. [1975 1st ex.s. c 290 § 2.]

48.46.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context indicates otherwise.

(1) "Health maintenance organization" means any organization receiving a certificate of authority by the commissioner under this chapter which provides comprehensive health care services to enrolled participants of such organization on a group practice per capita prepayment basis or on a prepaid individual practice plan, either directly or through contractual or other arrangements with other institutions, entities, or persons, and which qualifies as a health maintenance organization pursuant to RCW 48.46.030 and 48.46.040.

(2) "Comprehensive health care services" means basic consultative, diagnostic, and therapeutic services rendered by licensed health professionals together with emergency and preventive care, inpatient hospital, outpatient and physician care, at a minimum, and any additional health care services offered by the health maintenance organization.

(3) "Enrolled participant" means a person who or group of persons which has entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care services.

(4) "Health professionals" means practitioners who are licensed under the provisions of chapters 18.22, 18.25, 18.29, 18.32, 18.34, 18.53, 18.57, 18.57A, 18.64, 18.71, 18.71A, 18.74, 18.78, 18.83, or 18.88 RCW.

(5) "Health maintenance agreement" means an agreement for services between a health maintenance organization which is registered pursuant to the provisions of this chapter and enrolled participants of such organization which provides enrolled participants with

comprehensive health services rendered to enrolled participants by health professionals, groups, facilities, and other personnel associated with the health maintenance organization.

(6) "Consumer" means any member, subscriber, enrollee, beneficiary, or other person entitled to health care services under terms of a health maintenance agreement, but not including health professionals, employees of health maintenance organizations, partners, or shareholders of stock corporations licensed as health maintenance organizations.

(7) "Meaningful role in policy making" means a procedure approved by the commissioner which provides consumers or elected representatives of consumers a means of submitting the views and recommendations of such consumers to the governing board of such organization coupled with reasonable assurance that the board will give regard to such views and recommendations.

(8) "Meaningful grievance procedure" means a procedure for investigation of consumer grievances in a timely manner aimed at mutual agreement for settlement according to procedures approved by the commissioner, and which may include arbitration procedures.

(9) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes any health care services and is licensed or otherwise authorized to furnish such services.

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

(11) "Commissioner" means the insurance commissioner.

(12) "Group practice" means a partnership, association, corporation, or other group of health professionals:

(a) The members of which may be individual health professionals, clinics, or both individuals and clinics who engage in the coordinated practice of their profession; and

(b) The members of which are compensated by a prearranged salary, or by capitation payment or drawing account that is based on the number of enrolled participants.

(13) "Individual practice health care plan" means an association of health professionals in private practice who associate for the purpose of providing prepaid comprehensive health care services on a fee-for-service or capitation basis.

(14) "Uncovered expenditures" means the costs of health care services that are covered by a health maintenance organization for which an enrolled participant would also be liable in the event of the health maintenance organization's insolvency. [1983 c 106 § 1; 1982 c 151 § 1; 1975 1st ex.s. c 290 § 3.]

Effective date—1982 c 151: "This act shall take effect on January 1, 1983." [1982 c 151 § 5.]

48.46.023 Agent—Definition—License required—Application, issuance, renewal, fees—Penalties involving license. (1) Agent, as used in this chapter, means any person appointed or authorized by a health maintenance organization to solicit applications for health care service agreements on its behalf.

(2) No person shall act as or hold himself out to be an agent of a health maintenance organization unless licensed as a disability insurance agent by this state and appointed or authorized by the health maintenance organization on whose behalf solicitations are to be made.

(3) Applications, appointments, and qualifications for licenses, the renewal thereof, the fees and issuance of a license, and the renewal thereof shall be in accordance with the provisions of chapter 48.17 RCW that are applicable to a disability insurance agent.

(4) A person holding a valid license in this state as a health maintenance organization agent on July 24, 1983, is not required to requalify by an examination for the renewal of the license.

(5) The commissioner may revoke, suspend, or refuse to issue or renew any agent's license, or levy a fine upon the licensee, in accordance with those provisions of chapter 48.17 RCW that are applicable to a disability insurance agent. [1983 c 202 § 8.]

48.46.027 Registration, required—Issuance of securities—Penalty. (1) No person shall in this state, by mail or otherwise, act as or hold himself out to be a health maintenance organization as defined in RCW 48.46.020 without being duly registered therefor with the commissioner.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health maintenance organization domiciled in this state other than the memberships and bonds of a nonprofit corporation shall be subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health maintenance organizations were domestic insurers.

(3) Any person violating any provision of subsection (1) or (2) of this section shall be liable to a fine of not to exceed one thousand dollars and imprisonment for not to exceed six months for each instance of such violation. [1983 c 202 § 9.]

48.46.030 Eligibility requirements for certificate of registration—Application requirements, information.

Any corporation, cooperative group, partnership, individual, association, or groups of health professionals licensed by the state of Washington, public hospital district, or public institutions of higher education shall be entitled to a certificate of registration as a health maintenance organization if it:

(1) Provides comprehensive health care services to enrolled participants on a group practice per capita prepayment basis or on a prepaid individual practice plan and provides such health services either directly or through arrangements with institutions, entities, and persons which its enrolled population might reasonably require as determined by the health maintenance organization in order to be maintained in good health; and

(2) Is governed by a board elected by enrolled participants, or otherwise provides its enrolled participants with a meaningful role in policy making procedures of such organization, as defined in RCW 48.46.020(7), and 48.46.070; and

(3) Affords enrolled participants with a meaningful grievance procedure aimed at settlement of disputes between such persons and such health maintenance organization, as defined in RCW 48.46.020(8) and 48.46.100; and

(4) Provides enrolled participants, or makes available for inspection at least annually, financial statements pertaining to health maintenance agreements, disclosing income and expenses, assets and liabilities, and the bases for proposed rate adjustments for health maintenance agreements relating to its activity as a health maintenance organization; and

(5) Demonstrates to the satisfaction of the commissioner that its facilities and personnel are reasonably adequate to provide comprehensive health care services to enrolled participants and that it is financially capable of providing such members with, or has made adequate contractual arrangements through insurance or otherwise to provide such members with, such health services; and

(6) Substantially complies with administrative rules and regulations of the commissioner for purposes of this chapter; and

(7) Submits an application for a certificate of registration which shall be verified by an officer or authorized representative of the applicant, being in form as the commissioner prescribes, and setting forth:

(a) A copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(b) A copy of the bylaws, rules and regulations, or similar documents, if any, which regulate the conduct of the internal affairs of the applicant, and all amendments thereto;

(c) A list of the names, addresses, members of the board of directors, board of trustees, executive committee, or other governing board or committee and the principal officers, partners, or members;

(d) A full and complete disclosure of any financial interests held by any officer, or director in any provider associated with the applicant or any provider of the applicant;

(e) A description of the health maintenance organization, its facilities and its personnel, and the applicant's most recent financial statement showing such organization's assets, liabilities, income, and other sources of financial support;

(f) A description of the geographic areas and the population groups to be served and the size and composition of the anticipated enrollee population;

(g) A copy of each type of health maintenance agreement to be issued to enrolled participants;

(h) A schedule of all proposed rates of reimbursement to contracting health care facilities or providers, if any, and a schedule of the proposed charges for enrollee coverage for health care services, accompanied by data relevant to the formulation of such schedules;

(i) A description of the proposed method and schedule for soliciting enrollment in the applicant health maintenance organization and the basis of compensation for such solicitation services;

(j) A copy of the solicitation document to be distributed to all prospective enrolled participants in connection with any solicitation;

(k) A financial projection which sets forth the anticipated results during the initial two years of operation of such organization, accompanied by a summary of the assumptions and relevant data upon which the projection is based. The projection should include the projected expenses, enrollment trends, income, enrollee utilization patterns, and sources of working capital;

(l) A detailed description of the enrollee complaint system as provided by RCW 48.46.100;

(m) A detailed description of the procedures and programs to be implemented to assure that the health care services delivered to enrolled participants will be of professional quality; and

(n) Such other information as the commissioner shall require by rule or regulation which is reasonably necessary to carry out the provisions of this section.

A health maintenance organization shall, unless otherwise provided for in this chapter, file a notice describing any modification of any of the information required by subsection (7) of this section. Such notice shall be filed with the commissioner. [1985 c 320 § 1; 1983 c 106 § 2; 1975 1st ex.s. c 290 § 4.]

48.46.040 Certificate of registration—Issuance—Grounds for refusal—Name restrictions—Inspection and review of facilities. The commissioner shall issue a certificate of registration to the applicant within sixty days of such filing unless he notifies the applicant within such time that such application is not complete and the reasons therefor; or that he is not satisfied that:

(1) The basic organizational document of the applicant permits the applicant to conduct business as a health maintenance organization;

(2) The organization has demonstrated the intent and ability to assure that comprehensive health care services will be provided in a manner to assure both their availability and accessibility;

(3) The organization is financially responsible and may be reasonably expected to meet its obligations to its enrolled participants. In making this determination, the commissioner shall consider among other relevant factors:

(a) Any agreements with an insurer, a medical or hospital service bureau, a government agency or any other organization paying or insuring payment for health care services;

(b) Any agreements with providers for the provision of health care services; and

(c) Any arrangements for liability and malpractice insurance coverage;

(4) The procedures for offering health care services and offering or terminating contracts with enrolled participants are reasonable and equitable in comparison

with prevailing health insurance subscription practices and health maintenance organization enrollment procedures; and, that

(5) Procedures have been established to:

(a) Monitor the quality of care provided by such organization, including, as a minimum, procedures for internal peer review;

(b) Resolve complaints and grievances initiated by enrolled participants in accordance with RCW 48.46.010 and 48.46.100;

(c) Offer enrolled participants an opportunity to participate in matters of policy and operation in accordance with RCW 48.46.020(7) and 48.46.070.

No person to whom a certificate of registration has not been issued, except a health maintenance organization certified by the secretary of the department of health, education and welfare, pursuant to Public Law 93-222 or its successor, shall use the words "health maintenance organization" or the initials "HMO" in its name, contracts, or literature. Persons who are contracting with, operating in association with, recruiting enrolled participants for, or otherwise authorized by a health maintenance organization possessing a certificate of registration to act on its behalf may use the terms "health maintenance organization" or "HMO" for the limited purpose of denoting or explaining their relationship to such health maintenance organization.

The department of health, at the request of the insurance commissioner, shall inspect and review the facilities of every applicant health maintenance organization to determine that such facilities are reasonably adequate to provide the health care services offered in their contracts. If the commissioner has information to indicate that such facilities fail to continue to be adequate to provide the health care services offered, the department of health, upon request of the insurance commissioner, shall reinspect and review the facilities and report to the insurance commissioner as to their adequacy or inadequacy. [1989 1st ex.s. c 9 § 223; 1983 c 106 § 3; 1975 1st ex.s. c 290 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

48.46.060 Prepayment agreements—Standards for forms and documents—Grounds for disapproval—Cancellation or failure to renew—Filing of agreement forms. (1) Any health maintenance organization may enter into agreements with or for the benefit of persons or groups of persons, which require prepayment for health care services by or for such persons in consideration of the health maintenance organization providing health care services to such persons. Such activity is not subject to the laws relating to insurance if the health care services are rendered directly by the health maintenance organization or by any provider which has a contract or other arrangement with the health maintenance organization to render health services to enrolled participants.

(2) All forms of health maintenance agreements issued by the organization to enrolled participants or other

marketing documents purporting to describe the organization's comprehensive health care services shall comply with such minimum standards as the commissioner deems reasonable and necessary in order to carry out the purposes and provisions of this chapter, and which fully inform enrolled participants of the health care services to which they are entitled, including any limitations or exclusions thereof, and such other rights, responsibilities and duties required of the contracting health maintenance organization.

(3) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove an agreement form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous, or misleading clauses, or exceptions or conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the agreement;

(b) If it has any title, heading, or other indication which is misleading;

(c) If purchase of health care services thereunder is being solicited by deceptive advertising;

(d) If the benefits provided therein are unreasonable in relation to the amount charged for the agreement;

(e) If it contains unreasonable restrictions on the treatment of patients;

(f) If it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW; or

(g) If any agreement for health care services with any state agency, division, subdivision, board or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law.

(4) No health maintenance organization authorized under this chapter shall cancel or fail to renew the enrollment on any basis of an enrolled participant or refuse to transfer an enrolled participant from a group to an individual basis for reasons relating solely to age, sex, race, or health status: *Provided however*, That nothing contained herein shall prevent cancellation of an agreement with enrolled participants (a) who violate any published policies of the organization which have been approved by the commissioner, or (b) who are entitled to become eligible for medicare benefits and fail to enroll for a medicare supplement plan offered by the health maintenance organization and approved by the commissioner, or (c) for failure of such enrolled participant to pay the approved charge, including cost-sharing, required under such contract, or (d) for a material breach of the health maintenance agreement.

(5) No agreement form or amendment to an approved agreement form shall be used unless it is first filed with the commissioner. [1989 c 10 § 10. Prior: 1985 c 320 § 2; 1985 c 283 § 2; 1983 c 106 § 4; 1975 1st ex.s. c 290 § 7.]

48.46.070 Governing body. (1) The members of the governing body of a health maintenance organization shall be nominated by the voting members or by the enrolled participants and providers, and shall be elected by the enrolled participants or voting members pursuant to the provisions of their bylaws, which shall not be restricted to providers. At least one-third of such body shall consist of consumers who are substantially representative of the enrolled population of such organization: *Provided, however*, That any organization that is a qualified health maintenance organization under P.L. 93-222 (Title XIII, section 1310(d) of the public health services act) is deemed to have satisfied these governing body requirements and the requirements of RCW 48.46.030(2).

(2) For health maintenance organizations formed by public institutions of higher education or public hospital districts, the governing body shall be advised by an advisory board consisting of at least two-thirds consumers who are elected by the voting members or the enrolled participants and are substantially representative of the enrolled population. [1985 c 320 § 3; 1983 c 106 § 5; 1975 1st ex.s. c 290 § 8.]

48.46.080 Annual statement—Filing—Contents—Penalty for failure to file—Accuracy required.

(1) Every health maintenance organization shall annually, within one hundred twenty days of the closing date of its fiscal year, file with the commissioner a statement verified by at least two of the principal officers of the health maintenance organization showing its financial condition as of the closing date of its fiscal year.

(2) Such annual report shall be in such form as the commissioner shall prescribe and shall include:

(a) A financial statement of such organization, including its balance sheet and receipts and disbursements for the preceding year, which reflects at a minimum;

(i) all prepayments and other payments received for health care services rendered pursuant to health maintenance agreements;

(ii) expenditures to all categories of health care facilities, providers, insurance companies, or hospital or medical service plan corporations with which such organization has contracted to fulfill obligations to enrolled participants arising out of its health maintenance agreements, together with all other direct expenses including depreciation, enrollment, and commission; and

(iii) expenditures for capital improvements, or additions thereto, including but not limited to construction, renovation, or purchase of facilities and capital equipment;

(b) The number of participants enrolled and terminated during the report period. Every employer offering health care benefits to their employees through a group contract with a health maintenance organization shall furnish said health maintenance organization with a list of their employees enrolled under such plan;

(c) The number of doctors by type of practice who, under contract with or as an employee of the health

maintenance organization, furnished health care services to consumers during the past year;

(d) A report of the names and addresses of all officers, directors, or trustees of the health maintenance organization during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals for services to such organization. For partnership and professional service corporations, a report shall be made for partners or shareholders as to any compensation or expense reimbursement received by them for services, other than for services and expenses relating directly for patient care;

(e) Such other information relating to the performance of the health maintenance organization or the health care facilities or providers with which it has contracted as reasonably necessary to the proper and effective administration of this chapter, in accordance with rules and regulations; and

(f) Disclosure of any financial interests held by officers and directors in any providers associated with the health maintenance organization or any provider of the health maintenance organization.

(3) The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed.

(4) The commissioner may suspend or revoke the certificate of registration of any health maintenance organization failing to file its annual statement when due or during any extension of time therefor which the commissioner, for good cause, may grant.

(5) No person shall knowingly file with any public official or knowingly make, publish, or disseminate any financial statement of a health maintenance organization which does not accurately state the health maintenance organization's financial condition. [1983 c 202 § 10; 1983 c 106 § 6; 1975 1st ex.s. c 290 § 9.]

Reviser's note: This section was amended by 1983 c 202 § 10 and 1983 c 106 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

48.46.090 Standard of services provided. A health maintenance organization, and the health care facilities and providers with which such organization has entered into contracts to provide health care services to its enrolled participants, shall provide such services in a manner consistent with the dignity of each enrolled participant as a human being. [1975 1st ex.s. c 290 § 10.]

48.46.100 Grievance procedure. A health maintenance organization shall establish and maintain a grievance procedure, approved by the commissioner, to provide reasonable and effective resolution of complaints initiated by enrolled participants concerning any matter relating to the interpretation of any provision of such enrolled participants' health maintenance contracts, including, but not limited to, claims regarding the scope of coverage for health care services; denials, cancellations, or nonrenewals of enrolled participants' coverage; and the quality of the health care services rendered, and

which may include procedures for arbitration. [1975 1st ex.s. c 290 § 11.]

48.46.110 Name restrictions—Discrimination—Recovery of costs of health care services participant not entitled to. (1) No health maintenance organization may refer to itself in its name or advertising with any of the words: "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business, or deceptively similar to the name or description of any insurance or surety corporation or health care service contractor or other health maintenance organization doing business in this state.

(2) No health maintenance organization, nor any health care facility or provider with which such organization has contracted to provide health care services, shall discriminate against any person from whom or on whose behalf, payment to meet the required charge is available, with regard to enrollment, disenrollment, or the provision of health care services, on the basis of such person's race, color, sex, religion, place of residence if there is reasonable access to the facility of the health maintenance organization, socioeconomic status, or status as a recipient of medicare under Title XVIII of the Social Security Act, 42 U.S.C. section 1396, et seq.

(3) Where a health maintenance organization determines that an enrolled participant has received health care services to which such enrolled participant is not entitled under the terms of his health maintenance agreement, neither such organization, nor any health care facility or provider with which such organization has contracted to provide health care services, shall have recourse against such enrolled participant for any amount above the actual cost of providing such service, if any, specified in such agreement, unless the enrolled participant or a member of his family has given or withheld information to the health maintenance organization, the effect of which is to mislead or misinform the health maintenance organization as to the enrolled participant's right to receive such services. [1983 c 202 § 11; 1975 1st ex.s. c 290 § 12.]

48.46.120 Examination of health maintenance organizations—Duties of organizations, powers of commissioner—Independent audit reports—Assessment of organizations for costs, conditions. (1) The commissioner may make an examination of the operations of any health maintenance organization as often as he deems necessary in order to carry out the purposes of this chapter.

(2) Every health maintenance organization shall submit its books and records relating its operation for financial condition and market conduct examinations and in every way facilitate them. The quality or appropriateness of medical services or systems shall not be examined except to the extent that such items are incidental to an examination of the financial condition or the market conduct of a health maintenance organization. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health maintenance

organization and the principals of such providers concerning their business.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health maintenance organization in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his report of the examination.

(4) Health maintenance organizations licensed in the state shall be equitably assessed to cover the cost of financial condition and market conduct examinations, the costs of promulgating rules, and the costs of enforcing the provisions of this chapter. The assessments shall be levied not less frequently than once every twelve months and shall be in an amount expected to fund the examinations, promulgation of rules, and enforcement of the provisions of this chapter, including a reasonable margin for cost variations. The assessments shall be established by rules promulgated by the commissioner but shall not exceed five and one-half cents per month per person entitled to health care services pursuant to a health maintenance agreement, excluding such persons who are not residents of this state: *Provided*, That the minimum fee shall be one thousand dollars. Assessment receipts shall be deposited in the insurance commissioner's regulatory account in the state treasury; shall be used for the purpose of funding the examinations authorized in subsection (1) of this section, the costs of promulgating rules, and the costs of enforcing the provisions of this chapter; and shall be accounted for jointly with fees from health care service contractors but separately from insurers. Assessment receipts received from health maintenance organizations shall be used to pay a pro rata share of the costs, including overhead, of regulating health care service contractors and health maintenance organizations. Amounts remaining in the separate account at the end of a biennium shall be applied to reduce the assessments in the succeeding biennium. [1987 c 83 § 1; 1986 c 296 § 9; 1985 c 7 § 115; 1983 c 63 § 2; 1975 1st ex.s. c 290 § 13.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

48.46.130 Investigation of violations—Hearing—Findings—Penalties—Order requiring compliance, etc.—Suspension or revocation of certificate, effect—Application to courts. (1) The commissioner may, consistent with the provisions of the administrative procedure act, chapter 34.05 RCW, initiate proceedings to determine whether a health maintenance organization has:

(a) Operated in a manner that materially violates its organizational documents;

(b) Materially breached its obligation to furnish the health care services specified in its contracts with enrolled participants;

(c) Violated any provision of this chapter, or any rules and regulations promulgated thereunder;

(d) Made any false statement with respect to any report or statement required by this chapter or by the commissioner under this chapter;

(e) Advertised or marketed, or attempted to market, its services in such a manner as to misrepresent its services or capacity for services, or engaged in deceptive, misleading, or unfair practices with respect to advertising or marketing;

(f) Prevented the commissioner from the performance of any duty imposed by this chapter; or

(g) Fraudulently procured or attempted to procure any benefit under this chapter.

(2) After providing written notice and an opportunity for a hearing to be scheduled no sooner than ten days following such notice, the commissioner shall make administrative findings and may, as appropriate:

(a) Impose a penalty of not more than ten thousand dollars for each and every unlawful act committed which materially affects the health services offered or furnished;

(b) Issue an administrative order requiring the health maintenance organization to:

(i) Cease or modify inappropriate conduct or practices by it or any of the personnel employed or associated with it;

(ii) Fulfill its contractual obligations;

(iii) Provide a service which has been improperly denied;

(iv) Take steps to provide or arrange for any service which it has agreed to make available; or

(v) Abide by the terms of an arbitration proceeding, if any;

(c) Suspend or revoke the certificate of authority of the health maintenance organization:

(i) If its certificate of authority is suspended, the organization shall not, during the period of such suspension, enroll any additional participants except newborn children or other newly acquired dependents of existing enrolled participants, and shall not engage in any advertising or solicitation whatsoever;

(ii) If its certificate of authority is revoked, the organization shall proceed under the supervision of the commissioner immediately following the effective date of the order of revocation to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of such affairs: *Provided*, That the commissioner may, by written order, permit such further operation of the organization as it may find to be in the best interest of enrolled participants, to the end that such enrolled participants will be afforded the greatest practical opportunity to obtain continuing health care coverage: *Provided, further*, That if the organization is qualified to operate as a health care service contractor under chapter 48.44 RCW, it may continue to operate as such when it obtains the appropriate license.

(3) The commissioner may apply to any court for such legal or equitable relief as it deems necessary to effectively carry out the purposes of this chapter, including, but not limited to, an action in any court of competent jurisdiction to enjoin any such acts or practices and to

enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. [1975 1st ex.s. c 290 § 14.]

48.46.135 Fine in addition to or in lieu of suspension, revocation, or refusal. After hearing or upon stipulation by the registrant and in addition to or in lieu of the suspension, revocation, or refusal to renew any registration of a health maintenance organization, the commissioner may levy a fine against the party involved for each offense in an amount not less than fifty dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the registration of the registrant, if not already revoked, and the fine shall be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1983 c 202 § 15.]

48.46.140 Fees. Every organization subject to this chapter shall pay to the commissioner the following fees:

(1) For filing a copy of its application for a certificate of registration or amendment thereto, one hundred dollars;

(2) For filing each annual report pursuant to RCW 48.46.080, ten dollars. [1975 1st ex.s. c 290 § 15.]

48.46.150 Medicaid services. (1) The department is hereby authorized to enter into contracts with health maintenance organizations to furnish, directly or through contractual arrangements with providers or other persons, medicaid services to eligible recipients of medical assistance under Title XIX of the Social Security Act, 42 U.S.C. section 1396, et seq.

(2) The department shall enter into negotiations with any health maintenance organization for the provision of the medical needs of such recipients on a group basis located within the appropriate defined service area of such health maintenance organization in order to realize the possibility of obtaining cost savings of public funds in the purchase of health care services for such recipients, based on differentials between the cost of such services when offered by health maintenance organizations and other providers: *Provided*, That nothing herein shall require the department to enter into any contract: *And provided further*, That no such recipient shall be obligated to receive any such medical care from any health maintenance organization under contract with the department. [1975 1st ex.s. c 290 § 16.]

48.46.160 Report to legislature. The commissioner shall report annually to the legislature regarding the effect of this chapter on the development and operation of health maintenance organizations, the effect of such development and operation on both enrolled participants and nonenrollees including participation in medicare, the extent to which the purposes and provisions of this chapter have been carried out, and the modifications in this chapter, if any, necessary to further the interests of the public. [1975 1st ex.s. c 290 § 17.]

48.46.170 Effect of chapter as to other laws—Construction. (1) Solicitation of enrolled participants by a health maintenance organization granted a certificate of registration, or its agents or representatives, shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

(2) Any health maintenance organization authorized under this chapter shall not be deemed to be violating any law prohibiting the practice by unlicensed persons of podiatry, chiropractic, dental hygiene, opticianary, dentistry, optometry, osteopathy, pharmacy, medicine and surgery, physical therapy, nursing, or psychology: *Provided*, That this subsection shall not be construed to expand a health professional's scope of practice or to allow employees of a health maintenance organization to practice as a health professional unless licensed.

(3) Nothing contained in this chapter shall alter any statutory obligation, or rule or regulation promulgated thereunder, in chapter 70.38 or 70.39 RCW.

(4) Any health maintenance organization receiving a certificate of registration pursuant to this chapter shall be exempt from the provisions of chapter 48.05 RCW, but shall be subject to chapter 70.39 RCW. [1983 c 106 § 7; 1975 1st ex.s. c 290 § 18.]

48.46.180 Duty of employer to inform and make available to employees option of enrolling in health maintenance organization. (1) The state government, or any political subdivision thereof, which offers its employees a health benefits plan shall make available to and inform its employees or members of the option to enroll in at least one health maintenance organization holding a valid certificate of authority which provides health care services in the geographic areas in which such employees or members reside.

(2) Each employer, public or private, having more than fifty employees in this state which offers its employees a health benefits plan, and each employee benefits fund in this state having more than fifty members which offers its members any form of health benefits shall make available to and inform its employees or members of the option to enroll in at least one health maintenance organization holding a valid certificate of authority which provides health care services in the geographic areas in which a substantial number of such employees or members reside: *Provided*, That unless at least twenty-five employees agree to participate in a health maintenance organization the employer need not provide such an option: *Provided further*, That where such employees are members of a bona fide bargaining

unit covered by a labor-management collective bargaining agreement, the selection of the options required by this section may be specified in such agreement: *And provided further*, That the provisions of this section shall not be mandatory where such members are covered by a Taft-Hartley health care trust, except that the labor-management trustees may contract with a health maintenance organization if a feasibility study determines it is to the advantage of the members to so contract.

(3) Subsections (1) and (2) of this section shall impose no responsibilities or duties upon state government or any political subdivision thereof or any other employer, either public or private, to provide health maintenance organization coverage when no health maintenance organization exists for the purpose of providing health care services in the geographic areas in which the employees or members reside.

(4) No employer in this state shall in any way be required to pay more for health benefits as a result of the application of this section than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract of obligation for the provision of health benefits between such employer and its employees. [1975 1st ex.s. c 290 § 19.]

48.46.190 Payroll deductions for capitation payments to health maintenance organizations. See RCW 41.04.233.

48.46.200 Rules and regulations. The commissioner may, in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW, promulgate rules and regulations as necessary or proper to carry out the provisions of this chapter. Nothing in this chapter shall be construed to prohibit the commissioner from requiring changes in procedures previously approved by him. [1975 1st ex.s. c 290 § 21.]

48.46.210 Compliance with federal funding requirements—Construction. Nothing in this chapter shall prohibit any health maintenance organization from meeting the requirements of any federal law which would authorize such health maintenance organization to receive federal financial assistance or enroll beneficiaries assisted by federal funds. [1975 1st ex.s. c 290 § 22.]

48.46.220 Review of administrative action. Any party aggrieved by a decision, order, or regulation made under this chapter by the commissioner shall have the right to have such reviewed pursuant to the provisions of the administrative procedure act, chapter 34.05 RCW. [1975 1st ex.s. c 290 § 23.]

48.46.230 Surety bond, securities deposit—Amount—Waiver—Substitution of securities—Adjustment of amount. (1) Each health maintenance organization, as a requirement for receiving a certificate of registration by the commissioner under this chapter, shall provide a surety bond acceptable to the commissioner, or shall deposit with the commissioner or with

any organization/trustee acceptable to him, cash or securities eligible for investment by the health maintenance organizations pursuant to chapter 48.13 RCW, or any combination of these or other deposits that are acceptable to him, in the amount set forth in this section as a guarantee that the uncovered expenditure obligations of the health maintenance organization to the enrolled participants will be performed.

(2)(a) For a health maintenance organization that is beginning operation, the amount shall be the greatest of: (i) Five percent of its reasonably estimated expenditures for health care services for its first year of operation; (ii) three times its estimated average monthly uncovered expenditures for its first year of operation; or (iii) one hundred fifty thousand dollars.

(b) At the beginning of each succeeding year, unless not applicable, such a health maintenance organization shall deposit with the commissioner a surety bond acceptable to the commissioner, or cash or securities eligible for investment by the health maintenance organization pursuant to chapter 48.13 RCW, or any combination of these or other deposits acceptable to the commissioner in an amount equal to four percent of its reasonably estimated annual uncovered expenditures for that year. Each year's estimate, after the first year of operation, shall reasonably reflect the prior year's operating experience and delivery arrangements.

(3)(a) For a health maintenance organization that is in operation on January 1, 1983, unless not applicable under subsection (4) of this section, the amount shall be the greater of (i) one percent of the preceding twelve months of uncovered expenditures, or (ii) one hundred fifty thousand dollars, on the first day of the first fiscal year beginning six months or more after January 1, 1983.

(b) In the second fiscal year, if applicable, the amount of the additional deposit shall be equal to two percent of its reasonably estimated annual uncovered expenditures. In the third fiscal year, if applicable, the additional deposit shall be equal to three percent of its reasonably estimated annual uncovered expenditures for that year, and in the fourth fiscal year and subsequent years, if applicable, the additional deposit shall be equal to an amount of four percent of its reasonably estimated annual uncovered expenditures for each year. Each year's estimate, after the first year of operation shall reasonably reflect the prior year's operating experience and delivery arrangements.

(4)(a) A health maintenance organization shall no longer be required to make additional deposits as set forth under subsections (2) and (3) of this section if the total amount of its surety bond or deposit with the commissioner of cash, securities, or any combination of these or other deposits is equal to twenty-five percent of the health maintenance organization's reasonably estimated annual uncovered expenditures for the next calendar year.

(b) The annual deposit requirements set forth under subsections (2) and (3) of this section shall not apply to a health maintenance organization which has achieved (i) a total net worth not including land, buildings, and

equipment of at least one million dollars, or (ii) a total net worth including land, buildings, and equipment of at least five million dollars: *Provided*, That the total net worth of at least five million dollars must at least be equal to twenty-five percent of the health maintenance organization's reasonably estimated annual uncovered expenditures for the next calendar year, and be equal to ten percent or more of its total assets.

(c) For a health maintenance organization which has a guaranteeing organization, the annual deposit requirement set forth in subsections (2) and (3) of this section shall not apply if the guaranteeing organization has been in operation for at least five years and has achieved (i) a total net worth not including land, buildings, and equipment of at least one million dollars, or (ii) a total net worth including land, buildings, and equipment of at least five million dollars: *Provided*, That the total net worth of at least five million dollars must at least be equal to twenty-five percent of the health maintenance organization's reasonably estimated annual uncovered expenditures for the next calendar year, and be equal to ten percent or more of the guaranteeing organization's total assets: *Provided further*, That if the guaranteeing organization is sponsoring more than one health maintenance organization, the net worth requirement shall be increased by a multiple equal to the number of such health maintenance organizations.

(5) The commissioner may waive any of the deposit requirements set forth in subsections (2) and (3) of this section whenever satisfied that the health maintenance organization has sufficient net worth and an adequate history of generating net income to assure its financial viability for the next year, or its performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income, or the assets of the health maintenance organization or its contracts with insurers, providers, government, or other organizations are sufficient to reasonably assure the performance of its obligations.

(6) All income from securities on deposit with the commissioner shall belong to the depositing health maintenance organization and shall be paid to it as it becomes available.

(7) A health maintenance organization that has made a securities deposit with the commissioner may, at its option, withdraw the securities deposit or any part thereof after first having deposited or provided in lieu thereof a surety bond, a deposit of cash or securities, or any combination of these or other deposits of equal amount and value to that withdrawn. Any securities shall be subject to approval by the commissioner before being substituted.

(8) In any year in which, under subsection (4) of this section, an annual deposit is not required of a health maintenance organization, at its request, the commissioner shall lower the amount deposited by one hundred thousand dollars for each two hundred fifty thousand dollars of total net worth in excess of the amount that allows it not to make an annual deposit. If the total net worth of a health maintenance organization no longer supports a reduction of the amount it has deposited, it

shall immediately redeposit one hundred thousand dollars for each two hundred fifty thousand dollars of reduction, so long as its total deposit does not exceed the maximum required under this section. [1982 c 151 § 2.]

Effective date—1982 c 151: See note following RCW 48.46.020.

48.46.240 Funded reserve requirements. (1) Each health maintenance organization obtaining a certificate of authority from the commissioner shall provide and maintain a funded reserve of one hundred fifty thousand dollars, which shall be in addition to any deposit or contingent reserve requirements set forth in RCW 48.46-.230. The funded reserve shall be deposited with the commissioner or with any organization/trustee acceptable to him in the form of cash, securities eligible for investment by the health maintenance organization pursuant to chapter 48.13 RCW, or any combination of these or other measures that are acceptable to the commissioner, and must equal or exceed one hundred fifty thousand dollars. The funded reserve shall be established as a guarantee that the uncovered expenditure obligations of the health maintenance organization to the enrolled participants will be performed.

(2) Any health maintenance organization that is in operation on January 1, 1983, shall establish a funded reserve of one hundred thousand dollars within one year and accrue twenty-five thousand dollars on the first day of the second and third fiscal years following twelve months after January 1, 1983. [1985 c 320 § 4; 1982 c 151 § 3.]

Effective date—1982 c 151: See note following RCW 48.46.020.

48.46.250 Coverage of dependent children—Newborn infants, congenital anomalies—Notification period. (1) Any health maintenance agreement under this chapter which provides coverage for dependent children of the enrolled participant shall provide the same coverage for newborn infants of the enrolled participant from and after the moment of birth. Coverage provided under this section shall include, but not be limited to, coverage for congenital anomalies of such children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the agreement may require that notification of birth of a newly born child and payment of the required premiums must be furnished to the health maintenance organization. The notification period shall be no less than sixty days from the date of birth. This subsection applies to agreements issued or renewed on or after January 1, 1984. [1984 c 4 § 2; 1983 c 202 § 12.]

48.46.260 Individual health maintenance agreement—Return within ten days of delivery—Refunds—Void from beginning. Every subscriber of an individual health maintenance agreement may return the agreement to the health maintenance organization or the agent through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the agreement, the subscriber is not satisfied with it for any

reason. The health maintenance organization shall refund promptly any fee paid for the agreement. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the health maintenance organization or agent. Upon such return of the agreement, it shall be void from the beginning and the parties shall be in the same position as if no agreement had been issued. Notice of the provisions of this section shall be printed on the face of each such agreement or be attached thereto. [1983 c 202 § 13.]

48.46.270 Financial interests of health maintenance organization authorities, restricted—Exceptions, regulations. (1) No person having any authority in the investment or disposition of the funds of a health maintenance organization and no officer or director of a health maintenance organization shall accept, except for the health maintenance organization, or be the beneficiary of any fee, brokerage, gift, commission, or other emolument because of any sale of health care service agreements or any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the health maintenance organization, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the health maintenance organization directly upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the health maintenance organization's funds under this title.

(2) The commissioner may, by regulations, from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the health maintenance organization, or to a corporation or firm in which the director is interested, for necessary services performed or sales or purchases made to or for the health maintenance organization in the ordinary course of the health maintenance organization's business and in the usual private professional or business capacity of the director or the corporation or firm. [1985 c 320 § 5; 1983 c 202 § 14.]

48.46.275 Mammograms—Insurance coverage. Each health maintenance agreement issued or renewed after January 1, 1990, that provides benefits for hospital or medical care shall provide benefits for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the board of nursing pursuant to chapter 18.88 RCW or physician's assistant pursuant to chapter 18.71A RCW.

All services must be provided by the health maintenance organization or rendered upon referral by the health maintenance organization. This section shall not be construed to prevent the application of standard agreement provisions applicable to other benefits such as deductible or copayment provisions. This section does

not limit the authority of a health maintenance organization to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1989 c 338 § 4.]

48.46.280 Reconstructive breast surgery. (1) Any health care service plan issued, amended, or renewed after July 24, 1983, shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Any health care service plan issued, amended, or renewed after January 1, 1986, shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast has been performed. [1985 c 54 § 8; 1983 c 113 § 4.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.46.285 Mastectomy, lumpectomy. No health maintenance organization under this chapter may refuse coverage or cancel or decline coverage solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 4.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.46.290 Mental health treatment, optional supplemental coverage—Waiver. (1) Each health maintenance organization providing services or benefits for hospital or medical care coverage in this state under group health maintenance agreements which are issued, delivered, or renewed in this state on or after July 1, 1986, shall offer optional supplemental coverage for mental health treatment to the enrolled participant and the enrolled participant's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by the health maintenance organization or the health maintenance organization refers the enrolled participant or the enrolled participant's covered dependents for treatment to: (a) A physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83 RCW; (c) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (d) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer, health care service contractor, or health maintenance organization providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by physicians licensed under chapter 18.71 or 18.57 RCW,

psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW.

(3) The group health maintenance agreement may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the health maintenance organization.

(4) This section shall not apply to a group health maintenance agreement that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987. [1987 c 283 § 5; 1986 c 184 § 4; 1983 c 35 § 3.]

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Legislative intent—Effective date—Severability—1986 c 184: See notes following RCW 48.21.240.

Effective date—Severability—1983 c 35: See notes following RCW 48.21.240.

48.46.300 Future dividends or refunds, restricted—
Issuance or sale of securities regulated. (1) No health maintenance organization nor any individual acting in behalf thereof may guarantee or agree to the payment of future dividends or future refunds of unused charges or savings in any specific or approximate amounts or percentages in respect to any contract being offered to the public, except in a group contract containing an experience refund provision.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health maintenance organization domiciled in this state other than the memberships and bonds of a nonprofit corporation are subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits. [1983 c 106 § 8.]

48.46.310 Registration not endorsement. The granting of a certificate of registration to a health maintenance organization is permissive only, and does not constitute an endorsement by the insurance commissioner of any person or thing related to the health maintenance organization, and no person may advertise or display a certificate of registration for use as an inducement in any solicitation. [1983 c 106 § 9.]

48.46.320 Dependent children, termination of coverage, conditions. Any health maintenance agreement which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the agreement shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child

while the child is and continues to be both: (1) Incapable of self-sustaining employment by reason of developmental disability or physical handicap; and (2) chiefly dependent upon the subscriber for support and maintenance, if proof of such incapacity and dependency is furnished to the health maintenance organization by the enrolled participant within thirty-one days of the child's attainment of the limiting age and subsequently as required by the health maintenance organization but not more frequently than annually after the two-year period following the child's attainment of the limiting age. [1985 c 320 § 6; 1983 c 106 § 10.]

48.46.340 Return of agreement within ten days. Every subscriber of an individual health maintenance agreement may return the agreement to the health maintenance organization or the agent through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the agreement, the subscriber is not satisfied with it for any reason. The health maintenance organization shall refund promptly any fee paid for the agreement. Upon such return of the agreement, it shall be void from the beginning and the parties shall be in the same position as if no agreement had been issued. Notice of the substance of this section shall be printed on the face of each such agreement or be attached thereto. [1983 c 106 § 12.]

48.46.350 Chemical dependency treatment. Each group agreement for health care services that is delivered or issued for delivery or renewed on or after January 1, 1988, shall contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by an alcoholism or drug treatment facility which is an "approved treatment facility" under *RCW 69.54.030 or **70.96A.020(2): *Provided*, That this section does not apply to any agreement written as supplemental coverage to any federal or state programs of health care including, but not limited to, Title XVIII health insurance for the aged (commonly referred to as Medicare, Parts A & B), and amendments thereto. Treatment shall be covered under the chemical dependency coverage if treatment is rendered by the health maintenance organization or if the health maintenance organization refers the enrolled participant or the enrolled participant's dependents to a physician licensed under chapter 18.57 or 18.71 RCW, or to a qualified counselor employed by an approved treatment facility described in **RCW 70.96A.020(2). In all cases, a health maintenance organization shall retain the right to diagnose the presence of chemical dependency and select the modality of treatment that best serves the interest of the health maintenance organization's enrolled participant, or the enrolled participant's covered dependent. [1987 c 458 § 18; 1983 c 106 § 13.]

Reviser's note: *(1) RCW 69.54.030 was repealed by 1989 c 270 § 35.

** (2) RCW 70.96A.020 was amended twice during the 1989 session, by 1989 c 270 and c 271, both changing the definition "approved treatment facility."

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

Chemical dependency benefits, rules: RCW 48.21.197.

48.46.355 "Chemical dependency" defined. For the purposes of RCW 48.46.350, "chemical dependency" means an illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. [1987 c 458 § 19.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

48.46.360 Payment of cost of agreement directly to holder during labor dispute—Changes restricted—Notice to employee. Any employee whose compensation includes a health maintenance agreement, the cost of which is paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the cost as it becomes due directly to the agreement holder whenever the employee's compensation is suspended or terminated directly or indirectly as a result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the health maintenance agreement provides. During that period of time, such agreement may not be altered or changed. Nothing in this section impairs the right of the health maintenance organization to make normal decreases or increases in the cost of the health maintenance agreement upon expiration and renewal of the agreement, in accordance with the agreement. Thereafter, if such health maintenance agreement is no longer available, the employee shall be given the opportunity to convert as specified in RCW 48.46.450 and 48.46.460. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the agreement holder in writing, by mail addressed to the address last of record with the agreement holder, that the employee may pay the cost of the health maintenance agreement to the agreement holder as it becomes due as provided in this section. Payment must be made when due or the coverage may be terminated by the health maintenance organization. [1985 c 7 § 116; 1983 c 106 § 14.]

48.46.370 Coverage not denied for handicap. No health maintenance organization may deny coverage to a person solely on account of the presence of any sensory, mental, or physical handicap. Nothing in this section may be construed as limiting a health maintenance organization's authority to deny or otherwise limit coverage to a person when the person because of a medical

condition does not meet the essential eligibility requirements established by the health maintenance organization for purposes of determining coverage for any person. [1983 c 106 § 15.]

48.46.375 Benefits for prenatal diagnosis of congenital disorders—Agreements entered into or renewed on or after January 1, 1990. On or after January 1, 1990, every group health maintenance agreement entered into or renewed that covers hospital, medical, or surgical expenses and which provides benefits for pregnancy, childbirth, or related medical conditions to enrollees of such groups, shall offer benefits for prenatal diagnosis of congenital disorders of the fetus by means of screening and diagnostic procedures during pregnancy to such enrollees when those services are determined to be medically necessary by the health maintenance organization in accord with standards set in rule by the board of health: *Provided*, That such procedures shall be covered only if rendered directly by the health maintenance organization or upon referral by the health maintenance organization. Every group health maintenance organization shall communicate the availability of such coverage to all groups covered and to all groups with whom they are negotiating. [1988 c 276 § 8.]

Prenatal testing—Limitation on changes to coverage: RCW 48.42.090.

48.46.380 Procedure upon cancellation, denial, or refusal to renew agreement. Every authorized health maintenance organization, upon canceling, denying, or refusing to renew any individual health maintenance agreement, shall, upon written request, directly notify in writing the applicant or enrolled participant as appropriate, of the reasons for the action by the health maintenance organization. Any benefits, terms, rates, or conditions of such agreement which are restricted, excluded, modified, increased, or reduced because of the presence of a sensory, mental, or physical handicap shall, upon written request, be set forth in writing and supplied to the individual. The written communications required by this section shall be phrased in simple language which is readily understandable to a person of average intelligence, education, and reading ability. [1983 c 106 § 16.]

48.46.390 Providing information on cancellation or refusal—No liability for insurance commissioner or health maintenance organization. With respect to the provisions of health maintenance agreements as set forth in RCW 48.46.380, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, the commissioner's agents, or members of the commissioner's staff, or against any health maintenance organization, its authorized representative, its agents, its employees, for providing to the health maintenance organization information as to reasons for cancellation or refusal to issue or renew, for libel or slander on the basis of any statement

made by any of them in any written notice of cancellation or refusal to issue or renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to issue or renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith. [1983 c 106 § 17.]

48.46.400 False or misleading advertising prohibited. No person may knowingly make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a health maintenance organization, or relative to the business of a health maintenance organization or to any person engaged therein. [1983 c 106 § 18.]

48.46.410 Misrepresentations to induce termination or retention of agreement prohibited. No health maintenance organization nor any person representing a health maintenance organization may by misrepresentation or misleading comparisons induce or attempt to induce any member of a health maintenance organization to terminate or retain an agreement or membership in the organization. [1983 c 106 § 19.]

48.46.420 Penalty for violations. Any health maintenance organization or person who violates any provision of this chapter shall be guilty of a gross misdemeanor. [1983 c 106 § 20.]

48.46.430 Enforcement authority of commissioner. For the purposes of this chapter, the insurance commissioner shall have the same powers and duties of enforcement as are provided in RCW 48.02.080. [1983 c 106 § 21.]

48.46.440 Continuation option to be offered. Every health maintenance organization that issues agreements providing group coverage for hospital or medical care shall offer the agreement holder an option to include an agreement provision granting a person who becomes ineligible for coverage under the group agreement, the right to continue the group benefits for a period of time and at a rate agreed upon. The agreement provision shall provide that when such coverage terminates the covered person may convert to an agreement as provided in RCW 48.46.450. [1984 c 190 § 8.]

Legislative intent—Application—Severability—1984 c 190: See notes following RCW 48.21.250.

48.46.450 Conversion agreement to be offered—Exceptions, conditions. (1) Except as otherwise provided by this section, any group health maintenance agreement entered into or renewed on or after January 1, 1985, that provides benefits for hospital or medical care shall contain a provision granting a person covered by the group agreement the right to obtain a conversion agreement from the health maintenance organization upon termination of the person's eligibility for coverage under the group agreement.

(2) A health maintenance organization need not offer a conversion agreement to:

(a) A person whose coverage under the group agreement ended when the person's employment or membership was terminated for misconduct: *Provided*, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal Medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion agreement, a person must submit a written application and the first premium payment for the conversion agreement not later than thirty-one days after the date the person's eligibility for group coverage terminates. The conversion agreement shall become effective without lapse of coverage, immediately following termination of coverage under the group agreement.

(4) If a health maintenance organization or group agreement holder does not renew, cancels, or otherwise terminates the group agreement, the health maintenance organization shall offer a conversion agreement to any person who was covered under the terminated agreement unless the person is eligible to obtain group benefits for hospital or medical care within thirty-one days after such nonrenewal, cancellation, or termination of the group agreement.

(5) The health maintenance organization shall determine the premium for the conversion agreement in accordance with the organization's table of premium rates applicable to the age and class of risk of each person to be covered under the agreement and the type and amount of benefits provided. [1984 c 190 § 9.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.46.460 Conversion agreement—Restrictions and requirements. (1) A health maintenance organization must offer a conversion agreement for comprehensive health care services and shall not require proof of insurability as a condition for issuance of the conversion agreement.

(2) A conversion agreement may not contain an exclusion for preexisting conditions except to the extent that a waiting period for a preexisting condition has not been satisfied under the group agreement.

(3) A conversion agreement need not provide benefits identical to those provided under the group agreement. The conversion agreement may contain provisions requiring the person covered by the conversion agreement to pay reasonable deductibles and copayments.

(4) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion agreements.

(5) The commissioner shall adopt rules to establish specific standards for conversion agreement provisions. These rules may include but are not limited to:

- (a) Terms of renewability;
- (b) Nonduplication of coverage;
- (c) Benefit limitations, exceptions, and reductions; and
- (d) Definitions of terms. [1984 c 190 § 10.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.46.470 Endorsement of modifications. If an individual health care service agreement is issued on any basis other than as applied for, an endorsement setting forth such modification must accompany and be attached to the agreement. No agreement shall be effective unless the endorsement is signed by the applicant, and a signed copy thereof returned to the health maintenance organization. [1985 c 320 § 7.]

48.46.480 Continuation of coverage of former family members. Every health care service agreement issued, amended, or renewed after January 1, 1986, for an individual and his or her dependents shall contain provisions to assure that the covered spouse and/or dependents, in the event that any cease to be a qualified family member by reason of termination of marriage or death of the principal enrollee, shall have the right to continue the health maintenance agreement without a physical examination, statement of health, or other proof of insurability. [1985 c 320 § 8.]

48.46.490 Coverage for adopted children. (1) Any health maintenance agreement under this chapter which provides coverage for dependent children, as defined in the agreement of the enrolled participant, shall cover adoptive children placed with the enrolled participant on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the agreement may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the health maintenance organization. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 5.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.46.500 Cancellation of rider. Upon application by an enrollee, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the enrollee during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the enrollee from that condition, such agreement not to be unreasonably withheld. The option of the enrollee to apply for cancellation shall be

disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 4.]

48.46.510 Phenylketonuria. (1) The legislature finds that:

(a) Phenylketonuria is a rare inherited genetic disorder.

(b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.

(c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.

(d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.

(e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any agreement for health care services delivered or issued for delivery or renewed in this state on or after September 1, 1988, shall provide coverage for the formulas necessary for the treatment of phenylketonuria. Such formulas shall be covered when deemed medically necessary by the medical director or his or her designee of the health maintenance organization and if provided by the health maintenance organization or upon the health maintenance organizations's referral. Formulas shall be covered at the usual and customary rates for such formulas, subject to contract provisions with respect to deductible amounts or co-payments. [1988 c 173 § 4.]

48.46.520 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each employer-sponsored group contract for comprehensive health care service which is entered into, or renewed, on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Covered benefits and treatment must be rendered or referred by the health maintenance organization, and delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where treatment is rendered by such licensee. Nothing in this section shall prohibit a health maintenance organization from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the health maintenance organization. Benefits shall be provided for the maintenance of a covered enrollee in cases where significant deterioration in the patient's condition would

result without the service. Benefits shall be provided to restore and improve function.

(4) It is the intent of this section that employers purchasing comprehensive group coverage including the benefits required by this section, together with the health maintenance organization, retain authority to design and employ utilization and cost controls. Therefore, benefits provided under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the employer purchasing coverage and the health maintenance organization. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available, or may limit the number of services delivered as agreed by the employer purchasing coverage and the health maintenance organization. [1989 c 345 § 3.]

48.46.530 Temporomandibular joint disorders—Insurance coverage. (1) Except as provided in this section, a health maintenance agreement entered into or renewed after December 31, 1989, shall offer optional coverage for the treatment of temporomandibular joint disorders.

(a) Health maintenance organizations offering medical coverage only may limit benefits in such coverages to medical services related to treatment of temporomandibular joint disorders. No health maintenance organizations offering medical and dental coverage may limit benefits in such coverage to dental services related to treatment of temporomandibular joint disorders. No health maintenance organization offering medical coverage only may define all temporomandibular joint disorders as purely dental in nature.

(b) Health maintenance organizations offering optional temporomandibular joint disorder coverage as provided in this section may, but are not required to, offer lesser or no temporomandibular joint disorder coverage as part of their basic group disability contract.

(c) Benefits and coverage offered under this section may be subject to negotiation to promote broad flexibility in potential benefit coverage. This flexibility shall apply to services to be reimbursed, determination of treatments to be considered medically necessary, systems through which services are to be provided, including referral systems and use of other providers, and related issues.

(2) Unless otherwise directed by law, the insurance commissioner shall adopt rules, to be implemented on January 1, 1993, establishing minimum benefits, terms, definitions, conditions, limitations, and provisions for the use of reasonable deductibles and copayments.

(3) A health maintenance organization need not make the offer of coverage required by this section to an employer or other group that offers to its eligible enrollees

a self-insured health plan not subject to mandated benefit statutes under Title 48 RCW that does not provide coverage for temporomandibular joint disorders. [1989 c 331 § 4.]

Legislative finding—Effective date—1989 c 331: See notes following RCW 48.21.320.

48.46.900 Liberal construction. It is intended that the provisions of this chapter shall be liberally construed to accomplish the purposes provided for and authorized herein. [1975 1st ex.s. c 290 § 24.]

48.46.905 Studies by legislature. The legislature shall make a study of the appropriate financial security requirements, investment restrictions, bonding requirements, and the possibilities of providing arbitration proceedings as an acceptable grievance procedure for health maintenance organizations, and shall also study the establishment of a system for classifying contracts for health care coverage by health maintenance organizations and all other health care contractors and insurers according to the benefits they offer and appropriate procedures for quality review.

In all such studies under this section, the legislature may be advised by a committee which shall be generally representative of health maintenance organizations, consumers, professional organizations representing health professionals, and a representative of the commissioner. The results of such studies shall be reported to the governor and to the legislature prior to the first session of the legislature after January 1, 1977. [1975 1st ex.s. c 290 § 25.]

48.46.910 Severability—1975 1st ex.s. c 290. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 290 § 26.]

48.46.920 Short title. This 1975 amendatory act may be known and cited as "The Washington Health Maintenance Organization Act of 1975". [1975 1st ex.s. c 290 § 27.]

Chapter 48.48

STATE FIRE PROTECTION

(Formerly: State fire marshal)

Sections

48.48.030	Examination of premises.
48.48.040	Standards of safety.
48.48.045	Schools—Construction standards for fire prevention and safety—Plan reviews and construction inspections.
48.48.050	Removal of fire hazards.
48.48.060	Reports and investigation of fires—Police powers.
48.48.065	Statistical information and reports.
48.48.070	Examination of witnesses.
48.48.080	Criminal prosecutions.
48.48.090	Record of fires.
48.48.110	Annual report.
48.48.120	Forms, blanks, circulars, etc., at expense of state.

- 48.48.140 Smoke detection devices in dwelling units—Penalty.
 48.48.150 Premises with guard animals—Registration, posting—Acts permitted fire fighters—Liability for injury to fire fighters.

Director of fire protection, state fire protection policy board: RCW 43.63A.310, 43.63A.340.

Duties of director of community development and director of fire protection:

agencies for care of children, expectant mothers, developmentally disabled: RCW 74.15.050.

maternity homes: RCW 18.46.110.

nursing homes: RCW 18.51.140.

public fireworks displays: RCW 70.77.250.

Fire protection districts: Title 52 RCW.

Safety requirements as to doors, public buildings, and places of entertainment: RCW 70.54.070.

Transient accommodations, rules and regulations: RCW 70.62.290.

48.48.030 Examination of premises. (1) The director of community development, through the director of fire protection or his or her authorized deputy, shall have authority at all times of day and night, in the performance of duties imposed by this chapter, to enter upon and examine any building or premises where any fire has occurred and other buildings and premises adjoining or near thereto.

(2) The director of community development, through the director of fire protection or his or her authorized deputy, shall have authority at any reasonable hour to enter into any public building or premises or any building or premises used for public purposes to inspect for fire hazards. [1986 c 266 § 67; 1985 c 470 § 17; 1947 c 79 § .33.03; Rem. Supp. 1947 § 45.33.03.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1985 c 470: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 470 § 38.]

Effective date—1985 c 470: "This act shall take effect on January 1, 1986." [1985 c 470 § 40.]

48.48.040 Standards of safety. (1) The director of community development, through the director of fire protection or his or her authorized deputy, shall have authority to enter upon all premises and into all buildings except private dwellings for the purpose of inspection to ascertain if any fire hazard exists, and to require conformance with minimum standards for the prevention of fire and for the protection of life and property against fire and panic as to use of premises, and may adopt by reference nationally recognized standards applicable to local conditions.

(2) The director of community development, through the director of fire protection or his or her authorized deputy, may, upon request by the chief fire official or the local governing body or of taxpayers of such area, assist in the enforcement of any such code. [1986 c 266 § 68; 1985 c 470 § 18; 1947 c 79 § .33.04; Rem. Supp. 1947 § 45.33.04.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.045 Schools—Construction standards for fire prevention and safety—Plan reviews and construction inspections. Standards for construction relative to fire prevention and safety for all schools under the jurisdiction of the superintendent of public instruction and state board of education shall be established by the state fire protection board. The director of community development, through the director of fire protection, shall adopt such nationally recognized fire and building codes and standards as may be applicable to local conditions. After the approval of such standards by the superintendent of public instruction and the state board of education, the director of community development, through the director of fire protection, shall make or cause to be made plan reviews and construction inspections as may be necessary to insure compliance with said codes and standards.

Political subdivisions of the state having and enforcing such fire and building codes and standards at least equal to or higher than those adopted as provided for in this section shall be exempted from the plan review and construction inspection provisions of this section within their respective subdivision for as long as such codes and standards are enforced. [1986 c 266 § 69; 1985 c 470 § 19; 1981 c 198 § 3; 1972 ex.s. c 70 § 1.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.050 Removal of fire hazards. (1) If the director of community development, through the director of fire protection or his or her authorized deputy, finds in any building or premises subject to their inspection under this chapter, any combustible material or flammable conditions or fire hazards dangerous to the safety of the building, premises, or to the public, he or she shall by written order require such condition to be remedied, and such order shall forthwith be complied with by the owner or occupant of the building or premises.

(2) An owner or occupant aggrieved by any such order made by the director of community development, through the director of fire protection or his or her deputy, may appeal such order pursuant to chapter 34.05 RCW. If the order is confirmed, the order shall remain in force and be complied with by the owner or occupant.

(3) Any owner or occupant failing to comply with any such order not appealed from or with any order so confirmed shall be punishable by a fine of not less than ten dollars nor more than fifty dollars for each day such failure exists. [1986 c 266 § 70; 1985 c 470 § 20; 1947 c 79 § .33.05; Rem. Supp. 1947 § 45.33.05.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.060 Reports and investigation of fires—Police powers. (1) The chief of each organized fire department, the sheriff or other designated county official, and the designated city or town official shall investigate the cause, origin, and extent of loss of all fires occurring within their respective jurisdictions, as determined by

this subsection, and shall forthwith notify the director of community development, through the director of fire protection, of all fires of criminal, suspected, or undetermined cause occurring within their respective jurisdictions. The county fire marshal shall also be notified of and investigate all such fires occurring in unincorporated areas of the county. Fire departments shall have the responsibility imposed by this subsection for areas within their jurisdictions. Sheriffs or other designated county officials shall have responsibility imposed by this subsection for county areas not within the jurisdiction of a fire department, unless such areas are within the boundaries of a city or town, in which case the designated city or town official shall have the responsibility imposed by this subsection. For the purposes of this subsection, county officials shall be designated by the county legislative authority, and city or town officials shall be designated by the appropriate city or town legislative or executive authority. In addition to the responsibility imposed by this subsection, any sheriff or chief of police may assist in the investigation of the cause, origin, and extent of loss of all fires occurring within his or her respective jurisdiction.

(2) The director of community development, through the director of fire protection or his or her deputy, may investigate any fire for the purpose of determining its cause, origin, and the extent of the loss. The director of community development, through the director of fire protection or his or her deputy, shall assist in the investigation of those fires of criminal, suspected, or undetermined cause when requested by the reporting agency. In the investigation of any fire of criminal, suspected, or undetermined cause, the director of community development and the director of fire protection or his or her deputy, are vested with police powers to enforce the laws of this state. To exercise these powers, authorized deputies must receive prior written authorization from the director of community development, through the director of fire protection, and shall have completed a course of training prescribed by the Washington state criminal justice training commission. [1986 c 266 § 71; 1985 c 470 § 21; 1981 c 104 § 1; 1980 c 181 § 1; 1947 c 79 § .33.06; Rem. Supp. 1947 § 45.33.06.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—**Effective date**—1985 c 470: See notes following RCW 48.48.030.

48.48.065 Statistical information and reports. (1) The chief of each organized fire department, or the sheriff or other designated county official having jurisdiction over areas not within the jurisdiction of any fire department, shall report statistical information and data to the director of community development, through the director of fire protection, on each fire occurring within the official's jurisdiction. Reports shall be consistent with the national fire incident reporting system developed by the United States fire administration and rules established by the director of community development, through the director of fire protection. The director of community development, through the director of fire protection, and the department of natural resources shall

jointly determine the statistical information to be reported on fires on land under the jurisdiction of the department of natural resources.

(2) The director of community development, through the director of fire protection, shall analyze the information and data reported, compile a report, and distribute a copy annually by January 31 to each chief fire official in the state. Upon request, the director of community development, through the director of fire protection, shall also furnish a copy of the report to any other interested person at cost. [1986 c 266 § 72; 1985 c 470 § 22; 1980 c 181 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—**Effective date**—1985 c 470: See notes following RCW 48.48.030.

48.48.070 Examination of witnesses. In the conduct of any investigation into the cause, origin, or loss resulting from any fire, the director of community development and the director of fire protection shall have the same power and rights relative to securing the attendance of witnesses and the taking of testimony under oath as is conferred upon the insurance commissioner under RCW 48.03.070. False swearing by any such witness shall be deemed to be perjury and shall be subject to punishment as such. [1986 c 266 § 73; 1985 c 470 § 23; 1947 c 79 § .33.07; Rem. Supp. 1947 § 45.33.07.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—**Effective date**—1985 c 470: See notes following RCW 48.48.030.

48.48.080 Criminal prosecutions. If as the result of any such investigation, or because of any information received, the director of community development, through the director of fire protection, is of the opinion that there is evidence sufficient to charge any person with any crime, he or she may cause such person to be arrested and charged with such offense, and shall furnish to the prosecuting attorney of the county in which the offense was committed, the names of witnesses and all pertinent and material evidence and testimony within his or her possession relative to the offense. [1986 c 266 § 74; 1985 c 470 § 24; 1947 c 79 § .33.08; Rem. Supp. 1947 § 45.33.08.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—**Effective date**—1985 c 470: See notes following RCW 48.48.030.

48.48.090 Record of fires. The director of community development, through the director of fire protection, shall keep on file all reports of fires made to him or her pursuant to this code. Such records shall at all times during business hours be open to public inspection; except, that any testimony taken in a fire investigation may, in the discretion of the director of community development, through the director of fire protection, be withheld from public scrutiny. The director of community development, through the director of fire protection, may destroy any such report after five years from its date. [1986 c 266 § 75; 1985 c 470 § 25; 1947 c 79 § .33.09; Rem. Supp. 1947 § 45.33.09.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.110 Annual report. The director of community development, through the director of fire protection, shall submit annually a report to the governor of this state. The report shall contain a statement of his or her official acts pursuant to this chapter. [1986 c 266 § 76; 1985 c 470 § 26; 1977 c 75 § 71; 1947 c 79 § .33.11; Rem. Supp. 1947 § 45.33.11.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.120 Forms, blanks, circulars, etc., at expense of state. All forms, blanks, circulars, posters and such reports as may be required pursuant to the provisions of this chapter, shall be furnished at the expense of the state. [1947 c 79 § .33.12; Rem. Supp. 1947 § 45.33.12.]

48.48.140 Smoke detection devices in dwelling units—Penalty. (1) Smoke detection devices shall be installed inside all dwelling units:

(a) Occupied by persons other than the owner on and after December 31, 1981; or

(b) Built or manufactured in this state after December 31, 1980.

(2) The smoke detection devices shall be designed, manufactured, and installed inside dwelling units in conformance with:

(a) Nationally accepted standards; and

(b) As provided by the administrative procedure act, chapter 34.05 RCW, rules and regulations promulgated by the director of community development, through the director of fire protection.

(3) Installation of smoke detection devices shall be the responsibility of the owner. Maintenance of smoke detection devices shall be the responsibility of the tenant, who shall maintain the device as specified by the manufacturer. At the time of a vacancy, the owner shall insure that the smoke detection device is operational prior to the reoccupancy of the dwelling unit.

(4) Any owner or tenant failing to comply with this section shall be punished by a fine of not more than fifty dollars.

(5) For the purposes of this section:

(a) "Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) "Smoke detection device" means an assembly incorporating in one unit a device which detects visible or invisible particles of combustion, the control equipment, and the alarm-sounding device, operated from a power supply either in the unit or obtained at the point of installation. [1986 c 266 § 89; 1980 c 50 § 1.]

Severability—1986 c 266: See note following RCW 38.52.005.

48.48.150 Premises with guard animals—Registration, posting—Acts permitted fire fighters—Liability for injury to fire fighters. (1) All premises guarded by guard animals, which are animals professionally trained to defend and protect premises or the occupants of the premises, shall be registered with the local fire department. Front entrances to residences and all entrances to business premises shall be posted in a visible location with signs approved by the director of community development, through the director of fire protection, indicating that guard animals are present.

(2) A fire fighter, who reasonably believes that his or her safety is endangered by the presence of a guard animal, may without liability: (a) Refuse to enter the premises, or (b) take any reasonable action necessary to protect himself or herself from attack by the guard animal.

(3) If the person responsible for the guard animal being on the premises does not comply with subsection (1) of this section, that person may be held liable for any injury to the fire fighter caused by the presence of the guard animal. [1986 c 266 § 90; 1983 c 258 § 1.]

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 48.50

ARSON REPORTING IMMUNITY ACT

Sections

48.50.010	Short title.
48.50.020	Definitions.
48.50.030	Release of information or evidence by insurer.
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48.50.010 Short title. This chapter shall be known and may be cited as the Arson Reporting Immunity Act. [1979 ex.s. c 80 § 1.]

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

(1) "Authorized agency" means a public agency or its official representative having legal authority to investigate the cause of a fire and to initiate criminal proceedings or further investigations if the cause was not accidental, including the following persons and agencies:

(a) The director of community development and the director of fire protection;

(b) The prosecuting attorney of the county where the fire occurred;

(c) The state attorney general, when engaged in a prosecution which is or may be connected with the fire;

(d) The Federal Bureau of Investigation, or any other federal agency; and

(e) The United States attorney's office when authorized or charged with investigation or prosecution concerning the fire.

(2) "Insurer" means any insurer, as defined in RCW 48.01.050, which insures against loss by fire, and includes insurers under the Washington F.A.I.R. plan.

(3) "Relevant information" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the cause of any fire more probable or less probable than it would be without the information. [1986 c 266 § 77; 1985 c 470 § 27; 1979 ex.s. c 80 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.50.030 Release of information or evidence by insurer. (1) Any authorized agency may request, in writing, that an insurer release to the agency any or all relevant information or evidence which the insurer may have in its possession relating to a particular fire loss, if such information or evidence is deemed important by the agency in its discretion. The information requested may include, without limitation:

(a) Pertinent insurance policy information relating to a fire loss under investigation and any application for such a policy;

(b) Policy premium payment records which are available;

(c) History of previous claims made by the insured; and

(d) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence found in the investigation.

(2) An insurer receiving a request under subsection (1) of this section shall furnish to the agency within a reasonable time, orally or in writing, all relevant information requested. [1979 ex.s. c 80 § 3.]

48.50.040 Notification by insurer. (1) When an insurer has reason to believe that a fire loss reported to the insurer may be of other than accidental cause, the insurer shall notify the director of community development, through the director of fire protection, in the manner prescribed under RCW 48.05.320 concerning the circumstances of the fire loss, including any and all relevant material developed from the insurer's inquiry into the fire loss.

(2) Notification of the director of community development, through the director of fire protection, under subsection (1) of this section does not relieve the insurer of the duty to respond to a request for information from any other authorized agency. [1986 c 266 § 91; 1979 ex.s. c 80 § 4.]

Severability—1986 c 266: See note following RCW 38.52.005.

48.50.050 Release of information by authorized agencies. An authorized agency receiving information under RCW 48.50.030 or 48.50.040 may release or provide such information to any other authorized agencies. [1979 ex.s. c 80 § 5.]

48.50.060 Authorized agency to furnish requested information to insurer. Any insurer providing information to an authorized agency or agencies under RCW 48.50.030 or 48.50.040 may request that any authorized agency furnish to the insurer any or all relevant information possessed by the agency relating to the particular fire loss. The agency shall furnish within a reasonable time, not to exceed thirty days, the relevant information requested. [1979 ex.s. c 80 § 6.]

48.50.070 Immunity from liability for releasing information. Any licensed insurance agent, any licensed insurance broker, or any insurer or person acting in the insurer's behalf or any authorized agency which releases information, whether oral or written, under RCW 48.50.030, 48.50.040, 48.50.050, or 48.50.060 shall be immune from liability in any civil or criminal action, suit, or prosecution arising from the release of the information, unless actual malice on the part of the agent, broker, insurer, or authorized agency against the insured is shown. [1980 c 102 § 9; 1979 ex.s. c 80 § 7.]

48.50.075 Immunity from liability for denying claim based on written opinion of authorized agency. In denying a claim resulting from a fire, an insurer who relies upon a written opinion from an authorized agency specifically enumerated in (a) through (e) of RCW 48.50.020(1) that the fire was caused by arson, and that the insured was responsible for the fire, shall not be liable for bad faith or other noncontractual theory of damages as a result of this reliance.

Immunity under this section shall exist only so long as the incident for which the insured may be responsible is under active investigation or prosecution, or the authorized agency states its position that the claim is a result of arson for which the insured was responsible. [1981 c 320 § 2.]

48.50.080 Information released only in criminal or civil proceedings. (1) Any authorized agency or insurer which receives any information furnished as required by this chapter shall not make the information public until such time as its release is required in connection with a criminal or civil proceeding.

(2) Any authorized agency, through its personnel, may be required to testify in any litigation arising from a loss by fire which the agency has investigated or about which it has requested information, in which the insurer against the loss by fire is named as a party. [1979 ex.s. c 80 § 8.]

48.50.090 Local ordinances not preempted. This chapter does not preempt or preclude any county or municipality from enacting ordinances relating to fire prevention or control of arson. [1979 ex.s. c 80 § 9.]

48.50.900 Severability—1979 ex.s. c 80. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 80 § 11.]

Chapter 48.53
FIRE INSURANCE—ARSON FRAUD
REDUCTION

Sections	Purpose.
48.53.010	Purpose.
48.53.020	Designation of high arson incidence areas and classes of occupancy—Anti-arson application, contents.
48.53.030	Cancellation of policy—Conditions required for.
48.53.040	Cancellation of policy—Procedure.
48.53.050	Issuance or cancellation of policy in violation of chapter.
48.53.060	Adoption of rules.

48.53.010 Purpose. It is the purpose of this chapter to reduce the incidence of arson fraud by requiring insurers to obtain specified information prior to issuing a fire insurance policy for certain structures and by authorizing insurers to cancel fire insurance policies when characteristics frequently associated with arson fraud are present. [1982 c 110 § 1.]

48.53.020 Designation of high arson incidence areas and classes of occupancy—Anti-arson application, contents. (1) The director of community development, through the director of fire protection, may designate certain classes of occupancy within a geographic area or may designate geographic areas as having an abnormally high incidence of arson. This designation shall not be a valid reason for cancellation, refusal to issue or renew, modification, or increasing the premium for any fire insurance policy.

(2) A fire insurance policy may not be issued to insure any property within a class of occupancy within a geographic area or within a geographic area designated by the director of community development, through the director of fire protection, as having an abnormally high incidence of arson until the applicant has submitted an anti-arson application and the insurer or the insurer's representative has inspected the property. The application shall be prescribed by the director of community development, through the director of fire protection, and shall contain but not be limited to the following:

(a) The name and address of the prospective insured and any mortgagees or other parties having an ownership interest in the property to be insured;

(b) The amount of insurance requested and the method of valuation used to establish the amount of insurance;

(c) The dates and selling prices of the property, if any, during the previous three years;

(d) Fire losses exceeding one thousand dollars during the previous five years for property in which the prospective insured held an equity interest or mortgage;

(e) Current corrective orders pertaining to fire, safety, health, building, or construction codes that have not been complied with within the time period or any extension of such time period authorized by the authority issuing such corrective order applicable to the property to be insured;

(f) Present or anticipated occupancy of the structure, and whether a certificate of occupancy has been issued;

(g) Signature and title, if any, of the person submitting the application.

(3) If the facts required to be reported by subsection (2) of this section materially change, the insured shall notify the insurer of any such change within fourteen days.

(4) An anti-arson application is not required for: (a) Fire insurance policies covering one to four-unit owner-occupied residential dwellings; (b) policies existing as of June 10, 1982; or (c) the renewal of these policies.

(5) An anti-arson application shall contain a notice stating: "Designation of a class of occupancy within a geographic area or geographic areas as having an abnormally high incidence of arson shall not be a valid reason for cancellation, refusal to issue or renew, modification, or increasing the premium for any fire insurance policy." [1986 c 266 § 92; 1982 c 110 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

48.53.030 Cancellation of policy—Conditions required for. Notwithstanding the provisions of RCW 48.18.290, where two or more of the following conditions exist, an insurer may, under RCW 48.53.040, cancel a fire insurance policy for any structure:

(1) Which, without reasonable explanation, is unoccupied for more than sixty consecutive days, or in which at least sixty-five percent of the rental units are unoccupied for more than one hundred twenty consecutive days unless the structure is maintained for seasonal occupancy or is under construction or repair;

(2) On which, without reasonable explanation, progress toward completion of permanent repairs has not occurred within sixty days after receipt of funds following satisfactory adjustment or adjudication of loss resulting from a fire;

(3) Which, because of its physical condition, is in danger of collapse;

(4) For which, because of its physical condition, a vacation or demolition order has been issued, or which has been declared unsafe in accordance with applicable law;

(5) From which fixed and salvageable items have been removed, indicating an intent to vacate the structure;

(6) For which, without reasonable explanation, heat, water, sewer, and electricity are not furnished for sixty consecutive days; and

(7) Which is not maintained in substantial compliance with fire, safety, and building codes. [1982 c 110 § 3.]

48.53.040 Cancellation of policy—Procedure. An insurer may cancel a fire insurance policy when the requirements of RCW 48.53.030 are met only in accordance with the following procedure:

(1) The insurer shall, not less than five days prior to cancellation, issue written notice of cancellation to the insured or the insured's representative in charge of the policy. The notice shall contain at least the following:

(a) The date that the policy will be canceled;

(b) A description of the specific facts justifying the cancellation;

(c) A copy of this chapter; and

(d) The name, title, address, and telephone number of the insurer's employee who may be contacted regarding cancellation of the policy.

(2) The notice required by this section shall be actually delivered or mailed to the insured by certified mail, return receipt requested, and in addition by first class mail. A copy of the notice shall, at the time of delivery or mailing to the insured, or the insured's representative in charge of the policy, be mailed to the insurance commissioner.

(3) The insurer shall also comply with the requirements of RCW 48.18.290(1)(b), (2) and (3), and shall provide not less than twenty days notice of cancellation to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder except as provided in subsection (1) of this section.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in an amount as computed on a pro rata basis, must be actually paid or mailed to the insured or other person entitled thereto as shown by the policy or any endorsement thereon, as soon as possible, and no later than thirty days after the date that the notice of cancellation was issued. [1982 c 110 § 4.]

48.53.050 Issuance or cancellation of policy in violation of chapter. (1) Any fire insurance policy issued in violation of this chapter shall not be canceled by the insurer under the procedures authorized by this chapter.

(2) Cancellation of a fire insurance policy in violation of this chapter shall constitute a violation of this title. [1982 c 110 § 5.]

48.53.060 Adoption of rules. Rules designating geographic areas or classes of occupancy as having an abnormally high incidence of arson, and any other rules necessary to implement this chapter shall be adopted by the director of community development, through the director of fire protection, under chapter 34.05 RCW. [1986 c 266 § 93; 1982 c 110 § 6.]

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 48.56

INSURANCE PREMIUM FINANCE COMPANY ACT

Sections

48.56.010	Short title.
48.56.020	Definitions.
48.56.030	License—Required—Fee—Information to be furnished—Penalty.
48.56.040	Investigation of applicant—Qualifications—Hearing.
48.56.050	Revocation, suspension, or refusal to renew.
48.56.060	Records.
48.56.070	Rules and regulations.
48.56.080	Premium finance agreement.
48.56.090	Service charge.
48.56.100	Delinquency charge—Cancellation charge.
48.56.110	Cancellation of insurance contract.
48.56.120	Cancellation of insurance contract—Return of unearned premiums.

48.56.130	Filing of agreement.
48.56.900	Effective date—1969 ex.s. c 190.

48.56.010 Short title. This chapter shall be known and may be cited as "The Insurance Premium Finance Company Act". [1969 ex.s. c 190 § 1.]

48.56.020 Definitions. As used in this chapter:

(1) "Insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.

(2) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract together with a service charge as authorized and limited by this chapter and as security therefor the insurance premium finance company receives an assignment of the unearned premium.

(3) "Licensee" means a premium finance company holding a license issued by the insurance commissioner under this chapter. [1969 ex.s. c 190 § 2.]

48.56.030 License—Required—Fee—Information to be furnished—Penalty. (1) No person shall engage in the business of financing insurance premiums in the state without first having obtained a license as a premium finance company from the commissioner. Any person who shall engage in the business of financing insurance premiums in the state without obtaining a license as provided hereunder shall, upon conviction, be guilty of a misdemeanor and shall be subject to the penalties provided in this chapter.

(2) The annual license fee shall be one hundred dollars. Licenses may be renewed from year to year as of the first day of May of each year upon payment of the fee of one hundred dollars. The fee for said license shall be paid to the insurance commissioner.

(3) The person to whom the license or the renewal thereof may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the commissioner may require. The commissioner shall have authority, at any time, to require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees and he may, in his discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

(4) This section shall not apply to any savings and loan association, bank, trust company, *small loan company, industrial loan company or credit union authorized to do business in this state but RCW 48.56.080 through 48.56.130 and any rules promulgated by the commissioner pertaining to such sections shall be applicable to such organizations, if otherwise eligible, under all premium finance transactions wherein an insurance policy, other than a life or disability insurance policy, or any rights thereunder is made the security or collateral for

the repayment of the debt, however, neither this section nor the provisions of this chapter shall be applicable to the inclusion of insurance in a retail installment transaction or to insurance purchased in connection with a real estate transaction, mortgage, deed of trust or other security instrument or an insurance company authorized to do business in this state unless the insurance company elects to become a licensee. [1969 ex.s. c 190 § 3.]

***Reviser's note:** Term "small loan company" changed to "consumer finance business" by 1979 c 18. See chapter 31.08 RCW.

48.56.040 Investigation of applicant—Qualifications—Hearing. (1) Upon the filing of an application and the payment of the license fee the commissioner shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this chapter. If the commissioner does not so find, he shall, within thirty days after he has received such application, at the request of the applicant, give the applicant a full hearing.

(2) The commissioner shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed—

(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for,

(b) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for, and

(c) if a corporation, is a corporation incorporated under the laws of the state or a foreign corporation authorized to transact business in the state. [1969 ex.s. c 190 § 4.]

48.56.050 Revocation, suspension, or refusal to renew. (1) The commissioner may revoke or suspend the license of any premium finance company when and if after investigation it appears to the commissioner that—

(a) any license issued to such company was obtained by fraud,

(b) there was any misrepresentation in the application for the license,

(c) the holder of such license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company, or

(d) such company has violated any of the provisions of this chapter.

(2) Before the commissioner shall revoke, suspend, or refuse to renew the license of any premium finance company, he shall give to such person an opportunity to be fully heard and to introduce evidence in his behalf. In lieu of revoking or suspending the license for any of the causes enumerated in this section, after hearing as herein provided, the commissioner may subject such company to a penalty of not more than two hundred dollars for each offense when in his judgment he finds that the public interest would not be harmed by the continued operation of such company. The amount of any such penalty shall be paid by such company through the office of the commissioner to the state treasurer. At

any hearing provided by this section, the commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(3) If the commissioner refuses to issue or renew any license or if any applicant or licensee is aggrieved by any action of the commissioner, said applicant or licensee shall have the right to a hearing and court proceeding as provided by statute. [1969 ex.s. c 190 § 5.]

48.56.060 Records. (1) Every licensee shall maintain records of its premium finance transactions and the said records shall be open to examination and investigation by the commissioner. The commissioner may at any time require any licensee to bring such records as he may direct to the commissioner's office for examination.

(2) Every licensee shall preserve its records of such premium finance transactions, including cards used in a card system, for at least three years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement. [1969 ex.s. c 190 § 6.]

48.56.070 Rules and regulations. The commissioner shall have authority to make and enforce such reasonable rules and regulations as may be necessary in making effective the provisions of this chapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this chapter. [1969 ex.s. c 190 § 7.]

48.56.080 Premium finance agreement. (1) A premium finance agreement shall—

(a) be dated, signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight point type;

(b) contain the name and place of business of the insurance agent negotiating the related insurance contract, the name and residence or the place of business of the premium finance company to which payments are to be made, a description of the insurance contracts involved and the amount of the premium therefor; and

(c) set forth the following items where applicable—

(i) the total amount of the premiums,

(ii) the amount of the down payment,

(iii) the principal balance (the difference between items (i) and (ii)),

(iv) the amount of the service charge,

(v) the balance payable by the insured (sum of items (iii) and (iv)), and

(vi) the number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(2) The items set out in paragraph (c) of subsection (1) need not be stated in the sequence or order in which they appear in such paragraph (c), and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) of this section shall only be required in the initial agreement

where the premium finance company and the insured enter into an open end credit transaction, which is defined as follows: A plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(4) A copy of the premium finance agreement shall be given to the insured at the time or within ten days of its execution, except where the application has been signed by the insured and all the finance charges are one dollar or less per payment. In addition, the premium finance company shall deliver or mail a copy of the premium finance agreement or notice identifying policy, insured and producing agent to each insurer that has premiums involved in the transaction, within thirty days of the execution of the premium finance agreement.

(5) It shall be illegal for a premium finance company to offset funds of an agent with funds belonging to an insured. Premiums advanced by a premium finance company are funds belonging to the insured and shall be held in a fiduciary relationship. [1975-'76 2nd ex.s. c 119 § 6; 1969 ex.s. c 190 § 8.]

48.56.090 Service charge. (1) A premium finance company shall not charge, contract for, receive, or collect a service charge other than as permitted by this chapter.

(2) The service charge is to be computed on the balance of the premiums due (after subtracting the down payment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

(3) The service charge shall be a maximum of ten dollars per one hundred dollars per year plus an acquisition charge of ten dollars per premium finance agreement which need not be refunded upon cancellation or prepayment. [1969 ex.s. c 190 § 9.]

48.56.100 Delinquency charge—Cancellation charge. A premium finance agreement may provide for the payment by the insured of a delinquency charge of one dollar to a maximum of five percent of the delinquent installment but not to exceed five dollars on any installment which is in default for a period of five days or more.

If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency charge imposed with respect to the installment in default and five dollars. [1969 ex.s. c 190 § 10.]

48.56.110 Cancellation of insurance contract. (1) When a premium finance agreement contains a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the

agreement, the insurance contract or contracts shall not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(2) Not less than ten days' written notice shall be mailed to the insured of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such ten day period.

(3) After expiration of such ten day period, the premium finance company may thereafter request in the name of the insured, cancellation of such insurance contract or contracts by mailing to the insurer a notice of cancellation, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at his last known address.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation. [1969 ex.s. c 190 § 11.]

48.56.120 Cancellation of insurance contract—Return of unearned premiums. (1) Whenever a financed insurance contract is canceled, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured: *Provided*, That no such refund shall be required if it amounts to less than one dollar. [1969 ex.s. c 190 § 12.]

48.56.130 Filing of agreement. No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns. [1969 ex.s. c 190 § 13.]

48.56.900 Effective date—1969 ex.s. c 190. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on the sixtieth day following passage by the legislature and submission to the governor for action. [1969 ex.s. c 190 § 15.]

Chapter 48.58

RIOT REINSURANCE REIMBURSEMENT

Sections

48.58.010 Riot reinsurance reimbursement—Assessments.

48.58.010 Riot reinsurance reimbursement—Assessments. (1) The commissioner may reimburse the secretary of the department of housing and urban development under the provisions of Section 1223(a)(1) of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448) for losses reinsured by the secretary of the department of housing and urban development and occurring in this state on or after August 1, 1968. After receipt by the state treasurer of a statement requesting reimbursement from the secretary of the department of housing and urban development and upon certification promptly made by the commissioner of insurance, hereafter referred to as the commissioner, of the correctness of the amount thereof, the commissioner is hereby authorized to provide for an assessment upon insurers authorized to do business in this state in amounts sufficient to pay reimbursement to the secretary of the department of housing and urban development: *Provided*, That the amount assessed each insurer shall be in the same proportion that the premiums written by each insurer in this state bear to the aggregate premiums written in this state by all insurance companies on those lines for which reinsurance was available in this state from the secretary of the department of housing and urban development during the preceding calendar year.

(2) In the event any insurer fails, by reason of insolvency, to pay any assessment as provided herein, the amount assessed each insurer, as computed under subsection (1) of this section, shall be immediately recalculated excluding therefrom the insolvent insurer so that its assessment is, in effect, assumed and redistributed among the remaining insurers.

(3) When assessments as provided herein are made, the individual insurer, after having paid the full amount assessed against the insurer, may deduct from future premium tax liabilities an amount not to exceed twenty percent per annum until such deductions equal the amount of the assessment levied against the insurer.

(4) This section shall cease to be of any force and effect upon termination of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448), except that obligations incurred pursuant to the provisions of this section shall not be impaired by the expiration of the same.

(5) Notwithstanding the termination of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448), the commissioner is authorized to continue in force the program developed in response to that act, the Washington essential property insurance inspection and placement program, in order to provide essential property insurance within the state where it cannot be obtained through the normal insurance market. [1987 c 128 § 1; 1980 c 32 § 9; 1969 ex.s. c 140 § 1.]

Chapter 48.62

LOCAL GOVERNMENT INSURANCE TRANSACTIONS

Sections

48.62.010 Legislative finding—Intent.
 48.62.020 "Local governmental entity" defined.
 48.62.030 Risk management, claims, administrative services.
 48.62.035 Self-funded plans for educational employees.
 48.62.040 Joint action by local governmental entities.
 48.62.050 Joint self-insurance pool—Approval by state risk manager required—Procedure.
 48.62.060 Joint self-insurance pool—Provision for contingent liability of participants—Exemptions from certain taxes and laws.
 48.62.070 Joint self-funding, self-insurance pool—Assets, permissible investments.
 48.62.080 Joint self-funding, self-insurance pool—Assets, method of investment.
 48.62.090 Joint self-insurance pool—Operating and coverage requirements.
 48.62.100 Joint self-funding, self-insurance pool—Powers enumerated.
 48.62.110 Joint self-funding, self-insurance pool—Private meetings—Liability reserve amount protected from discovery.
 48.62.120 Joint self-insurance pool—Contracting with insurance agents or brokers.

48.62.010 Legislative finding—Intent. The legislature finds that local governmental entities in this state are experiencing a trend of vastly increased insurance premiums for the renewal of identical insurance policies, that fewer insurance carriers are willing to provide local governmental entities with insurance coverage, and that some local governmental entities are unable to obtain desired insurance coverage.

It is the intent of this legislation to clearly provide for the authority of local governmental entities to individually self-insure, self-fund under RCW 48.62.035, purchase individual insurance coverage, and obtain risk management, claims, and administrative services. It is also the intent of this legislation to grant local governmental entities the maximum flexibility to enter into agreements with each other to provide joint programs, which include programs for joint self-funding under RCW 48.62.035, the joint purchasing of insurance, joint self-insuring, and joint contracting for or hiring personnel to provide risk management, claims, and administrative services. [1985 c 277 § 1; 1979 ex.s. c 256 § 1.]

Retrospective application—1985 c 277: "This act applies retrospectively to group self-funded plans formed on or after January 1, 1983." [1985 c 277 § 10.] "This act" consisted of amendments to RCW 28A.58.420, 48.01.050, 48.62.010, 48.62.030, 48.62.070, 48.62.080, 48.62.100, and 48.62.110 and the enactment of RCW 48.62.035.

48.62.020 "Local governmental entity" defined. As used in RCW 48.62.010 through 48.62.120, the term "local governmental entity" shall mean every unit of local government, both general purpose and special purpose, and shall include, but not be limited to, counties, cities, towns, port districts, public utility districts, water districts, sewer districts, school districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal

corporations, and quasi municipal corporations. [1979 ex.s. c 256 § 2.]

48.62.030 Risk management, claims, administrative services. The governing body of any local governmental entity may, as an alternative or in addition to the establishment of a self-funded plan, a self-insurance reserve, or the purchasing of insurance, contract for or hire personnel to provide risk management, claims, and administrative services. Moneys made available and moneys expended by school districts and educational service districts for the purpose of implementing any provision of RCW 48.62.010 through 48.62.120 or RCW 36.16.138 shall be subject to such rules of the superintendent of public instruction as the superintendent may adopt governing the budgeting and accounting of such plan or reserves. [1985 c 277 § 2; 1983 c 59 § 17; 1979 ex.s. c 256 § 3.]

Retrospective application—1985 c 277: See note following RCW 48.62.010.

Application—**Effective date**—**Severability**—1983 c 59: See notes following RCW 28A.65.400.

48.62.035 Self-funded plans for educational employees. (1) School districts and educational service districts may, either individually or in combination with other such districts, self-fund their employees' loss of time and health benefit plans if (1) the plans, their manner of operation, and the managers meet standards established by the superintendent of public instruction; and (2) the plan is fully covered by an excess loss insurance policy issued by an insurer which has a certificate authorizing it to provide insurance in this state. Self-funded plans shall also comply with the mandatory coverage provisions of chapter 48.44 RCW. Claims under such plans shall be administered by competent, disinterested third parties acting independently of all school districts and their personnel. Such a plan or any trust established thereunder shall not be deemed to be an insurance company and shall not be deemed to be engaged in the business of insurance for purposes of the insurance code.

(2) Any plan authorized by this section is not subject to chapter 48.42 RCW and shall be subject to audit by the state auditor. [1985 c 277 § 3.]

Retrospective application—1985 c 277: See note following RCW 48.62.010.

48.62.040 Joint action by local governmental entities. (1) Except as provided in subsection (2) of this section, the governing body of any one or more local governmental entities may, as an alternative or in addition to exercising any one or more of the powers granted in RCW 48.62.030 and 36.16.138, as now or hereafter amended, or any other provision of law, form together into or join a pool or organization for the joint purchasing of insurance, and/or joint self-insuring, and/or joint hiring or contracting for risk management services to the same extent that they may individually purchase insurance, self-insure, or hire or contract for risk management services.

(2)(a) No organization of local governmental entities, other than local school districts and educational service districts, that is organized under this section for the purpose of self-insuring shall provide any self-insurance other than liability and property insurance. For purposes of this section, liability insurance shall include but not be limited to coverage for claims arising from the tortious or negligent conduct of the local government entity, its officers, employees, or agents thereof, or any error or omission on the part of said local government entity, its officers, employees or agents thereof as a result of which a claim may be made against the local government entity.

(b) Local school districts and educational service districts may not organize under this section for the purpose of providing joint self-insured life, health, health care, accident, disability and salary protection or insurance, or any combination thereof, to the district employees, students, directors, or any of their dependents.

(3) The agreement to form such a pooling arrangement shall be made under chapter 39.34 RCW. Any pool or organization authorized to be formed by this section shall be subject to audit by the state auditor. [1986 c 302 § 1; 1985 c 278 § 1; 1979 ex.s. c 256 § 4.]

48.62.050 Joint self-insurance pool—Approval by state risk manager required—Procedure. Prior to the establishment of a joint self-insurance pool by any organization of local governmental entities that is organized under RCW 48.62.040 for the purpose of self-insuring through a contributing trust, approval of the establishment of such self-insurance pool shall be obtained from the state risk manager pursuant to RCW 43.19.19362 in accordance with the following procedure:

(1) A proposed plan of organization and operation, including the following elements shall be submitted;

(a) A financial plan specifying:

(i) The coverage to be offered by the self-insurance pool, setting forth the deductible level and the maximum level of claims which the pool will self-insure;

(ii) The amount of cash reserves to be set aside for the payment of claims;

(iii) The amount of insurance to be purchased over and above the amount of claims to be satisfied directly from the organization's resources;

(iv) The amount of stop-loss coverage to be purchased in the event that the joint self-insurance pool's resources are exhausted in a given fiscal period; and

(v) Certification that the participating local governmental entities in the self-insurance pool are apprised of the limitations of coverage provided and the availability of additional coverage which may be purchased individually by the participants in the pool;

(b) A plan of management setting forth the means of fulfilling the requirements of RCW 48.62.090(1), the means of establishing the governing authority of the organization, and the frequency of actuarial studies to establish the periodic contribution rates for each of the participants; and

(c) A plan specifying the conditions and responsibilities of the participants, including procedures for entry

into and withdrawal from the pool and the allocation of contingent liabilities pursuant to RCW 48.62.060.

(2) Within sixty days after receipt of the aforementioned plan, the state risk manager shall determine whether the organization proposing to create a joint self-insurance pool has complied with the procedures and provisions contained in RCW 48.62.050(1), and has made provision for professional management of the joint self-insurance pool pursuant to RCW 48.62.090(1), and has provided for the insurance coverages required in RCW 48.62.090 (2) and (3), and that participants in the proposed joint self-insurance pool have been informed of the deductibles and limitations established pursuant to RCW 48.62.090(4). If the state risk manager determines that these criteria have been met, he shall approve the plan of operation of the proposed joint self-insurance pool, and such organization shall be authorized to commence operation.

(3) If approval is denied, the state risk manager shall specify in detail the reasons for denial and the manner in which the proposed joint self-insurance pool fails to meet the requirements of this section and RCW 48.62.090(1) through (4) and make comments and suggestions as to means by which such deficiencies could be corrected. The provisions of RCW 34.05.410 through 34.05.494 shall apply with regard to such basis for denial and a review thereof. If the risk manager fails to act within the time limit established in subsection (2) of this section the plan of operation of the proposed joint self-insurance pool shall be deemed approved. [1989 c 175 § 114; 1979 ex.s. c 256 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

48.62.060 Joint self-insurance pool—Provision for contingent liability of participants—Exemptions from certain taxes and laws. Any organization of local governmental entities that is organized under RCW 48.62.040 which is established for the purpose of joint self-insuring through a contributing trust fund shall provide for the contingent liability of the participants in the event the assets of the joint self-insurance pool are not sufficient to cover its liabilities.

Each organization shall be exempt from insurance premium taxes, from chapters 48.32 and 48.32A RCW and from business and occupation taxes imposed pursuant to chapter 82.04 RCW, and from any assigned risk plan or joint underwriting authority otherwise required by law. [1979 ex.s. c 256 § 6.]

48.62.070 Joint self-funding, self-insurance pool—Assets, permissible investments. The assets of any organization of local governmental entities that is organized under RCW 48.62.040 or 48.62.035 which is established for the purpose of jointly self-funding or self-insuring may, pursuant to RCW 48.62.080, be invested only in the following classes of securities and investments:

(1) Savings or time accounts in banks, trust companies, and mutual savings banks which are doing business in this state, up to the amount of insurance afforded

such accounts by the federal deposit insurance corporation;

(2) Accounts in savings and loan associations which are doing business in this state, up to the amount of insurance afforded such accounts by the federal savings and loan insurance corporation;

(3) Investment deposits in banks, trust companies, mutual savings banks, and savings and loan associations, which are doing business in this state, available for investment and secured by collateral in accordance with the provisions of chapter 39.58 RCW;

(4) Certificates, notes, bonds, or other obligations or securities of the United States or any of its agencies, or of any corporation wholly owned by the government of the United States;

(5) Federal home loan bank notes and bonds, federal land bank bonds, and federal national mortgage association notes, debentures, and guaranteed certificates of participation, or the obligations of any other government-sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(6) Direct and general obligation bonds and warrants of the state of Washington or any other state of the United States;

(7) Direct and general obligation bonds and warrants of any local governmental entity of this state having the power to levy general taxes which are payable from general ad valorem taxes;

(8) Revenue bonds of this state or any authority, board, commission, committee, or similar agency thereof;

(9) Motor vehicle fund warrants when authorized by agreement between the state finance committee and the state transportation commission requiring repayment of invested funds from any moneys in the motor vehicle fund available for state highway construction;

(10) Bonds, securities, and obligations which are designated to be authorized security for all public deposits pursuant to RCW 35.58.510, 35.81.110, 35.82.220, 39.60.030, 39.60.040, and 54.24.120; and

(11) Investments permitted by RCW 39.59.020. [1988 c 281 § 4; 1985 c 277 § 4; 1979 ex.s. c 256 § 7.]

Severability—1988 c 281: See RCW 39.59.900.

Retrospective application—1985 c 277: See note following RCW 48.62.010.

48.62.080 Joint self-funding, self-insurance pool—Assets, method of investment. (1) Any organization of local governmental entities that is organized under RCW 48.62.040 which is established for the purpose of jointly self-insuring may invest all or a portion of its assets by one or more of the following methods:

(a) Directly invest such assets itself; or

(b) Deposit such assets with the treasurer of any county within whose territorial limits any of its member local governmental entities lies, to be invested by such treasurer for the organization.

(2) Any organization of school districts or educational service districts that is organized under RCW 48.62.035

which is established for the purpose of jointly self-funding may invest all or a portion of its assets by depositing such assets with the treasurer of any county within whose territorial limits any of its member districts lies, to be invested by such treasurer for the organization. [1985 c 277 § 5; 1979 ex.s. c 256 § 8.]

Retrospective application—1985 c 277: See note following RCW 48.62.010.

48.62.090 Joint self-insurance pool—Operating and coverage requirements. Any organization of local governmental entities that is organized under RCW 48.62.040 which elects to provide pooled self-insurance shall satisfy the following requirements:

(1) Contract with a professional insurance management corporation or otherwise provide for the management and operation of any joint self-insurance pool established by the organization;

(2) Provide for umbrella coverage for the participating local governmental entities;

(3) Provide insurance coverage for those claims which the organization plans to jointly self-insure, such coverage to be effective only in the event of the exhaustion of the joint self-insurance pool's resources for a given fiscal period;

(4) Establish deductibles and/or limits to any coverage that is provided; and

(5) Provide an annual report of the operations of the organization to the participating entities, the state risk manager, and the state insurance commissioner. [1979 ex.s. c 256 § 9.]

48.62.100 Joint self-funding, self-insurance pool—Powers enumerated. Any organization of local governmental entities that is organized under RCW 48.62.040 or 48.62.035 shall have the flexibility to perform its functions and at its option may, if such functions and actions are within its purview as established by the agreement or contract adopted pursuant to chapter 39.34 RCW that lists the powers and functions of the organization, do any of the following:

(1) Contract or otherwise provide for risk management and loss control services;

(2) Contract or otherwise provide legal counsel for the defense of claims and/or other legal services;

(3) Consult with the state insurance commissioner and/or the state risk manager;

(4) Jointly purchase insurance coverage in such form and amount as the organization's participants may by contract agree; and

(5) Possess any other powers and perform all other functions reasonably necessary to carry out the purposes of this chapter. [1985 c 277 § 6; 1979 ex.s. c 256 § 10.]

Retrospective application—1985 c 277: See note following RCW 48.62.010.

48.62.110 Joint self-funding, self-insurance pool—Private meetings—Liability reserve amount protected from discovery. Any organization of local governmental entities that is organized under RCW 48.62.040 or 48.62.035 may provide for private meetings to

consider litigation and settlement of claims when it appears that public discussion of these matters would impair the organization's ability to conduct its business effectively.

Notwithstanding any provision to the contrary contained in the public disclosure act, chapter 42.17 RCW, in a claim or action against the state or any local governmental entity, no person shall be entitled to discover that portion of funds or liability reserve established for purposes of satisfying a claim or cause of action, except that the reserve is discoverable in any supplemental or ancillary proceeding to enforce a judgment. [1985 c 277 § 7; 1979 ex.s. c 256 § 11.]

Retrospective application—1985 c 277: See note following RCW 48.62.010.

48.62.120 Joint self-insurance pool—Contracting with insurance agents or brokers. The provisions of RCW 48.30.140 and 48.30.150 shall not be construed in such a manner as to prevent any local governmental entity or organization of local government entities that is organized under RCW 48.62.040 from engaging or contracting with an insurance agent or broker to purchase or obtain insurance on a fee basis. [1979 ex.s. c 256 § 12.]

Chapter 48.66

MEDICARE SUPPLEMENTAL HEALTH INSURANCE ACT

Sections

48.66.010	Short title—Intent—Application of chapter.
48.66.020	Definitions.
48.66.030	Renewability—Benefit standards, required definitions—Benefit limitations.
48.66.041	Minimum standards required by rule—Waiver.
48.66.050	Policy provisions prohibited by rule—Waivers restricted.
48.66.060	Equal coverage of sickness and accidents.
48.66.070	Adjustment of benefits and premiums for medicare cost-sharing.
48.66.080	"Benefit period"—"Medicare benefit period"—Minimum requirements.
48.66.090	Cancellation, nonrenewal restrictions.
48.66.100	Loss ratio requirements—Mass sales practices of individual policies.
48.66.110	Disclosure form by insurer—Substitute outline of coverage.
48.66.120	Return of policy and refund of premium—Notice required—Effect of return.
48.66.130	Preexisting condition limitations.
48.66.140	Medical history.
48.66.150	Reporting and recordkeeping, separate data required.
48.66.160	Federal law supersedes.
48.66.900	Severability—1981 c 153.
48.66.910	Effective date—1981 c 153.

48.66.010 Short title—Intent—Application of chapter. This chapter shall be known and may be cited as "The Medicare Supplemental Health Insurance Act" and is intended to govern the content and sale of medicare supplemental insurance as defined in this chapter. The provisions of this chapter shall apply in addition to, rather than in place of, other requirements of Title 48 RCW. [1981 c 153 § 1.]

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

(1) "Medicare supplemental insurance" or "medicare supplement insurance policy" refers to a group or individual policy of disability insurance or a subscriber contract of a health care service contractor, a health maintenance organization, or a fraternal benefit society, which relates its benefits to medicare, or which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare by reason of age. Such term does not include:

(a) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association:

(i) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) Has been maintained in good faith for purposes other than obtaining insurance; and

(iii) Has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members; or

(c) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this chapter; or policies issued to employees or members as additions to franchise plans in existence on January 1, 1982.

(2) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(3) "Medicare eligible expenses" means health care expenses of the kinds covered by medicare, to the extent recognized as reasonable by medicare. Payment of benefits by insurers for medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to medicare claims.

(4) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy or subscriber contract, the proposed certificate holder.

(5) "Certificate" means any certificate issued under a group medicare supplement insurance policy, which policy has been delivered or issued for delivery in this state.

(6) "Loss ratio" means the incurred claims as a percentage of the earned premium computed under rules adopted by the insurance commissioner.

(7) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during a specified time period immediately prior to the effective date of coverage.

(8) "Disclosure form" means the form designated by the insurance commissioner which discloses medicare benefits, the supplemental benefits offered by the insurer, and the remaining amount for which the insured will be responsible. [1981 c 153 § 2.]

48.66.030 Renewability—Benefit standards, required definitions—Benefit limitations. (1) Medicare supplement insurance policies must include a renewal, continuation, or nonrenewal provision. The language or specifications of such provision must be consistent with the type of contract to be issued. Such provision must be appropriately captioned, appear on the first page of the policy, and clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(2) A medicare supplement insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import must include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(3) Limitations on benefits, such as policy exclusions or waiting periods, shall be labeled in a separate section of the policy or placed with the benefit provisions to which they apply, rather than being included in other sections of the policy, rider, or endorsement. [1981 c 153 § 3.]

48.66.041 Minimum standards required by rule—Waiver. (1) The insurance commissioner shall adopt rules to establish minimum standards for benefits in medicare supplement insurance policies.

(2) The commissioner shall adopt rules to establish specific standards for medicare supplement insurance policy provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms.

(3) The insurance commissioner may adopt rules that establish disclosure standards for replacement of policies or certificates by persons eligible for medicare by reason of age.

(4) The insurance commissioner may by rule prescribe that an informational brochure, designed to improve the buyer's understanding of medicare and ability to select the most appropriate coverage, be provided to persons eligible for medicare by reason of age. The commissioner may require that the brochure be provided to applicants concurrently with delivery of the outline of coverage, except with respect to direct response insurance, when

the brochure may be provided upon request but no later than the delivery of the policy.

(5) In the case of a state or federally qualified health maintenance organization, the commissioner may waive compliance with one or all provisions of this section until January 1, 1983. [1982 c 200 § 1.]

48.66.050 Policy provisions prohibited by rule—Waivers restricted. (1) The insurance commissioner may issue reasonable rules that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unfair, unjust, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement insurance policy.

(2) No medicare supplement insurance policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1981 c 153 § 5.]

48.66.060 Equal coverage of sickness and accidents. A medicare supplement insurance policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents. [1981 c 153 § 6.]

48.66.070 Adjustment of benefits and premiums for medicare cost-sharing. A medicare supplement insurance policy must provide that benefits designed to cover cost-sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes. [1981 c 153 § 7.]

48.66.080 "Benefit period"—"Medicare benefit period"—Minimum requirements. "Benefit period" or "medicare benefit period" may not be defined more restrictively than as defined in the medicare program. [1981 c 153 § 8.]

48.66.090 Cancellation, nonrenewal restrictions. A medicare supplement insurance policy may not provide that the policy may be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health. [1981 c 153 § 9.]

48.66.100 Loss ratio requirements—Mass sales practices of individual policies. (1) Commencing with reports for the accounting periods beginning on or after January 1, 1982, medicare supplement insurance policies shall be expected to return to policyholders in the form of aggregate loss ratio under the policy:

(a) At least seventy-five percent of the earned premiums in the case of group policies; and

(b) At least sixty percent of the earned premiums in the case of individual policies.

(2) For the purpose of this section, medicare supplement insurance policies issued as a result of solicitation of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(3) By January 1, 1982, the insurance commissioner shall adopt rules sufficient to accomplish the provisions of this section and may, by such rules, impose more stringent or appropriate loss ratio requirements when it is necessary for the protection of the public interest. [1982 c 200 § 2; 1981 c 153 § 10.]

48.66.110 Disclosure form by insurer—Substitute outline of coverage. (1) An agent, insurer, health care service contractor or health maintenance organization initiating a sale of an individual or group medicare supplement insurance policy in this state shall complete and sign a disclosure form, in a form prescribed by the insurance commissioner, and deliver the completed form to the potential policyholder not later than the time of application for the policy.

(2) If a medicare supplement insurance policy or certificate is issued on a basis which would require revision of the outline of coverage delivered at the time of application, a substitute outline of coverage properly describing the policy or certificate actually issued must accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve-point type, immediately above the company name: "NOTICE. Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued." [1981 c 153 § 11.]

48.66.120 Return of policy and refund of premium—Notice required—Effect of return. Every individual medicare supplement insurance policy issued after January 1, 1982, and every certificate issued pursuant to a group medicare supplement policy after January 1, 1982, shall have prominently displayed on the first page of the policy form or certificate a notice stating in substance that the person to whom the policy or certificate is issued shall be permitted to return the policy or certificate within thirty days of its delivery to the purchaser and to have the premium refunded if, after examination of the policy or certificate, the purchaser is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policyholder or purchaser, pursuant to such notice, returns the policy or certificate to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy or certificate had been issued. [1983 1st ex.s. c 32 § 12; 1982 c 200 § 3; 1981 c 153 § 12.]

48.66.130 Preexisting condition limitations. (1) Effective January 1, 1982, no medicare supplement insurance policy which excludes coverage for preexisting conditions which appeared more than one hundred eighty days prior to the effective date of the policy may be sold or offered for sale in this state.

(2) Effective January 1, 1982, no medicare supplement insurance policy may be sold or offered for sale in

this state which excludes coverage for preexisting conditions for a period of more than one hundred eighty days into the term of the policy.

(3) If a medicare supplement insurance policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations." [1981 c 153 § 13.]

48.66.140 Medical history. Any time that completion of a medical history of a patient is required in order for an application for a medicare supplement insurance policy to be accepted, that medical history must be completed by the applicant, a relative of the applicant, a legal guardian of the applicant, or a physician. [1981 c 153 § 14.]

48.66.150 Reporting and recordkeeping, separate data required. Commencing with reports for accounting periods beginning on or after January 1, 1982, insurers, health care service contractors, health maintenance organizations, and fraternal benefit societies shall, for reporting and recordkeeping purposes, separate data concerning medicare supplement insurance policies and contracts from data concerning other disability insurance policies and contracts. [1981 c 153 § 15.]

48.66.160 Federal law supersedes. In any case where the provisions of this chapter conflict with provisions of the "Health Insurance For The Aged Act," Title XVIII of the Social Security Amendments of 1965, or any amendments thereto or regulations promulgated thereunder, regarding any contract between the secretary of health and human services and a health maintenance organization, the provisions of the "Health Insurance For The Aged Act" shall supersede and be paramount. [1981 c 153 § 16.]

48.66.900 Severability—1981 c 153. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 153 § 17.]

48.66.910 Effective date—1981 c 153. This act shall take effect January 1, 1982. [1981 c 153 § 19.]

Chapter 48.70

SPECIFIED DISEASE INSURANCE ACT

Sections

48.70.010	Legislative intent.
48.70.020	Definitions—Rules.
48.70.030	Expected returns to policyholders—Rules.
48.70.040	Rules required.
48.70.900	Application of chapter.
48.70.910	Severability—1982 c 181.

48.70.010 Legislative intent. This chapter shall be known as the specified disease insurance act and is intended to govern the content and sale of specified disease insurance as defined in this chapter. This chapter applies

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in addition to, rather than in place of, other requirements of Title 48 RCW. It is the intent of the legislature to guarantee that specified disease policies issued, delivered, or used in this state provide a reasonable level of benefits to the policyholders. This chapter shall be applied broadly to ensure achievement of its aim. [1982 c 181 § 20.]

48.70.020 Definitions—Rules. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Specified disease policy" refers to any insurance policy or contract which provides benefits to a policyholder only in the event that the policyholder contracts the disease or diseases specifically named in the policy.

(2) "Loss ratio" means the incurred claims as a percentage of the earned premium, computed under rules adopted by the commissioner. Earned premiums and incurred claims shall be computed under rules adopted by the commissioner. [1982 c 181 § 21.]

48.70.030 Expected returns to policyholders—Rules. (1) Commencing with reports for the accounting periods beginning on or after July 1, 1983, specified disease policies shall be expected to return to policyholders in the form of aggregate loss ratios under the policy:

(a) At least seventy-five percent of the earned premiums in the case of group policies; and

(b) At least sixty percent of the earned premiums in the case of individual policies.

(2) For the purpose of this section, specified disease insurance policies issued as a result of solicitation of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(3) By July 1, 1983, the commissioner shall adopt rules sufficient to accomplish the provisions of this section. [1982 c 181 § 22.]

48.70.040 Rules required. By July 1, 1983, the commissioner shall adopt all rules necessary to ensure that specified disease policies provide a reasonable level of benefits to policyholders, and that purchasers and potential purchasers of such policies are fully informed of the level of benefits provided. [1982 c 181 § 23.]

48.70.900 Application of chapter. This chapter shall apply to all policies issued on or after July 1, 1983. This chapter shall not apply to services provided by health care service contractors as defined in RCW 48.44.010. [1982 c 181 § 24.]

48.70.910 Severability—1982 c 181. See note following RCW 48.03.010.

Chapter 48.74

STANDARD VALUATION LAW

Sections

48.74.010	Short title—"NAIC" defined.
48.74.020	Valuation of reserve liabilities.

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48.74.030	Minimum standard for valuation.
48.74.040	Amount of reserves required.
48.74.050	Minimum aggregate reserves.
48.74.060	Other methods of reserve calculation.
48.74.070	Minimum reserve if gross premium less than valuation net premium.
48.74.080	Procedure when specified methods of reserve determination unfeasible.

48.74.010 Short title—"NAIC" defined. This chapter may be known and cited as the standard valuation law. As used in this chapter, "NAIC" means the National Association of Insurance Commissioners. [1982 1st ex.s. c 9 § 1.]

48.74.020 Valuation of reserve liabilities. The commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods, including net level premium method or other, used in the calculation of such reserves. In calculating such reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard provided in this chapter and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction. [1982 1st ex.s. c 9 § 2.]

48.74.030 Minimum standard for valuation. (1) Except as otherwise provided in subsections (2) and (3) of this section, the minimum standard for the valuation of all such policies and contracts issued prior to July 10, 1982, shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections (2) and (3) of this section, the minimum standard for the valuation of all such policies and contracts issued on or after July 10, 1982, shall be the commissioner's reserve valuation methods defined in RCW 48.74.040 and 48.74.070, three and one-half percent interest, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after July 16, 1973, four percent interest for such policies issued prior to September 1, 1979, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on and after September 1, 1979, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies—the commissioner's 1941 standard ordinary mortality table for such policies issued prior to the operative date of *RCW 48.23.350(5a) and the commissioner's 1958 standard ordinary mortality table for such policies issued on or after such operative date and prior to the operative date of RCW 48.76.050(4), except that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this chapter may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of RCW 48.76.050(4): (i) The commissioner's 1980 standard ordinary mortality table; or (ii) at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with ten-year select mortality factors; or (iii) any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies—the 1941 standard industrial mortality table for such policies issued prior to the operative date of *RCW 48.23.350(5b), and for such policies issued on or after such operative date the commissioner's 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule of the commissioner for use in determining the minimum standard of valuation for such policies.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of the tables or modifications of table[s] specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such

policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the class (3) disability table (1926); and for policies issued prior to January 1, 1961, the class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies—for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the intercompany double indemnity mortality table; and for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

(2) Except as provided in subsection (3) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after July 10, 1982, and for all annuities and pure endowments purchased on or after such effective date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in RCW 48.74.040 and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued before September 1, 1979, excluding any disability and accidental death benefit in such contracts—the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

(b) For individual single premium immediate annuity contracts issued on or after September 1, 1979, excluding any disability and accidental death benefits in such contracts—the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

(c) For individual annuity and pure endowment contracts issued on or after September 1, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts—the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after

1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts.

(d) For all annuities and pure endowments purchased prior to September 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 group annuity mortality table, or any modification of this table approved by the commissioner, and six percent interest.

(e) For all annuities and pure endowments purchased on or after September 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 group annuity mortality table or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

After July 16, 1973, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1979, which shall be the operative date of this section for such company: *Provided*, That a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this section for such company shall be January 1, 1979.

(3) (a) The interest rates used in determining the minimum standard for the valuation of:

(i) All life insurance policies issued in a particular calendar year, on or after the operative date of RCW 48.76.050(4);

(ii) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(iii) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(iv) The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this section.

(b) The calendar year statutory valuation interest rates, *I*, shall be determined as follows and the results rounded to the nearer one-quarter of one percent:

(i) For life insurance:

$$I = .03 + W (R_1 - .03) + W/2 (R_2 - .09);$$

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from

other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W (R - .03)$$

where R_1 is the lesser of R and $.09$,

R_2 is the greater of R and $.09$,

R is the reference interest rate defined in this section, and

W is the weighting factor defined in this section;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in (ii) of this subparagraph, the formula for life insurance stated in (i) of this subparagraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in (ii) of this subparagraph shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in (ii) of this subparagraph shall apply;

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in (ii) of this subparagraph shall apply.

(c) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1983 using the reference interest rate defined for 1982 and shall be determined for each subsequent calendar year regardless of when RCW 48.76.050(4) becomes operative.

(d) The weighting factors referred to in the formulas stated in subparagraph (b) of this subsection are given in the following tables:

(i) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium

rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80;

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in (ii) of this subparagraph, shall be as specified in (d)(iii) (A), (B), and (C) of this subsection, according to the rules and definitions in (d)(iii) (D), (E), and (F) of this subsection:

(A) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(B) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (d)(iii) (A) of this subsection increased by:

A	Plan Type	
	B	C
.15	.25	.05

(C) For annuities and guaranteed interest contracts valued on an issue year basis other than those with no cash settlement options which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in (d)(iii) (A) of this subsection or derived in (d)(iii) (B) of this subsection increased by:

A	Plan Type	
	B	C
.05	.05	.05

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(E) Plan type as used in the tables in (d)(iii) (A), (B), and (C) of this subsection is defined as follows:

Plan Type A: At any time a policyholder may withdraw funds only: (1) With an adjustment to reflect

changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, a policyholder may withdraw funds only: (1) With adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of the interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan Type C: A policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(F) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract. The change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(e) The reference interest rate referred to in subparagraphs (b) and (c) of this subsection is defined as follows:

(i) For all life insurance, the lesser of the average over a period of thirty–six months and the average over a period of twelve months, ending on June 30th of the calendar year next preceding the year of issue, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30th of the calendar year of issue or year of purchase of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (ii) of this subparagraph, with guarantee duration in excess of ten years, the lesser of the average over a period of thirty–six months and the average over a period of twelve months, ending on June 30th of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (ii) of this subparagraph, with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30th of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30th of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in (ii) of this subparagraph, the average over a period of twelve months, ending on June 30th of the calendar year of the change in the fund, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(g)[f] If Moody's corporate bond yield average—monthly average corporates is no longer published by Moody's Investors Service, Inc., or if the National Association of Insurance Commissioners determines that Moody's corporate bond yield average—monthly average corporates as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by rule adopted by the commissioner, may be substituted. [1982 1st ex.s. c 9 § 3.]

*Reviser's note: RCW 48.23.350 was repealed by 1982 1st ex.s. c 9 § 36. For later enactment, see chapter 48.76 RCW.

48.74.040 Amount of reserves required. (1) Except as otherwise provided in RCW 48.74.040(2) and 48.74.070, reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such

uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: *Provided however*, That such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year: *Provided*, That for any life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in RCW 48.74.070, be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph of this subsection and the reserve as of such policy anniversary calculated as described in that paragraph, but with: (i) The value defined in subparagraph (a) of that paragraph being reduced by fifteen percent of the amount of such excess first year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on such date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in RCW 48.74.030(1) and (3) shall be used.

Reserves according to the commissioner's reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, disability and accidental death benefits in all policies

and contracts, and all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this subsection.

(2) This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values. [1982 1st ex.s. c 9 § 4.]

48.74.050 Minimum aggregate reserves. In no event may a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after July 10, 1982, be less than the aggregate reserves calculated in accordance with the methods set forth in RCW 48.74.040, 48.74.070, and 48.74.080 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies. [1982 1st ex.s. c 9 § 5.]

48.74.060 Other methods of reserve calculation. Reserves for all policies and contracts issued prior to the operative date of this chapter, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts, or benefits as established by the commissioner, issued on or after July 10, 1982, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein

provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

Any such company which at any time has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided. [1982 1st ex.s. c 9 § 6.]

48.74.070 Minimum reserve if gross premium less than valuation net premium. If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in RCW 48.74.030(1) and (3): *Provided*, That for any life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this section shall be applied as if the method actually used in calculating the reserve for such policy were the method described in RCW 48.74.040, ignoring the second paragraph of that section. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with RCW 48.74.040, including the second paragraph of that section, and the minimum reserve calculated in accordance with this section. [1982 1st ex.s. c 9 § 7.]

48.74.080 Procedure when specified methods of reserve determination unfeasible. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in RCW 48.74.040 and 48.74.070, the reserves which are

held under any such plan must, under regulations promulgated by the commissioner:

(1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) Be computed by a method which is consistent with the principles of this standard valuation law. [1982 1st ex.s. c 9 § 8.]

Chapter 48.76

STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE

Sections

48.76.010	Short title—"NAIC" defined.
48.76.020	Nonforfeiture and cash surrender provisions required.
48.76.030	Amount of cash surrender value.
48.76.040	Nonforfeiture benefit in case of premium default.
48.76.050	Calculation of adjusted premiums—Operative date of section.
48.76.060	Requirements when specified methods of minimum values determination unfeasible.
48.76.070	Calculation of cash surrender value and paid-up nonforfeiture benefit.
48.76.080	Cash surrender value required for policies issued on or after January 1, 1986.
48.76.090	Chapter inapplicable to certain policies.
48.76.100	Operative date of chapter.

48.76.010 Short title—"NAIC" defined. This chapter may be known and cited as the standard nonforfeiture law for life insurance. As used in this chapter, "NAIC" means the National Association of Insurance Commissioners. [1982 1st ex.s. c 9 § 10.]

48.76.020 Nonforfeiture and cash surrender provisions required. In the case of policies issued on and after the operative date of this chapter as defined in RCW 48.76.100, no policy of life insurance, except as stated in RCW 48.76.090, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements specified in this chapter and are essentially in compliance with RCW 48.76.080:

(1) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be specified in this chapter. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(2) That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full

years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be specified in this chapter.

(3) That a specified paid-up nonforfeiture benefit becomes effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default.

(4) That if the policy has become paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be specified in this chapter.

(5) That policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(6) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six

months after demand therefor with surrender of the policy. [1982 1st ex.s. c 9 § 11.]

48.76.030 Amount of cash surrender value. (1) Subject to subsections (2) and (3) of this section, any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by RCW 48.76.020, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of the then present value of the adjusted premiums as defined in RCW 48.76.050, corresponding to premiums which would have fallen due on and after such anniversary, and the amount of any indebtedness to the company on the policy.

(2) For any policy issued on or after the operative date of RCW 48.76.050(4), which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subsection (1) of this section shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

(3) For any family policy issued on or after the operative date of RCW 48.76.050(4), which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash surrender value shall be an amount not less than the sum of the cash surrender value as defined in this section for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in this section for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

(4) Any cash surrender value available within thirty days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by RCW 48.76.020, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy. [1982 1st ex.s. c 9 § 12.]

48.76.040 Nonforfeiture benefit in case of premium default. Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary is at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value

which would have been required by this chapter in the absence of the condition that premiums shall have been paid for at least a specified period. [1982 1st ex.s. c 9 § 13.]

48.76.050 Calculation of adjusted premiums—

Operative date of section. (1)(a) This subsection does not apply to policies issued on or after the operative date of subsection (4) of this section. Except as provided in subparagraph (c) of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of: (i) The then present value of the future guaranteed benefits provided for by the policy; (ii) two percent of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as herein-after defined, if the amount of insurance varies with duration of the policy; (iii) forty percent of the adjusted premium for the first policy year; (iv) twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: *Provided*, That in applying the percentages specified in subparagraph (a)(iii) and (iv) of this subsection, no adjusted premium shall be deemed to exceed four percent of the amount of insurance or level amount equivalent thereto. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(b) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent level amount thereof for the purpose of this section shall be deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the inception of the insurance as the benefits under the policy: *Provided however*, That in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

(c) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to: (i) The adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, subparagraph (c) (i) and (ii) of

this subsection being calculated separately and as specified in subparagraphs (a) and (b) of this subsection except that, for the purposes of subparagraph (a)(ii), (a)(iii), and (a)(iv) of this subsection, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in subparagraph (c)(ii) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in subparagraph (c)(i) of this subsection.

(d) Except as otherwise provided in subsections (2) and (3) of this section, all adjusted premiums and present values referred to in this chapter shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table: *Provided*, That for any category of ordinary insurance issued on female risks on or after July 1, 1957, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: *Provided*, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty percent of the rates of mortality according to such applicable table: *Provided, further*, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(2) This subsection does not apply to ordinary policies issued on or after the operative date of subsection (4) of this section. In the case of ordinary policies issued on or after the operative date of this section, all adjusted premiums and present values referred to in this chapter shall be calculated on the basis of the commissioner's 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after July 16, 1973, and before September 1, 1979, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after September 1, 1979, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured: *Provided*, That in calculating the present value of any paid-

up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 extended term insurance table: *Provided further*, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After June 11, 1959, any company may file with the commissioner a written notice of its election to comply with the provisions of this section. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such company), this subsection shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1966.

(3) This subsection does not apply to industrial policies issued on or after the operative date of subsection (4) of this section. In the case of industrial policies issued on or after the operative date of this chapter, all adjusted premiums and present values referred to in this chapter shall be calculated on the basis of the commissioner's 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum, except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after July 16, 1973, and prior to September 1, 1979, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after September 1, 1979, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used: *Provided*, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1961 industrial extended term insurance table: *Provided further*, That for insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provisions of this section. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such company), this subsection shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1968.

(4) (a) This section applies to all policies issued on or after the operative date of this subsection as defined herein. Except as provided in subparagraph (g) of this

subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of: (i) The then present value of the future guaranteed benefits provided for by the policy; (ii) one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and (iii) one hundred twenty-five percent of the nonforfeiture net level premium as defined in subparagraph (b) of this subsection: *Provided*, That in applying the percentage specified in (iii) of this subparagraph no nonforfeiture net level premium shall be deemed to exceed four percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(b) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(c) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(d) Except as otherwise provided in subparagraph (g) of this subsection, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (i) the sum of (A)

the then present value of the then future guaranteed benefits provided for by the policy and (B) the additional expense allowance, if any, over (ii) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(e) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of: (i) One percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (ii) one hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.

(f) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (i) by (ii) where:

(i) Equals the sum of:

(A) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(B) The present value of the increase in future guaranteed benefits provided for by the policy; and

(ii) Equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(g) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(h) All adjusted premiums and present values referred to in this chapter shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1980 standard ordinary mortality table or at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with ten-year select mortality factors, shall for all policies of industrial insurance be calculated on the basis of the commissioner's 1961 standard industrial mortality table, and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section, for policies issued in that calendar year, subject to the following provisions:

(i) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the

nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.

(ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by RCW 48.76.020, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(iii) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(iv) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioner's 1961 industrial extended term insurance table for policies of industrial insurance.

(v) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(vi) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioner's 1980 extended term insurance table.

(vii) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term insurance table.

(i) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in the standard valuation law (chapter 48.74 RCW), rounded to the nearer one quarter of one percent.

(j) Notwithstanding any other provision in this title to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(k) After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provision[s] of this section after a specified

date before January 1, 1989, which shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1989. [1982 1st ex.s. c 9 § 14.]

48.76.060 Requirements when specified methods of minimum values determination unfeasible. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in RCW 48.76.020 through 48.76.050, then:

(1) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by RCW 48.76.020 through 48.76.050;

(2) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;

(3) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this chapter, as determined by regulations promulgated by the commissioner. [1982 1st ex.s. c 9 § 15.]

48.76.070 Calculation of cash surrender value and paid-up nonforfeiture benefit. Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in RCW 48.76.030 through 48.76.050 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding the provisions of RCW 48.76.030, additional benefits payable: (1) In the event of death or dismemberment by accident or accidental means; (2) in the event of total and permanent disability; (3) as reversionary annuity or deferred reversionary annuity benefits; (4) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this chapter would not apply; (5) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child; and (6) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this

chapter, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits. [1982 1st ex.s. c 9 § 16.]

48.76.080 Cash surrender value required for policies issued on or after January 1, 1986. (1) This section, in addition to all other applicable sections of this chapter, shall apply to all policies issued on or after January 1, 1986. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of: (a) The greater of zero and the basic cash value specified in subsection (2) of this section; and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

(2) The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as defined in subsection (3) of this section, corresponding to premiums which would have fallen due on and after such anniversary: *Provided*, That the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in RCW 48.76.030 or 48.76.050(4), whichever is applicable, shall be the same as are the effects specified in RCW 48.76.030 or 48.76.050(4), whichever is applicable, on the cash surrender values defined in that section.

(3) The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in RCW 48.76.050 (1) or (4). Except as is required by the next succeeding sentence of this paragraph, such percentage:

(a) Must be the same percentage for each policy year between the second policy anniversary and the later of: (i) The fifth policy anniversary; and (ii) The first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and

(b) Must be such that no percentage after the later of the two policy anniversaries specified in subparagraph (a) of this subsection may apply to fewer than five consecutive policy years: *Provided*, That no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in RCW 48.76.050 (1) or (4), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(4) All adjusted premiums and present values referred to in this section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this chapter. The cash surrender values referred to in this section shall include any endowment benefits provided for by the policy.

(5) Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in RCW 48.76.020 through 48.76.040, 48.76.050(4), and 48.76.070. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in RCW 48.76.070 shall conform with the principles of this section. [1982 1st ex.s. c 9 § 17.]

48.76.090 Chapter inapplicable to certain policies.

This chapter does not apply to any of the following:

- (1) Reinsurance;
- (2) Group insurance;
- (3) A pure endowment;
- (4) An annuity or reversionary annuity contract;
- (5) A term policy of a uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;
- (6) A term policy of a decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in RCW 48.76.050, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;
- (7) A policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in RCW 48.76.030 through 48.76.050, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year; nor
- (8) A policy which is delivered outside this state through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of this chapter, the age at expiration for a joint term life insurance policy is the age at expiration of the oldest life. [1982 1st ex.s. c 9 § 18.]

48.76.100 Operative date of chapter. After July 10, 1982, any company may file with the commissioner a

written notice of its election to comply with the provisions of this chapter. After the filing of such notice, then upon such specified date (which shall be the operative date for such company), this chapter becomes operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this chapter for such company shall be January 1, 1948. [1982 1st ex.s. c 9 § 19.]

Chapter 48.80

HEALTH CARE FALSE CLAIM ACT

Sections	
48.80.010	Legislative finding—Short title.
48.80.020	Definitions.
48.80.030	Making false claims, concealing information—Penalty—Exclusions.
48.80.040	Use of circumstantial evidence.
48.80.050	Civil action not limited.
48.80.060	Conviction of provider, notification to regulatory agency.
48.80.900	Severability—1986 c 243.

48.80.010 Legislative finding—Short title. The legislature finds and declares that the welfare of the citizens of this state is threatened by the spiraling increases in the cost of health care. It is further recognized that fraudulent health care claims contribute to these increases in health care costs. In recognition of these findings, it is declared that special attention must be directed at eliminating the unjustifiable costs of fraudulent health care claims by establishing specific penalties and deterrents. This chapter may be known and cited as "the health care false claim act." [1986 c 243 § 1.]

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

- (1) "Claim" means any attempt to cause a health care payer to make a health care payment.
- (2) "Deceptive" means presenting a claim to a health care payer that contains a statement of fact or fails to reveal a material fact, leading the health care payer to believe that the represented or suggested state of affairs is other than it actually is. For the purposes of this chapter, the determination of what constitutes a material fact is a question of law to be resolved by the court.
- (3) "False" means wholly or partially untrue or deceptive.
- (4) "Health care payment" means a payment for health care services or the right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service.
- (5) "Health care payer" means any insurance company authorized to provide health insurance in this state, any health care service contractor authorized under chapter 48.44 RCW, any health maintenance organization authorized under chapter 48.46 RCW, any legal entity which is self-insured and providing health care benefits to its employees, or any person responsible for paying for health care services.

(6) "Person" means an individual, corporation, partnership, association, or other legal entity.

(7) "Provider" means any person lawfully licensed or authorized to render any health service. [1986 c 243 § 2.]

48.80.030 Making false claims, concealing information—Penalty—Exclusions. (1) A person shall not make or present or cause to be made or presented to a health care payer a claim for a health care payment knowing the claim to be false.

(2) No person shall knowingly present to a health care payer a claim for a health care payment that falsely represents that the goods or services were medically necessary in accordance with professionally accepted standards. Each claim that violates this subsection shall constitute a separate offense.

(3) No person shall knowingly make a false statement or false representation of a material fact to a health care payer for use in determining rights to a health care payment. Each claim that violates this subsection shall constitute a separate violation.

(4) No person shall conceal the occurrence of any event affecting his or her initial or continued right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service. A person shall not conceal or fail to disclose any information with intent to obtain a health care payment to which the person or any other person is not entitled, or to obtain a health care payment in an amount greater than that which the person or any other person is entitled.

(5) A person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

(6) This section does not apply to statements made on an application for coverage under a contract or certificate of health care coverage issued by an insurer, health care service contractor, health maintenance organization, or other legal entity which is self-insured and providing health care benefits to its employees. [1986 c 243 § 3.]

48.80.040 Use of circumstantial evidence. In a prosecution under this chapter, circumstantial evidence may be presented to demonstrate that a false statement or claim was knowingly made. Such evidence may include but shall not be limited to the following circumstances:

(1) Where a claim for a health care payment is submitted with the person's actual, facsimile, stamped, typewritten, or similar signature on the form required for the making of a claim for health care payment; and

(2) Where a claim for a health care payment is submitted by means of computer billing tapes or other electronic means if the person has advised the health care payer in writing that claims for health care payment will be submitted by use of computer billing tapes or other electronic means. [1986 c 243 § 4.]

48.80.050 Civil action not limited. This chapter shall not be construed to prohibit or limit a prosecution of or

civil action against a person for the violation of any other law of this state. [1986 c 243 § 5.]

48.80.060 Conviction of provider, notification to regulatory agency. Upon the conviction under this chapter of any provider, the prosecutor shall provide written notification to the appropriate regulatory or disciplinary agency of such conviction. [1986 c 243 § 6.]

48.80.900 Severability—1986 c 243. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 243 § 7.]

Chapter 48.84

LONG-TERM CARE INSURANCE ACT

Sections	
48.84.010	General provisions, intent.
48.84.020	Definitions.
48.84.030	Rules—Benefits—premiums ratio, coverage limitations.
48.84.040	Policies and contracts—Prohibited provisions.
48.84.050	Disclosure rules—Required provisions in policy or contract.
48.84.060	Prohibited practices.
48.84.070	Separation of data regarding certain policies.
48.84.900	Severability—1986 c 170.
48.84.910	Effective date, application—1986 c 170.

48.84.010 General provisions, intent. This chapter may be known and cited as the "long-term care insurance act" and is intended to govern the content and sale of long-term care insurance and long-term care benefit contracts as defined in this chapter. This chapter shall be liberally construed to promote the public interest in protecting purchasers of long-term care insurance from unfair or deceptive sales, marketing, and advertising practices. The provisions of this chapter shall apply in addition to other requirements of Title 48 RCW. [1986 c 170 § 1.]

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

(1) "Long-term care insurance" or "long-term care benefit contract" means any insurance policy or benefit contract primarily advertised, marketed, offered, or designed to provide coverage or services for either institutional or community-based convalescent, custodial, chronic, or terminally ill care. Such terms do not include and this chapter shall not apply to policies or contracts governed by chapter 48.66 RCW and continuing care retirement communities.

(2) "Loss ratio" means the incurred claims plus or minus the increase or decrease in reserves as a percentage of the earned premiums, or the projected incurred claims plus or minus the increase or decrease in projected reserves as a percentage of projected earned premiums, as defined by the commissioner.

(3) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during the specified time period before the effective date of coverage.

(4) "Medicare" means Title XVIII of the United States social security act, or its successor program.

(5) "Medicaid" means Title XIX of the United States social security act, or its successor program.

(6) "Nursing home" means a nursing home as defined in RCW 18.51.010. [1986 c 170 § 2.]

48.84.030 Rules—Benefits—premiums ratio, coverage limitations. (1) The commissioner shall adopt rules requiring reasonable benefits in relation to the premium or price charged for long-term care policies and contracts which rules may include but are not limited to the establishment of minimum loss ratios.

(2) In addition, the commissioner may adopt rules establishing standards for long-term care coverage benefit limitations, exclusions, exceptions, and reductions and for policy or contract renewability. [1986 c 170 § 3.]

48.84.040 Policies and contracts—Prohibited provisions. No long-term care insurance policy or benefit contract may:

(1) Use riders, waivers, endorsements, or any similar method to limit or reduce coverage or benefits;

(2) Indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

(3) Be canceled, nonrenewed, or segregated at the time of rating solely on the grounds of the age or the deterioration of the mental or physical health of the covered person;

(4) Exclude or limit coverage for preexisting conditions for a period of more than one year prior to the effective date of the policy or contract or more than six months after the effective date of the policy or contract;

(5) Differentiate benefit amounts on the basis of the type or level of nursing home care provided;

(6) Contain a provision establishing any new waiting period in the event an existing policy or contract is converted to a new or other form within the same company. [1986 c 170 § 4.]

48.84.050 Disclosure rules—Required provisions in policy or contract. (1) The commissioner shall adopt rules requiring disclosure to consumers of the level, type, and amount of benefits provided and the limitations, exclusions, and exceptions contained in a long-term care insurance policy or contract. In adopting such rules the commissioner shall require an understandable disclosure to consumers of any cost for services that the consumer will be responsible for in utilizing benefits covered under the policy or contract.

(2) Each long-term care insurance policy or contract shall include a provision, prominently displayed on the first page of the policy or contract, stating in substance that the person to whom the policy or contract is sold

shall be permitted to return the policy or contract within thirty days of its delivery. In the case of policies or contracts solicited and sold by mail, the person may return the policy or contract within sixty days. Once the policy or contract has been returned, the person may have the premium refunded if, after examination of the policy or contract, the person is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy or contract to the insurer or agent. If a person, pursuant to such notice, returns the policy or contract to the insurer at its branch or home office, or to the agent from whom the policy or contract was purchased, the policy or contract shall be void from its inception, and the parties shall be in the same position as if no policy or contract had been issued. [1986 c 170 § 5.]

48.84.060 Prohibited practices. No agent, broker, or other representative of an insurer, contractor, or other organization selling or offering long-term care insurance policies or benefit contracts may: (1) Complete the medical history portion of any form or application for the purchase of such policy or contract; (2) knowingly sell a long-term care policy or contract to any person who is receiving medicaid; or (3) use or engage in any unfair or deceptive act or practice in the advertising, sale, or marketing of long-term care policies or contracts. [1986 c 170 § 6.]

48.84.070 Separation of data regarding certain policies. Commencing with reports for accounting periods beginning on or after January 1, 1988, all insurers, fraternal benefit societies, health care services contractors, and health maintenance organizations shall, for reporting and record keeping purposes, separate data concerning long-term care insurance policies and contracts from data concerning other insurance policies and contracts. [1986 c 170 § 7.]

48.84.900 Severability—1986 c 170. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 170 § 9.]

48.84.910 Effective date, application—1986 c 170. RCW 48.84.060 shall take effect on November 1, 1986, and the commissioner shall adopt all rules necessary to implement RCW 48.84.060 by its effective date including rules prohibiting particular unfair or deceptive acts and practices in the advertising, sale, and marketing of long-term care policies and contracts. The commissioner shall adopt all rules necessary to implement the remaining sections of this chapter by July 1, 1987, and the remaining sections of this chapter shall apply to policies and contracts issued on or after January 1, 1988. [1986 c 170 § 10.]

Chapter 48.88

DAY CARE SERVICES—JOINT UNDERWRITING ASSOCIATION

Sections

48.88.010	Intent.
48.88.020	Definitions.
48.88.030	Plan for joint underwriting association.
48.88.040	Association—Membership.
48.88.050	Policies—Liability limits—Rating plan.
48.88.060	Report to legislature.
48.88.070	Rules.

48.88.010 Intent. Day care service providers have experienced major problems in both the availability and affordability of liability insurance. Premiums for such insurance policies have recently grown as much as five hundred percent and the availability of such insurance in Washington markets has greatly diminished.

The availability of quality day care is essential to achieving such goals as increased work force productivity, family self-sufficiency, and protection for children at risk due to poverty and abuse. The unavailability of adequate liability insurance threatens to decrease the availability of day care services.

This chapter is intended to remedy the problem of unavailable liability insurance for day care services by requiring all insurers authorized to write commercial or professional liability insurance to be members of a joint underwriting association created to provide liability insurance for day care services. [1986 c 141 § 1.]

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

(1) "Association" means the joint underwriting association established pursuant to the provisions of this chapter.

(2) "Day care insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any licensee.

(3) "Licensee" means any person or facility licensed to provide day care services pursuant to chapter 74.15 RCW. [1986 c 141 § 2.]

48.88.030 Plan for joint underwriting association. The commissioner shall approve by July 1, 1986, a reasonable plan for the establishment of a nonprofit, joint underwriting association for day care insurance, subject to the conditions and limitations contained in this chapter. [1986 c 141 § 3.]

48.88.040 Association—Membership. The association shall be comprised of all insurers possessing a certificate of authority to write and engage in writing property and casualty insurance within this state on a direct basis, including the liability portion of multiperil policies, but not of ocean marine insurance. Every such insurer shall be a member of the association and shall

remain a member as a condition of its authority to continue to transact business in this state. [1986 c 141 § 4.]

48.88.050 Policies—Liability limits—Rating plan. Any licensee may apply to the association to purchase day care insurance, and the association shall offer a policy with liability limits of at least one hundred thousand dollars per occurrence. The commissioner shall require the use of a rating plan for day care insurance that permits rates to be modified for individual licensees according to the type, size and past loss experience of the licensee including any other difference among licensees that can be demonstrated to have a probable effect upon losses. [1986 c 141 § 5.]

48.88.060 Report to legislature. By December 1, 1987, the commissioner shall file or cause to be filed a report to the legislature detailing the operations, finances, claims, and marketing experience of the association. [1986 c 141 § 6.]

48.88.070 Rules. The commissioner may adopt all rules necessary to ensure the efficient, equitable operation of the association, including but not limited to, rules requiring or limiting certain policy provisions. [1986 c 141 § 7.]

Chapter 48.90

DAY CARE CENTERS—SELF-INSURANCE

Sections

48.90.010	Findings and intent.
48.90.020	Definitions.
48.90.030	Authority to self-insure.
48.90.040	Chapter exclusive.
48.90.050	Elements of plan.
48.90.060	Approval of plan.
48.90.070	Contributing trust fund.
48.90.080	Initial implementation of plan—Conditions.
48.90.090	Standard of care in fund management—Fiduciary.
48.90.100	Annual report.
48.90.110	Powers of association.
48.90.120	Contracts—Terms.
48.90.130	Significant modifications in plan, statement on.
48.90.140	Dissolution of plan and association.
48.90.150	Recovery limits.
48.90.160	Suspension of plan—Reconsideration.
48.90.170	Costs of investigation or review of plan.

48.90.010 Findings and intent. (1) Day care providers are facing a major crisis in that adequate and affordable business liability insurance is no longer available within this state for persons who care for children. Many day care centers have been forced to purchase inadequate coverage at prohibitive premium rates from unregulated foreign surplus line carriers over which the state has minimal control.

(2) There is a danger that a substantial number of day care centers who cannot afford the escalating premiums will be unable or unwilling to remain in business without adequate coverage. As a result the number of available facilities will be drastically reduced forcing some parents to leave the work force to care for their

children. A corresponding demand upon the state's resources will result in the form of public assistance to unemployed parents and day care providers.

(3) There is a further danger that a substantial number of day care centers now licensed pursuant to state law, who currently provide specific safeguards for the health and safety of children but are unable to procure insurance, may choose to continue to operate without state approval, avoiding regulation and payment of legitimate taxes, and forcing some parents to place their children in facilities of unknown quality and questionable levels of safety.

(4) Most day care centers are small business enterprises with limited resources. The state's policies encourage the growth and development of small businesses.

(5) This chapter is intended to remedy the problem of nonexistent or unaffordable liability coverage for day care centers, and to encourage compliance with state laws protecting children while meeting the state's sound economic policies of encouraging small business development, sustaining an active work force, and discouraging policies that result in an increased drain on the state's resources through public assistance and other forms of public funding. This chapter will empower day care centers to create self-insurance pools, to purchase insurance coverage, and to contract for risk management and administrative services through an association with demonstrated responsible fiscal management.

(6) The intent of this legislation is to allow such associations maximum flexibility to create and administer plans to provide coverage and risk management services to licensed day care centers. [1986 c 142 § 1.]

48.90.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Day care center" means an agency that regularly provides care for one or more children for periods of less than twenty-four hours as defined in RCW 74.15.020(3)(d).

(2) "Association" means a corporation organized under Title 24 RCW, representative of one or more categories of day care centers not formed for the sole purpose of establishing and operating a self-insurance program that:

(a) Maintains a roster of current names and addresses of member day care centers and of former member day care centers or their representatives, and of all employees of member or former member day care centers;

(b) Has a membership of a size and stability to ensure that it will be able to provide consistent and responsible fiscal management; and

(c) Maintains a regular newsletter or other periodic communication to member day care centers.

(3) "Subscriber" means a day care center that:

(a) Subscribes to a plan created pursuant to this chapter;

(b) Complies with all state licensing requirements;

(c) Is a member in good standing of an association;

(d) Has consistently maintained its license free from revocation for cause, except where the revocation was

not later rescinded or vacated by appellate or administrative decision; and

(e) Is prepared to demonstrate the willingness and ability to bear its share of the financial responsibility of its participation in the plan for each applicable contractual period. [1986 c 142 § 2.]

48.90.030 Authority to self-insure. Associations meeting the criteria of RCW 48.90.020 are empowered to create and operate self-insurance plans to provide general liability coverage to member day care centers who choose to subscribe to the plans. [1986 c 142 § 3.]

48.90.040 Chapter exclusive. Except as provided in this chapter, self-insurance plans formed and implemented pursuant to this chapter shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state. [1986 c 142 § 4.]

48.90.050 Elements of plan. Any association desiring to establish a plan pursuant to this chapter shall prepare and submit to the commissioner a proposed plan of organization and operation, including the following elements:

(1) A statement that the association meets the requirements of this chapter.

(2) A financial plan specifying:

(a) The coverage to be offered by the self-insurance pool, setting forth a deductible level and maximum level of claims that the pool will self-insure;

(b) The amount of cash reserves to be maintained for the payment of claims;

(c) The amount of insurance, if any, to be purchased to cover claims in excess of the amount of claims to be satisfied directly from the association's own cash reserves;

(d) The amount of stop-loss coverage to be purchased in the event the joint self-insurance pool's resources are exhausted in a given fiscal period;

(e) A mechanism for determining and assessing the contingent liability of subscribers in the event the assets in the contributing trust fund are at any time insufficient to cover liabilities; and

(f) Certification that all subscribers in the pool are apprised of the limitations of coverage to be provided.

(3) A plan of management setting forth:

(a) The means of fulfilling the requirements in RCW 48.90.050(2);

(b) The names and addresses of board members and their terms of office, and a copy of the corporate bylaws defining the method of election of board members;

(c) The frequency of studies or other evaluation to establish the periodic contribution rates for each of the subscribers;

(d) The responsibilities of subscribers, including procedures for entry into and withdrawal from the pool, the allocation of contingent liabilities and a procedure for immediate assessments if the contributing trust fund falls below the level set in RCW 48.90.050(2)(b);

(e) A plan for monitoring risks and disseminating information with respect to their reduction or elimination;

(f) A contract with a professional insurance management corporation, for the management and operation of any joint self-insurance pool established by the association; and

(g) The corporate address of the association. [1986 c 142 § 5.]

48.90.060 Approval of plan. If the plan submitted complies with RCW 48.90.050 and if the terms of the plan reflect sound financial management, the commissioner shall approve the plan submitted pursuant to RCW 48.90.050. [1986 c 142 § 6.]

48.90.070 Contributing trust fund. All funds contributed for the purpose of the self-insurance plan shall be deposited in a contributing trust fund, which shall at all times be maintained separately from the general funds of the association. The association shall not contribute to or draw upon the contributing trust fund at any time or for any reason other than administration of the trust fund and operation of the plan. All administration and operating costs related to the trust fund shall be drawn from it. [1986 c 142 § 7.]

48.90.080 Initial implementation of plan—Conditions. The initial implementation of the plan shall be conditioned upon establishment of the minimum deposits in the contributing trust fund at least thirty days prior to the first effective date of the program for its first year of operation. [1986 c 142 § 8.]

48.90.090 Standard of care in fund management—Fiduciary. In managing the assets of the contributing trust fund, the association shall exercise the reasonable judgment and care that ordinary persons of prudence, intelligence, and discretion exercise in the sound management of their affairs, not in regard to speculation but in regard to preservation of their funds with maximum return, given the information reasonably available. The association may delegate this duty to a responsible fiduciary. If the fiduciary has special skills or represents that it has special skills, then the fiduciary is under a duty to use those skills in the management of the fund's assets. [1986 c 142 § 9.]

48.90.100 Annual report. The association shall provide an annual report of the operations of the plan to all subscribers, to the secretary of social and health services, and to the commissioner. This report shall:

(1) Review claims made, judgments entered, and claims rejected;

(2) Certify that the current level of the contributing trust fund is sufficient to meet reasonable needs, or provide a plan for establishing such a level within a reasonable time; and

(3) Make recommendations for specific measures of risk reduction. [1986 c 142 § 10.]

48.90.110 Powers of association. The association shall have the power, in its capacity as plan administrator, to contract for or delegate services as necessary for

the efficient management and operation of the plan, including but not limited to:

(1) Contracting for risk management and loss control services;

(2) Designing a continuing program of risk reduction, calling for the participation of all subscribers;

(3) Contracting for legal counsel for the defense of claims and other legal services;

(4) Consulting with the commissioner, the secretary of social and health services, or other interested state agencies with respect to any matters affecting the provision of day care for the state's children, and related risk problems; and

(5) Purchasing commercial insurance coverage in the form and amount as the subscribers may by contract agree, including reinsurance, excess coverage, and stop-loss insurance. [1986 c 142 § 11.]

48.90.120 Contracts—Terms. (1) All contracts between subscribers and the association shall be for one-year periods and shall terminate on the first day of the next fiscal year of the association following their signature. Subscribers withdrawing from participation in the plan during any contract period may do so only upon surrender of their licenses to care for children to the department of social and health services.

(2) Premiums should be annual, prorated quarterly in the event any subscriber withdraws, or any new subscriber contracts with the association to become part of the plan during the fiscal year. Subscribers should not have the power to delegate or assign the responsibility for their assessments.

(3) Contracts should provide for recovery by the association, of any assessments that are not promptly contributed, for methods of collection, and for resolution of related disputes. [1986 c 142 § 12.]

48.90.130 Significant modifications in plan, statement on. Within six months of the beginning of any fiscal year in which significant modifications of the plan are envisioned, the association shall provide the commissioner with a statement of those modifications, setting forth the proposed changes, reasons for the changes, and reasonable alternatives, if any exist. The statement shall specifically include reference to coverage available in the commercial insurance market, together with suggested solutions within the joint self-insurance plan. [1986 c 142 § 13.]

48.90.140 Dissolution of plan and association. (1) If at any time the plan can no longer be operated on a sound financial basis, the association may elect to dissolve the plan, subject to explicit approval by the commissioner of a plan for dissolution. Once a plan operated by an association has been dissolved, that association may not again implement a plan pursuant to this chapter for five calendar years.

(2) At dissolution, the assets of the association represented by the contributing trust fund shall be deposited with the commissioner [for] a period of twenty-one years, to be made available for claims arising during

that period based upon occurrences during the term of coverage. At the time of transfer of the funds, the association shall certify to the commissioner a list of all current subscribers, with their correct mailing addresses, and shall have notified all current subscribers of their obligation to keep the commissioner informed of any changes in their mailing addresses over the twenty-one year period, and that this obligation extends to their representatives, successors, assigns, and to the representatives of their estates. Upon dissolution, the association shall be required to provide to the commissioner a list of all plan subscribers during all of the years of operation of the plan.

At the end of the twenty-one year period, any funds remaining in the trust account shall be distributed to those subscribers who were current subscribers in the most recent year of operation of the plan, with each current subscriber receiving an equal share of the distribution, without regard for the length of time each day care center was a subscriber.

In the alternative, in the discretion of the association, the balance of the contributing trust fund may be used to purchase similar or more liberal coverage from a commercial insurer. Each subscriber shall, however, be given the option to deposit its share of the fund with the commissioner as provided in this section if it elects not to participate in the proposed commercial insurance. [1986 c 142 § 14.]

48.90.150 Recovery limits. No person with a claim covered by a plan established pursuant to this chapter shall be entitled to recover from the plan any amount in excess of the limits of coverage provided for in the plan. [1986 c 142 § 15.]

48.90.160 Suspension of plan—Reconsideration. The commissioner may disapprove, and require suspension of a plan for failure of the association to comply with any provision of this chapter, for gross mismanagement, or for wilful disregard and neglect of its fiduciary duty. The association shall have the right to request reconsideration of the commissioner's decision within fifteen days of the receipt of the commissioner's written notification of the decision, or to request a hearing according to chapter 48.04 RCW. [1986 c 142 § 16.]

48.90.170 Costs of investigation or review of plan. All reasonable costs of any investigation or review by the commissioner of an association's plan of organization and operation, or any changes or modifications thereof, including the dissolution of a plan, shall be paid by the association before issuance of any approval required under this chapter. [1986 c 142 § 17.]

Chapter 48.92

LIABILITY RISK RETENTION

Sections	
48.92.010	Purpose.
48.92.020	Definitions.
48.92.030	Requirements for chartering.

48.92.040	Required acts—Prohibited practices.
48.92.050	Insolvency guaranty fund, participation prohibited— Joint underwriting associations, participation required.
48.92.060	Countersigning not required.
48.92.070	Purchasing groups—Exempt from certain laws.
48.92.080	Purchasing groups—Notice and registration.
48.92.090	Purchasing groups—Dealing with foreign insurers.
48.92.100	Authority of commissioner.
48.92.110	Penalties.
48.92.120	Agents, brokers, solicitors.
48.92.130	Federal injunctions.
48.92.140	Rules.

48.92.010 Purpose. The purpose of this chapter is to regulate the formation and operation of risk retention groups in this state formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986. [1987 c 306 § 1.]

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

(1) "Commissioner" means the insurance commissioner of Washington state or the commissioner, director, or superintendent of insurance in any other state.

(2) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:

- (a) Any person who performs that work; or
- (b) Any person who hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

(3) "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means:

- (a) For a corporation, the state in which the purchasing group is incorporated; and
- (b) For an unincorporated entity, the state of its principal place of business.

(4) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:

- (a) To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
- (b) To pay other obligations in the normal course of business.

(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.

(6) "Liability" means legal liability for damages including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of:

- (a) Any business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations; or
- (b) Any activity of any state or local government, or any agency or political subdivision thereof.

"Liability" does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the federal Employers' Liability Act 45 U.S.C. 51 et seq.

(7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection (6) of this section.

(8) "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum:

(a) The coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(b) Historical and expected loss experience of the proposed members and national experience of similar exposures;

(c) Pro forma financial statements and projections;

(d) Appropriate opinions by a qualified, independent, casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(e) Identification of management, underwriting procedures, managerial oversight methods, and investment policies; and

(f) Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state.

(9) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage including damages resulting from the loss of use of property arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

(10) "Purchasing group" means any group which:

(a) Has as one of its purposes the purchase of liability insurance on a group basis;

(b) Purchases the insurance only for its group members and only to cover their similar or related liability exposure, as described in (c) of this subsection;

(c) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(d) Is domiciled in any state.

(11) "Risk retention group" means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

(a) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(b) Which is organized for the primary purpose of conducting the activity described under (a) of this subsection;

(c) Which:

(i) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as the terms were defined in the federal Product Liability Risk Retention Act of 1981 before the date of the enactment of the federal Risk Retention Act of 1986;

(d) Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(e) Which:

(i) Has as its members only persons who have an ownership interest in the group and which has as its owners only persons who are members who are provided insurance by the risk retention group; or

(ii) Has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group;

(f) Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

(g) Whose activities do not include the provision of insurance other than:

(i) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in businesses or activities so that the group or member meets the requirement described in (f) of this subsection from membership in the risk retention group which provides such reinsurance; and

(h) The name of which includes the phrase "risk retention group."

(12) "State" means any state of the United States or the District of Columbia. [1987 c 306 § 2.]

48.92.030 Requirements for chartering. A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this chapter, must comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and licensed in this

state and with RCW 48.92.040 to the extent the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance. [1987 c 306 § 3.]

48.92.040 Required acts—Prohibited practices.

Risk retention groups chartered in states other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and any other information including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under RCW 48.92.020(11);

(b) A copy of its plan of operations or a feasibility study and revisions of the plan or study submitted to its state of domicile: *Provided, however,* That the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which: (i) Was defined in the federal Product Liability Risk Retention Act of 1981 before October 27, 1986; and (ii) was offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date; and

(c) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) Any risk retention group doing business in this state shall submit to the commissioner:

(a) A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(c) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) Any information as may be required to verify its continuing qualification as a risk retention group under RCW 48.92.020(11).

(3)(a) All premiums paid for coverages within this state to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines,

and penalties for nonpayment as that applicable to foreign admitted insurers.

(b) To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Each risk retention group shall report all premiums paid to it for risks insured within the state.

(4) Any risk retention group, its agents and representatives, shall be subject to any and all unfair claims settlement practices statutes and regulations specifically denominated by the commissioner as unfair claims settlement practices regulations.

(5) Any risk retention group, its agents and representatives, shall be subject to the provisions of chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this state. The examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the national association of insurance commissioners' examiner handbook.

(7) Any policy issued by a risk retention group shall contain in ten-point type on the front page and the declaration page, the following notice:

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(8) The following acts by a risk retention group are hereby prohibited:

(a) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in that group; and

(b) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(10) No risk retention group may offer insurance policy coverage prohibited by Title 48 RCW or declared unlawful by the highest court of this state.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or

in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under RCW 48.92.040(6). [1987 c 306 § 4.]

48.92.050 Insolvency guaranty fund, participation prohibited—Joint underwriting associations, participation required. (1) No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds, receive any benefit from any such fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations and mandatory liability pools or plans required by the commissioners. [1987 c 306 § 5.]

48.92.060 Countersigning not required. A policy of insurance issued to a risk retention group or any member of that group shall not be required to be countersigned. [1987 c 306 § 6.]

48.92.070 Purchasing groups—Exempt from certain laws. Any purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Act of 1986 shall be exempt from any law of this state relating to the creation of groups for the purchase of insurance, prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer shall be exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group shall be subject to all other applicable laws of this state. [1987 c 306 § 7.]

48.92.080 Purchasing groups—Notice and registration. (1) A purchasing group which intends to do business in this state shall furnish notice to the commissioner which shall:

- (a) Identify the state in which the group is domiciled;
- (b) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;
- (c) Identify the insurance company from which the group intends to purchase its insurance and the domicile of that company;
- (d) Identify the principal place of business of the group; and
- (e) Provide any other information as may be required by the commissioner to verify that the purchasing group is qualified under RCW 48.92.020(10).

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, except that this requirement shall not apply in the case of a purchasing group:

- (a) Which:
 - (i) Was domiciled before April 2, 1986; and

- (ii) Is domiciled on and after October 27, 1986, in any state of the United States;

(b) Which:

- (i) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state;
- (ii) Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;
- (c) Which was a purchasing group under the requirements of the federal Product Liability Retention Act of 1981 before October 27, 1986; and
- (d) Which does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986. [1987 c 306 § 8.]

48.92.090 Purchasing groups—Dealing with foreign insurers. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of that state. [1987 c 306 § 9.]

48.92.100 Authority of commissioner. The commissioner is authorized to make use of any of the powers established under Title 48 RCW to enforce the laws of this state so long as those powers are not specifically preempted by the federal Product Liability Risk Retention Act of 1981, as amended by the federal Risk Retention Amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction. [1987 c 306 § 10.]

48.92.110 Penalties. A risk retention group which violates any provision of this chapter shall be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license and/or the right to do business in this state. [1987 c 306 § 11.]

48.92.120 Agents, brokers, solicitors. Any person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, which solicits members, sells insurance coverage, purchases coverage for its members located within the state or otherwise does business in this state shall be subject to the provisions of chapter 48.17 RCW and before commencing any such activity, obtain a license and pay the fees designated for the license under RCW 48.14.010. [1987 c 306 § 12.]

48.92.130 Federal injunctions. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or

operating, in any state or in all states or in any territory or possession of the United States, upon a finding that the group is in a hazardous financial condition, shall be enforceable in the courts of the state. [1987 c 306 § 13.]

48.92.140 Rules. The commissioner may establish and from time to time amend the rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of this chapter. [1987 c 306 § 14.]

Chapter 48.96

MOTOR VEHICLE MECHANICAL BREAKDOWN INSURANCE

Sections

48.96.010	Definitions.
48.96.020	Reimbursement policy required for sale of service contract.
48.96.030	Reimbursement policy—Required provisions.
48.96.040	Service contract—Required statements.
48.96.050	Limitation on chapter.
48.96.060	Noncompliance as unfair competition, trade practice—Remedies.
48.96.900	Application of chapter—Date.

48.96.010 Definitions. (1) "Motor vehicle service contract" or "service contract" means a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance.

(2) "Motor vehicle service contract provider" or "provider" means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract.

(3) "Mechanical breakdown insurance" means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, and that is issued by an insurance company authorized to do business in this state.

(4) "Motor vehicle service contract reimbursement insurance policy" or "reimbursement insurance policy" means a policy of insurance providing coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider.

(5) "Motor vehicle" means any vehicle subject to registration under chapter 46.16 RCW.

(6) "Service contract holder" means a person who purchases a motor vehicle service contract. [1987 c 99 § 1.]

48.96.020 Reimbursement policy required for sale of service contract. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless

the provider of the service contract is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state. [1987 c 99 § 2.]

48.96.030 Reimbursement policy—Required provisions. A motor vehicle service contract reimbursement insurance policy shall not be issued, sold, or offered for sale in this state unless the reimbursement insurance policy conspicuously states that the issuer of the policy shall pay on behalf of the provider all sums which the provider is legally obligated to pay for failure to perform according to the provider's contractual obligations under the motor vehicle service contracts issued or sold by the provider. [1987 c 99 § 3.]

48.96.040 Service contract—Required statements. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states that the obligations of the provider to the service contract holder are guaranteed under the service contract reimbursement policy, and unless the contract conspicuously states the name and address of the issuer of the reimbursement policy, the applicable policy number, and the means by which a service contract holder may file a claim under the policy. [1987 c 99 § 4.]

48.96.050 Limitation on chapter. This chapter does not apply to motor vehicle service contracts issued by a motor vehicle manufacturer or importer. [1987 c 99 § 5.]

48.96.060 Noncompliance as unfair competition, trade practice—Remedies. Failure to comply with the provisions of this chapter is an unfair method of competition and an unfair or deceptive act or practice in the conduct of a trade or commerce, as specifically contemplated by RCW 19.86.020, and is a violation of the Consumer Protection Act, chapter 19.86 RCW. Any service contract holder injured as a result of a violation of a provision of this chapter shall be entitled to maintain an action pursuant to chapter 19.86 RCW against the motor vehicle service contract provider and the insurer issuing the applicable motor vehicle service contract reimbursement policy and shall be entitled to all of the rights and remedies afforded by that chapter. Any successful claimant under this section shall also be entitled to reasonable attorneys' fees. [1987 c 99 § 6.]

48.96.900 Application of chapter—Date. This chapter shall apply to all motor vehicle service contracts issued, sold, or offered for sale on or after January 1, 1988. [1987 c 99 § 7.]



Title 49

LABOR REGULATIONS

Chapters

- 49.04 Apprenticeship.
- 49.08 Arbitration of disputes.
- 49.12 Industrial welfare.
- 49.17 Washington industrial safety and health act.
- 49.22 Safety—Crime prevention.
- 49.24 Health and safety—Underground workers.
- 49.26 Health and safety—Asbestos.
- 49.28 Hours of labor.
- 49.30 Agricultural labor.
- 49.32 Injunctions in labor disputes.
- 49.36 Labor unions.
- 49.38 Theatrical enterprises.
- 49.40 Seasonal labor.
- 49.44 Violations—Prohibited practices.
- 49.46 Minimum wage act.
- 49.48 Wages—Payment—Collection.
- 49.52 Wages—Deductions—Contributions—Rebates.
- 49.56 Wages—Priorities—Preferences.
- 49.60 Discrimination—Human rights commission.
- 49.64 Employee benefit plans.
- 49.66 Health care activities.
- 49.70 Worker and community right to know act.
- 49.74 Affirmative action.
- 49.78 Family leave.

Reviser's note: Throughout this title, "director of labor and industries" has been substituted for "commissioner of labor," such office having been abolished by the administrative code of 1921 (1921 c 7 §§ 3, 80, and 135).

Apprentices to be paid prevailing wage on public works: RCW 39.12.021.

Collective bargaining with employees of city-owned utilities: RCW 35.22.350.

Department of labor and industries: Chapter 43.22 RCW.

Elevators, lifting devices and moving walks: Chapter 70.87 RCW.

Employee benefit plans when private utility acquired: RCW 54.04.130.

Employment agencies: Chapter 19.31 RCW.

Industrial products of prisoners: RCW 72.01.150, chapter 72.60 RCW.

Job protection for members of state militia: RCW 38.40.050.

Labor and employment of prisoners: Chapter 72.64 RCW.

Lien of employees for contributions to benefit plans: Chapter 60.76 RCW.

Marine employees—Public employment relations: Chapter 47.64 RCW.

Occupational and environmental research facility at University of Washington: RCW 28B.20.450 through 28B.20.458.

Promotional printing contracts of apple advertising, fruit, dairy products commissions—Conditions of employment: RCW 15.24.086.

Public employees' collective bargaining, arbitration of disputes: RCW 41.56.100.

Public employment: Title 41 RCW.

Sheriff's office, civil service: Chapter 41.14 RCW.

Unemployment compensation: Title 50 RCW.

Unfair practices—Consumer protection—Act does not impair labor organizations: RCW 19.86.070.

Urban renewal law: Chapter 35.81 RCW.

Workers' compensation: Title 51 RCW.

Youth development and conservation corps: RCW 43.51.500.

Chapter 49.04 APPRENTICESHIP

Sections

- 49.04.010 Apprenticeship council created—Composition—Terms—Compensation—Duties.
- 49.04.030 Supervisor of apprenticeship—Duties.
- 49.04.040 Local and state joint apprenticeship committees.
- 49.04.050 Standards for apprenticeship agreements.
- 49.04.060 Apprenticeship agreements.
- 49.04.070 Limitation.
- 49.04.080 On-the-job training agreements and projects—Supervisor to promote.
- 49.04.090 On-the-job training agreements and projects—Agreements with federal agencies.
- 49.04.100 Minority race representation in apprenticeship programs—Required—Ratio.
- 49.04.110 Minority race representation in apprenticeship programs—Noncompliance.
- 49.04.120 Minority race representation—Community colleges, vocational, or high schools to enlist minority race representation in apprenticeship programs.
- 49.04.130 Minority race representation—Employer and employee organizations, apprenticeship council and committees, etc., to enlist minority race representation in apprenticeship programs.
- 49.04.900 Severability—1941 c 231.
- 49.04.910 Chapter not affected by certain laws against discrimination in employment because of age.

Apprenticeship agreements, inmates of state school for girls (Maple Lane school): RCW 72.20.090.

Child labor: RCW 26.28.060, 26.28.070.

49.04.010 Apprenticeship council created—Composition—Terms—Compensation—Duties. The director of labor and industries shall appoint an apprenticeship council, composed of three representatives each from employer and employee organizations, respectively. The terms of office of the members of the apprenticeship council first appointed by the director of labor and industries shall be as follows: One representative each of employers and employees shall be appointed for one year, two years, and three years, respectively. Thereafter, each member shall be appointed for a term of three years. The governor shall appoint a public member to the apprenticeship council for a three-year term. The appointment of the public member is subject to confirmation by the senate. Each member shall hold office until his successor is appointed and has qualified and any vacancy shall be filled by appointment for the unexpired portion of the term. The state official who has been designated by the *commissioner for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of

the state public employment service shall ex officio be members of said council, without vote. Each member of the council, not otherwise compensated by public moneys, shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and shall be compensated in accordance with RCW 43.03.240. The apprenticeship council with the consent of employee and employer groups shall: (1) Establish standards for apprenticeship agreements in conformity with the provisions of this chapter; (2) issue such rules and regulations as may be necessary to carry out the intent and purposes of this chapter, including a procedure to resolve an impasse should a tie vote of the council occur; and (3) perform such other duties as are hereinafter imposed. Not less than once a year the apprenticeship council shall make a report to the director of labor and industries of its activities and findings which shall be available to the public. [1984 c 287 § 97; 1982 1st ex.s. c 39 § 2; 1979 ex.s. c 37 § 1; 1977 c 75 § 72; 1975-'76 2nd ex.s. c 34 § 143; 1967 c 6 § 1; 1961 c 114 § 1; 1941 c 231 § 1; Rem. Supp. 1941 § 7614-3. Formerly RCW 49.04.010 and 49.04.020.]

***Reviser's note:** The commission on vocational education and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

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

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

Vocational education: Chapter 28C.04 RCW.

49.04.030 Supervisor of apprenticeship—Duties. Subject to the confirmation of the state apprenticeship council by a majority vote, the director of labor and industries shall appoint and deputize an assistant director to be known as the supervisor of apprenticeship. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor shall: (1) Encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter, and in harmony with the policies of the United States department of labor; (2) act as secretary of the apprenticeship council and of state joint apprenticeship committees; (3) when so authorized by the apprenticeship council, register such apprenticeship agreements as are in the best interests of the apprentice and conform to the standards established by or in accordance with this chapter; (4) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship; (5) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who (6) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for

such instruction shall be the responsibility of the *commission for vocational education and its local recognized agency for vocational education. The director of labor and industries is authorized to appoint such other personnel as may be necessary to aid the apprenticeship council and the supervisor of apprenticeship in the execution of their functions under this chapter. [1979 ex.s. c 37 § 2; 1961 c 114 § 2; 1941 c 231 § 2; Rem. Supp. 1941 § 7614-4.]

***Reviser's note:** The commission on vocational education and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

Vocational education in public schools: Chapter 28C.04 RCW.

Vocational rehabilitation and placement: Chapter 74.29 RCW.

49.04.040 Local and state joint apprenticeship committees. Local and state joint apprenticeship committees may be approved, in any trade or group of trades, in cities or trade areas, by the apprenticeship council, whenever the apprentice training needs of such trade or group of trades justifies such establishment. Such local or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employer and of employees respectively, or a state joint apprenticeship committee may be approved as, or the council may act itself as the joint committee in such trade or group of trades. Subject to the review of the council and in accordance with the standards established by this chapter and by the council, such committees shall devise standards for apprenticeship agreements and give such aid as may be necessary in their operation in their respective trades and localities. [1941 c 231 § 3; Rem. Supp. 1941 § 7614-5.]

49.04.050 Standards for apprenticeship agreements. Standards of apprenticeship agreements are as follows:

(1) A statement of the trade or craft to be taught and the required hours for completion of apprenticeship which shall be not less than two thousand hours of reasonably continuous employment.

(2) A statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(3) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction which instruction shall be not less than one hundred forty-four hours per year.

(4) A statement of the age of the apprentice which may not be less than sixteen years of age.

(5) A statement of the progressively increasing scale of wages to be paid the apprentice.

(6) Provision for a period of probation during which the apprenticeship council or the supervisor of apprenticeship may terminate an apprenticeship agreement at

the request in writing of any party thereto. After the probationary period the apprenticeship council, or the supervisor of apprenticeship, under the procedure approved by the council, shall be empowered to terminate the apprenticeship agreement in accordance with the provisions of such agreement.

(7) Provision that the services of the supervisor and the apprenticeship council may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

(8) Provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement he may transfer such obligation to another employer.

(9) Such additional standards as may be prescribed in accordance with the provisions of this chapter. [1979 ex.s. c 37 § 3; 1961 c 114 § 3; 1941 c 231 § 4; Rem. Supp. 1941 § 7614-6.]

49.04.060 Apprenticeship agreements. For the purposes of this chapter an apprenticeship agreement is:

(1) An individual written agreement between an employer and apprentice, or (2) a written agreement between an employer, or an association of employers, and an organization of employees describing conditions of employment for apprentices, or (3) a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

All such agreements shall conform to the basic standards and other provisions of this chapter. [1941 c 231 § 5; Rem. Supp. 1941 § 7614-7.]

49.04.070 Limitation. The provisions of this chapter shall apply to a person, firm, corporation or craft only after such person, firm, corporation or craft has voluntarily elected to conform with its provisions. [1941 c 231 § 6; Rem. Supp. 1941 § 7614-8.]

49.04.080 On-the-job training agreements and projects—Supervisor to promote. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor of apprenticeship shall encourage and promote the making of such other types of on-the-job training agreements and projects, in addition to apprenticeship agreements, as he in his discretion shall find meritorious. [1963 c 172 § 1.]

49.04.090 On-the-job training agreements and projects—Agreements with federal agencies. The director of labor and industries shall have authority to enter into and perform, through the supervisor of apprenticeship, agreements with appropriate federal departments or agencies for the development, administration and servicing of on-the-job training projects. Further, the director of labor and industries, through the supervisor of apprenticeship, shall have power to receive and administer funds provided by the federal government for such purposes. [1963 c 172 § 2.]

49.04.100 Minority race representation in apprenticeship programs—Required—Ratio. Joint apprenticeship programs entered into under authority of chapter 49.04 RCW and which receive any state assistance in instructional or other costs, shall as a part thereof include entrance of minority races in such program, when available, in a ratio not less than the ratio which the minority race represents in population to the actual population in the city or trade area concerned, based on current census figures issued by the office of financial management with the ultimate goal of obtaining the proportionate ratio of representation in the total program membership. Where minimum standards have been set for entering upon any such apprenticeship program, this minority race representation shall be filled when minority race applicants have met such minimum standards and irrespective of individual ranking among all applicants seeking to enter the program: *Provided*, That nothing in RCW 49.04.100 through 49.04.130 will affect the total number of entrants into the apprenticeship program or modify the dates of entrance both as established by the joint apprenticeship committee. Minority race for the purposes of RCW 49.04.100 through 49.04.130 shall include Blacks, Mexican Americans or Spanish Americans, Orientals and Indians or Filipinos. [1985 c 6 § 17; 1969 ex.s. c 183 § 2.]

Purpose—Construction—1969 ex.s. c 183: "It is the policy of the legislature and the purpose of this act to provide every citizen in this state a reasonable opportunity to enjoy employment and other associated rights, benefits, privileges, and to help citizens of minority races realize in a greater measure the goals upon which this nation and this state were founded. All the provisions of this act shall be liberally construed to achieve these ends, and administered and enforced with a view to carry out the above declaration of policy." [1969 ex.s. c 183 § 1.]

Severability—1969 ex.s. c 183: "If any provision of this 1969 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 183 § 8.]

The foregoing annotations apply to 1969 ex.s. c 183. For codification of that act, see Codification Tables, Volume 0.

49.04.110 Minority race representation in apprenticeship programs—Noncompliance. When it shall appear to the department of labor and industries that any apprenticeship program referred to in RCW 49.04.100 has failed to comply with the minority race representation requirement hereinabove in such section referred to by January 1, 1970, which fact shall be determined by reports the department may request or in such other manner as it shall see fit, then the same shall be deemed prima facie evidence of noncompliance with RCW 49.04.100 through 49.04.130 and thereafter no state funds or facilities shall be expended upon such program: *Provided*, That prior to such withdrawal of funds evidence shall be received and state funds or facilities shall not be denied if there is a showing of a genuine effort to comply with the provisions of RCW 49.04.100 through 49.04.130 as to entrance of minority races into the program. The director shall notify the appropriate federal authorities if there is noncompliance with the minority race representation qualification under any

apprenticeship program as provided for in RCW 49.04.100 through 49.04.130. [1969 ex.s. c 183 § 3.]

49.04.120 Minority race representation—Community colleges, vocational, or high schools to enlist minority race representation in apprenticeship programs. Every community college, vocational school, or high school carrying on a program of vocational education shall make every effort to enlist minority race representation in the apprenticeship programs within the state and are authorized to carry out such purpose in such ways as they shall see fit. [1969 ex.s. c 183 § 4.]

49.04.130 Minority race representation—Employer and employee organizations, apprenticeship council and committees, etc., to enlist minority race representation in apprenticeship programs. Every employer and employee organization as well as the apprenticeship council and local and state apprenticeship committees and vocational schools shall make every effort to enlist minority race representation in the apprenticeship programs of the state and shall be aided therein by the department of labor and industries insofar as such department may be able to so do without undue interference with its other powers and duties. In addition, the legislature, in fulfillment of the public welfare, mandates those involved in apprenticeship training with the responsibility of making every effort to see that minority race representatives in such programs pursue the same to a successful conclusion thereof. [1969 ex.s. c 183 § 5.]

49.04.900 Severability—1941 c 231. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. [1941 c 231 § 8; no RRS.]

49.04.910 Chapter not affected by certain laws against discrimination in employment because of age. The amendments made by chapter 100, Laws of 1961 shall not be construed as modifying chapter 231, Laws of 1941 as amended, or as applying to any standards established thereunder or employment pursuant to any bona fide agreements entered into thereunder. [1961 c 100 § 6.]

Reviser's note: (1) Chapter 100, Laws of 1961 amended RCW 49.60.180, 49.60.190, 49.60.200 and reenacted RCW 49.60.310 to include age as an element of discrimination, and such chapter added a new section codified as RCW 49.44.090 relating to unfair practices in employment because of age.

(2) Chapter 231, Laws of 1941 is the apprenticeship law codified in chapter 49.04 RCW.

Chapter 49.08

ARBITRATION OF DISPUTES

Sections

49.08.010	Duty of director—Mediation—Board of arbitration selected—Board's findings final.
49.08.020	Procedure for arbitration.
49.08.030	Service of process.

49.08.040	Compensation and travel expenses of arbitrators.
49.08.050	Failure to arbitrate—Statement of facts—Publicity.
49.08.060	Tender on exhaustion of available funds.

Arbitration: Chapter 7.04 RCW.

Collective bargaining with employees of city-owned utilities: RCW 35.22.350.

Marine employees—Public employment relations: Chapter 47.64 RCW.

Supervisor of industrial relations: RCW 43.22.260.

49.08.010 Duty of director—Mediation—Board of arbitration selected—Board's findings final. It shall be the duty of the chairman of the public employment relations commission upon application of any employer or employee having differences, as soon as practicable, to visit the location of such differences and to make a careful inquiry into the cause thereof and to advise the respective parties, what, if anything, ought to be done or submitted to by both to adjust said dispute and should said parties then still fail to agree to a settlement through said chairman, then said chairman shall endeavor to have said parties consent in writing to submit their differences to a board of arbitrations to be chosen from citizens of the state as follows, to wit: Said employer shall appoint one and said employees acting through a majority, one, and these two shall select a third, these three to constitute the board of arbitration and the findings of said board of arbitration to be final. [1975 1st ex.s. c 296 § 36; 1903 c 58 § 1; RRS § 7667.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.
Public employment relations commission: Chapter 41.58 RCW.

49.08.020 Procedure for arbitration. The proceedings of said board of arbitration shall be held before the chairman of the public employment relations commission who shall act as moderator or chairman, without the privilege of voting, and who shall keep a record of the proceedings, issue subpoenas and administer oaths to the members of said board, and any witness said board may deem necessary to summon. [1975 1st ex.s. c 296 § 37; 1903 c 58 § 2; RRS § 7668.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

49.08.030 Service of process. Any notice or process issued by the board herein created, shall be served by any sheriff, coroner or constable to whom the same may be directed, or in whose hands the same may be placed for service. [1903 c 58 § 3; RRS § 7669.]

49.08.040 Compensation and travel expenses of arbitrators. Such arbitrators shall receive five dollars per day for each day actually engaged in such arbitration and travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended to be paid upon certificates of the director of labor and industries out of the fund appropriated for the purpose or at the disposal of the department of labor and industries applicable to such expenditure. [1975-'76 2nd ex.s. c 34 § 144; 1903 c 58 § 4; RRS § 7670.]

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

49.08.050 Failure to arbitrate—Statement of facts—Publicity. Upon the failure of the director of labor and industries, in any case, to secure the creation of a board of arbitration, it shall become his duty to request a sworn statement from each party to the dispute of the facts upon which their dispute and their reasons for not submitting the same to arbitration are based. Any sworn statement made to the director of labor and industries under this provision shall be for public use and shall be given publicly in such newspapers as desire to use it. [1903 c 58 § 5; RRS § 7671.]

49.08.060 Tender on exhaustion of available funds. There is hereby appropriated out of the state treasury from funds not otherwise appropriated the sum of three thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this chapter. In case the funds herein provided are exhausted and either party to a proposed arbitration shall tender the necessary expenses for conducting said arbitration, then it shall be the duty of the director of labor and industries to request the opposite party to arbitrate such differences in accordance with the provisions of this chapter. [1903 c 58 § 6; RRS § 7672.]

Chapter 49.12

INDUSTRIAL WELFARE

Sections

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Reviser's note: Throughout this chapter, the words "the committee" have been substituted for "the industrial welfare commission" or "the commission."

The industrial welfare commission was abolished and its powers and duties transferred to a new agency by the administrative code of 1921. In particular, 1921 c 7 § 135 abolished the commission while 1921 c 7 § 82 created an unnamed committee "which shall have the power and it shall be its duty:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the industrial welfare commission."

1921 c 7 § 82 was codified by the 1941 Code Committee as RCW 43.22.280, wherein the Code Committee revised the wording of the session law to designate the unnamed committee as the "industrial welfare committee." The committee was apparently commonly known by that name, but such designation has no foundation in the statutes. RCW 43.22.280 was repealed by 1982 c 163 § 23. Powers, duties, and functions of the industrial welfare committee were transferred to the director of labor and industries. See RCW 43.22.282.

Child labor: RCW 26.28.060, 26.28.070.

Food and beverage establishment workers' permits: Chapter 69.06 RCW.

Hours of labor: Chapter 49.28 RCW.

49.12.005 Definitions. For the purposes of this chapter:

(1) The term "department" means the department of labor and industries.

(2) The term "director" means the director of the department of labor and industries, or his designated representative.

(3) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees and for the purposes of RCW 49.12.270 through 49.12.295 also includes the state, any state institution, any state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(4) The term "employee" means an employee who is employed in the business of his employer whether by way of manual labor or otherwise.

(5) The term "conditions of labor" shall mean and include the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed

by statutes and rules and regulations relating to industrial safety and health administered by the department.

(6) For the purpose of *this 1973 amendatory act a minor is defined to be a person of either sex under the age of eighteen years.

(7) The term "committee" shall mean the industrial welfare committee. [1988 c 236 § 8; 1973 2nd ex.s. c 16 § 1.]

***Reviser's note:** "this 1973 amendatory act" [1973 2nd ex.s. c 16] consists of amendments to RCW 43.22.260, 43.22.270, 43.22.280, 49.12.010, 49.12.020, 49.12.050, 49.12.110 and 49.12.170, new sections codified as RCW 49.12.005, 49.12.035, 49.12.041, 49.12.091, 49.12.101, 49.12.105, 49.12.121, 49.12.161, 49.12.185, 49.12.187, and 49.12.900, and the repeal of RCW 49.12.030, 49.12.040, 49.12.060, 49.12.070, 49.12.080, 49.12.090, 49.12.100, 49.12.120, 49.12.160, 49.12.190, 49.12.215, 49.12.217, 49.12.220, and 49.12.230.

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.010 Declaration. The welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect. [1973 2nd ex.s. c 16 § 2; 1913 c 174 § 1; RRS § 7623.]

49.12.020 Conditions of employment—Wages. It shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health; and it shall be unlawful to employ workers in any industry within the state of Washington at wages which are not adequate for their maintenance. [1973 2nd ex.s. c 16 § 3; 1913 c 174 § 2; RRS § 7624.]

49.12.033 Administration and enforcement of chapter by director of labor and industries. See RCW 43.22.270(5).

49.12.035 Meetings of industrial welfare committee. The industrial welfare committee shall meet at least annually and at such other times as may be reasonably necessary for the purpose of reviewing rules and regulations fixing minimum wages and standards, conditions and hours of labor and for the purpose of proposing the amendment, repeal or adoption of new rules and regulations. [1973 2nd ex.s. c 16 § 10.]

Industrial welfare committee: RCW 43.22.282.

49.12.041 Investigation of wages, hours and working conditions—Statements, inspections and examinations authorized. It shall be the responsibility of the industrial welfare committee, with the aid and assistance of the director, to investigate the wages, hours and conditions of employment of all employees, including minors, except as may otherwise be provided in *this 1973 amendatory act. The director, or his authorized representative, shall have full authority to require statements from all employers, relative to wages, hours and working conditions and to inspect the books, records and

physical facilities of all employers subject to *this 1973 amendatory act. Such examinations shall take place within normal working hours, within reasonable limits and in a reasonable manner. [1973 2nd ex.s. c 16 § 5.]

***Reviser's note:** "this 1973 amendatory act", see note following RCW 49.12.005.

49.12.050 Employer's record of employees. Every employer shall keep a record of the names of all employees employed by him, and shall on request permit the committee or any of its members or authorized representatives to inspect such record. [1973 2nd ex.s. c 16 § 14; 1913 c 174 § 7; RRS § 7626.]

49.12.091 Investigation information to be furnished committee—Findings—Rules prescribing minimum wages, working conditions. After an investigation has been conducted by the director of labor and industries of wages, hours and conditions of labor subject to *this 1973 amendatory act, the industrial welfare committee shall be furnished with all information relative to such investigation of wages, hours and working conditions, including current statistics on wage rates in all occupations subject to the provisions of *this 1973 amendatory act. Within a reasonable time thereafter, if the committee finds that in any occupation, trade or industry, subject to *this 1973 amendatory act, the wages paid to employees are inadequate to supply the necessary cost of living, but not to exceed the state minimum wage as prescribed in RCW 49.46.020, as now or hereafter amended, or that the conditions of labor are detrimental to the health of employees, the committee shall have authority to prescribe rules and regulations for the purpose of adopting minimum wages for occupations not otherwise governed by minimum wage requirements fixed by state or federal statute, or a rule or regulation promulgated pursuant to such statute, and, at the same time have the authority to prescribe rules and regulations fixing standards, conditions and hours of labor for the protection of the safety, health and welfare of employees for all or specified occupations subject to *this 1973 amendatory act. Thereafter, the committee shall conduct a public hearing in accordance with the procedures of the administrative procedure act, chapter 34.05 RCW, for the purpose of the adoption of rules and regulations fixing minimum wages and standards, conditions and hours of labor subject to the provisions of *this act. After such rules become effective, copies thereof shall be supplied to employers who may be affected by such rules and such employers shall post such rules, where possible, in such place or places, reasonably accessible to all employees of such employer. After the effective date of such rules, it shall be unlawful for any employer in any occupation subject to *this 1973 amendatory act to employ any person for less than the rate of wages specified in such rules or under conditions and hours of labor prohibited for any occupation specified in such rules: *Provided*, That this section shall not apply to sheltered workshops. [1973 2nd ex.s. c 16 § 6.]

***Reviser's note:** "this 1973 amendatory act", "this act", see note following RCW 49.12.005.

49.12.101 Hearings. Whenever wages, standards, conditions and hours of labor have been established by rule and regulation of the committee, the committee may upon application of either employers or employees conduct a public hearing for the purpose of the adoption, amendment or repeal of rules and regulations promulgated under the authority of *this 1973 amendatory act. [1973 2nd ex.s. c 16 § 7.]

*Reviser's note: "this 1973 amendatory act", see note following RCW 49.12.005.

49.12.105 Variance orders—Application—Issuance—Contents—Termination. An employer may apply to the committee for an order for a variance from any rule or regulation establishing a standard for wages, hours, or conditions of labor promulgated by the committee under this chapter. The committee shall issue an order granting a variance if it determines or decides that the applicant for the variance has shown good cause for the lack of compliance. Any order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, standards and processes which he must adopt and utilize to the extent they differ from the standard in question. At any time the committee may terminate and revoke such order, provided the employer was notified by the committee of the termination at least thirty days prior to said termination. [1973 2nd ex.s. c 16 § 8.]

49.12.110 Exceptions to minimum scale—Special certificate or permit. For any occupation in which a minimum wage has been established, the committee through its secretary may issue to an employer, a special certificate or permit for an employee who is physically or mentally handicapped to such a degree that he or she is unable to obtain employment in the competitive labor market, or to a trainee or learner not otherwise subject to the jurisdiction of the apprenticeship council, a special certificate or permit authorizing the employment of such employee for a wage less than the legal minimum wage; and the committee shall fix the minimum wage for said person, such special certificate or permit to be issued only in such cases as the committee may decide the same is applied for in good faith and that such certificate or permit shall be in force for such length of time as the said committee shall decide and determine is proper. [1977 ex.s. c 80 § 35; 1973 2nd ex.s. c 16 § 13; 1913 c 174 § 13; RRS § 7632.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

49.12.121 Wages and working conditions of minors—Special rules—Work permits. The committee, or the director, may at any time inquire into wages, hours, and conditions of labor of minors employed in any trade, business or occupation in the state of Washington and may adopt special rules for the protection of the safety, health and welfare of minor employees. The minimum wage for minors shall be as prescribed in RCW 49.46.020. The committee shall issue work permits to

employers for the employment of minors, after being assured the proposed employment of a minor meets the standards set forth concerning the health, safety and welfare of minors as set forth in the rules and regulations promulgated by the committee. No minor person shall be employed in any occupation, trade or industry subject to *this 1973 amendatory act, unless a work permit has been properly issued, with the consent of the parent, guardian or other person having legal custody of the minor and with the approval of the school which such minor may then be attending. [1989 c 1 § 3 (Initiative Measure No. 518, approved November 8, 1988); 1973 2nd ex.s. c 16 § 15.]

*Reviser's note: "this 1973 amendatory act", see note following RCW 49.12.005.

Effective date—1989 c 1 (Initiative Measure No. 518): See note following RCW 49.46.010.

49.12.123 Work permits for minors required. In implementing state policy to assure the attendance of children in the public schools it shall be required of any person, firm or corporation employing any minor under the age of eighteen years to obtain a work permit as set forth in RCW 49.12.121 and keep such permit on file during the employment of such minor, and upon termination of such employment of such minor to return such permit to the industrial welfare committee of the department of labor and industries. [1983 c 3 § 156; 1973 c 51 § 3.]

Severability—1973 c 51: See note following RCW 28A.27.010.

49.12.125 Director to furnish statistics. Upon the request of the committee the director of labor and industries of the state of Washington shall furnish to the committee such statistics as the committee may require. [1913 c 174 § 15; RRS § 7634. Formerly RCW 49.12-.040, part.]

49.12.130 Witnesses protected—Penalty. Any employer who discharges, or in any other manner discriminates against any employee because such employee has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings relative to the enforcement of RCW 49.12.010 through 49.12.180, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of from twenty-five dollars to one hundred dollars for each such misdemeanor. [1913 c 174 § 16; RRS § 7635.]

49.12.140 Complaints of noncompliance. Any worker or the parent or guardian of any minor to whom RCW 49.12.010 through 49.12.180 applies may complain to the committee that the wages paid to the workers are less than the minimum rate and the committee shall investigate the same and proceed under RCW 49.12.010 through 49.12.180 in behalf of the worker. [1913 c 174 § 17 1/2; RRS § 7637.]

49.12.150 Civil action to recover underpayment. If any employee shall receive less than the legal minimum

wage, except as hereinbefore provided in RCW 49.12.110, said employee shall be entitled to recover in a civil action the full amount of the legal minimum wage as herein provided for, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited with any wages which have been paid upon account. [1913 c 174 § 18; RRS § 7638.]

49.12.161 Appeals. Any person, firm, or corporation feeling aggrieved of any action taken or decision made by an officer or employee of the department in the enforcement of *this act may appeal such action or decision to the industrial welfare committee by filing notice of such appeal with the industrial welfare committee within thirty days of such action or decision. Such appeal shall be done in accordance with the rules of procedure for the process of appeals, such rules to be promulgated by the industrial welfare committee. The notice of appeal shall suspend such action or decision pending the determination of the appeal by the industrial welfare committee. The said committee shall review the record, accept and consider written briefs and may hear oral arguments regarding the appeal. The said committee shall decide the questions raised by the appeal on the merits and shall notify all parties in writing of its decision, which shall be final and binding upon all parties, subject to judicial review at the instance of a losing party pursuant to chapter 34.05 RCW, the administrative procedure act. [1973 2nd ex.s. c 16 § 9.]

*Reviser's note: "this act", see note following RCW 49.12.005.

49.12.170 Penalty. Any employer employing any person for whom a minimum wage or standards, conditions, and hours of labor have been specified, at less than said minimum wage, or under standards, or conditions of labor or at hours of labor prohibited by the rules and regulations of the committee; or violating any other of the provisions of *this 1973 amendatory act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars. [1973 2nd ex.s. c 16 § 16; 1913 c 174 § 17; RRS § 7636.]

*Reviser's note: "this 1973 amendatory act", see note following RCW 49.12.005.

Witnesses protected—Penalty: RCW 49.12.130.

49.12.175 Wage discrimination due to sex prohibited—Penalty—Civil recovery. Any employer in this state, employing both males and females, who shall discriminate in any way in the payment of wages as between sexes or who shall pay any female a less wage, be it time or piece work, or salary, than is being paid to males similarly employed, or in any employment formerly performed by males, shall be guilty of a misdemeanor. If any female employee shall receive less compensation because of being discriminated against on account of her sex, and in violation of this section, she shall be entitled to recover in a civil action the full

amount of compensation that she would have received had she not been discriminated against. In such action, however, the employer shall be credited with any compensation which has been paid to her upon account. A differential in wages between employees based in good faith on a factor or factors other than sex shall not constitute discrimination within the meaning of RCW 49.12.010 through 49.12.180. [1943 c 254 § 1; Rem. Supp. 1943 § 7636–1. Formerly RCW 49.12.210.]

49.12.180 Annual report. The committee shall report annually to the governor on its investigations and proceedings. [1977 c 75 § 73; 1913 c 174 § 20; RRS § 7640.]

49.12.185 Exemptions from chapter. *This 1973 amendatory act shall not apply to newspaper vendors or carriers and domestic or casual labor in or about private residences and agricultural labor as defined in RCW 50.04.150, as now or hereafter amended. [1973 2nd ex.s. c 16 § 17.]

*Reviser's note: "This 1973 amendatory act", see note following RCW 49.12.005.

49.12.187 Collective bargaining rights not affected. This chapter shall not be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment. [1973 2nd ex.s. c 16 § 18.]

49.12.200 Women may pursue any calling open to men. That hereafter in this state every avenue of employment shall be open to women; and any business, vocation, profession and calling followed and pursued by men may be followed and pursued by women, and no person shall be disqualified from engaging in or pursuing any business, vocation, profession, calling or employment or excluded from any premises or place of work or employment on account of sex. [1963 c 229 § 1; 1890 p 519 § 1; RRS § 7620.]

Qualifications of electors: State Constitution Art. 6 § 1 (Amendment 63).

Sex equality—Rights and responsibility: State Constitution Art. 31 §§ 1, 2 (Amendment 61).

49.12.240 Employee inspection of personnel file. Every employer shall, at least annually, upon the request of an employee, permit that employee to inspect any or all of his or her own personnel file(s). [1985 c 336 § 1.]

Destruction or retention of information relating to state employee misconduct: RCW 41.06.450 through 41.06.460.

49.12.250 Employee inspection of personnel file—Erroneous or disputed information. (1) Each employer shall make such file(s) available locally within a reasonable period of time after the employee requests the file(s).

(2) An employee annually may petition that the employer review all information in the employee's personnel

file(s) that are regularly maintained by the employer as a part of his business records or are subject to reference for information given to persons outside of the company. The employer shall determine if there is any irrelevant or erroneous information in the file(s), and shall remove all such information from the file(s). If an employee does not agree with the employer's determination, the employee may at his or her request have placed in the employee's personnel file a statement containing the employee's rebuttal or correction. Nothing in this subsection prevents the employer from removing information more frequently.

(3) A former employee shall retain the right of rebuttal or correction for a period not to exceed two years. [1985 c 336 § 2.]

49.12.260 Employee inspection of personnel file—Limitations. RCW 49.12.240 and 49.12.250 do not apply to the records of an employee relating to the investigation of a possible criminal offense. RCW 49.12.240 and 49.12.250 do not apply to information or records compiled in preparation for an impending lawsuit which would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts. [1985 c 336 § 3.]

49.12.270 Sick leave to care for child. An employer shall allow an employee to use the employee's accrued sick leave to care for a child of the employee under the age of eighteen with a health condition that requires treatment or supervision. Use of leave other than accrued sick leave to care for a child under the circumstances described in this section shall be governed by the terms of the appropriate collective bargaining agreement or employer policy, as applicable. [1988 c 236 § 3.]

Legislative findings—1988 c 236: "The legislature recognizes the changing nature of the work force brought about by increasing numbers of working mothers, single parent households, and dual career families. The legislature finds that the needs of families must be balanced with the demands of the workplace to promote family stability and economic security. The legislature further finds that it is in the public interest for employers to accommodate employees by providing reasonable leaves from work for family reasons. In order to promote family stability, economic security, and the public interest, the legislature hereby establishes a minimum standard for family care. Nothing contained in this act shall prohibit any employer from establishing family care standards more generous than the minimum standards set forth in this act." [1988 c 236 § 1.]

Effective date—1988 c 236: "This act shall take effect on September 1, 1988." [1988 c 236 § 12.]

Implementation—1988 c 236: "Prior to September 1, 1988, the department of labor and industries may take such steps as are necessary to ensure that chapter 236, Laws of 1988 is implemented on September 1, 1988." [1988 c 236 § 10.]

Severability—1988 c 236: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 236 § 11.]

49.12.275 Sick leave to care for child—Poster required. The department shall develop and furnish to each employer a poster which describes an employer's obligations and an employee's rights under RCW 49.12.270 through 49.12.295. The poster must include notice about

any state law, rule, or regulation governing maternity disability leave and indicate that federal or local ordinances, laws, rules, or regulations may also apply. The poster must also include a telephone number and an address of the department to enable employees to obtain more information regarding RCW 49.12.270 through 49.12.295. Each employer must display this poster in a conspicuous place. Every employer shall also post its leave policies, if any, in a conspicuous place. Nothing in this section shall be construed to create a right to continued employment. [1988 c 236 § 2.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.280 Sick leave to care for child—Administration and enforcement. The department shall administer and investigate violations of RCW 49.12.270 and 49.12.275. [1988 c 236 § 4.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.285 Sick leave to care for child—Monetary penalties. The department may issue a notice of infraction if the department reasonably believes that an employer has failed to comply with RCW 49.12.270 or 49.12.275. The form of the notice of infraction shall be adopted by rule pursuant to chapter 34.05 RCW. An employer who is found to have committed an infraction under RCW 49.12.270 or 49.12.275 may be assessed a monetary penalty not to exceed two hundred dollars for each violation. An employer who repeatedly violates RCW 49.12.270 or 49.12.275 may be assessed a monetary penalty not to exceed one thousand dollars for each violation. For purposes of this section, the failure to comply with RCW 49.12.275 as to an employee or the failure to comply with RCW 49.12.270 as to a period of leave sought by an employee shall each constitute separate violations. An employer has twenty days to appeal the notice of infraction. Any appeal of a violation determined to be an infraction shall be heard and determined by an administrative law judge. Monetary penalties collected under this section shall be deposited into the general fund. [1988 c 236 § 5.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.290 Sick leave to care for child—Collective bargaining agreements not reduced. Nothing in RCW 49.12.270 through 49.12.295 shall be construed to reduce any provision in a collective bargaining agreement. [1988 c 236 § 6.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.295 Sick leave to care for child—Notification of employers. The department shall notify all employers of the provisions of RCW 49.12.270 through 49.12.290. [1988 c 236 § 7.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.300 House-to-house sales by minors—Registration of employers. (1) No person under sixteen years of age may be employed in house-to-house sales unless the department grants a variance permitting specific employment under criteria adopted by department rule.

(2) No person sixteen or seventeen years of age may be employed in house-to-house sales unless the employer:

(a) Obtains and maintains a validated registration certificate issued by the department. Application for registration shall be made on a form prescribed by the director, which shall include but not be limited to:

(i) The employer's name, permanent address, and telephone number;

(ii) The employer's social security number and industrial insurance number or, in lieu of these numbers, the employer's unified business identifier account number; and

(iii) A description of the work to be performed by persons aged sixteen or seventeen and the working conditions under which the work will be performed;

(b) Provides each employee sixteen or seventeen years of age, before beginning work, an identification card in a form prescribed by the director. The card shall include, but not be limited to, a picture of the employee, the employee's name, the name and address of the employer, a statement that the employer is registered with the department of labor and industries, and the registration number. The person employed in house-to-house sales shall show the identification card to each customer or potential customer of the person;

(c) Ensures supervision by a person aged twenty-one years or over during all working hours, with each supervisor responsible for no more than five persons; and

(d) If transporting an employee sixteen or seventeen years of age to another state, obtains the express written consent of the employee's parent or legal guardian.

(3) An employer may not employ a person sixteen or seventeen years of age in house-to-house sales after the hour of nine p.m.

(4) The department shall adopt by rule procedures for the renewal, denial, or revocation of registrations required by this section. [1989 c 216 § 1.]

49.12.310 House-to-house sales by minors—Advertising by employers—Penalty. (1) Any person advertising to employ a person in house-to-house sales with an advertisement specifically prescribing a minimum age requirement that is under the age of twenty-one shall:

(a) Register with the department as provided in RCW 49.12.300(2)(a); and

(b) Include the following information in any advertisement:

(i) The registration number required by subsection (1)(a) of this section;

(ii) The specific nature of the employment and the product or services to be sold; and

(iii) The average monthly compensation paid in the previous six months to new employees, taking into account any deductions made pursuant to the employment contract.

(2) Advertising to recruit or employ a person in house-to-house sales shall not be false, misleading, or deceptive.

(3) A violation of this section is an unfair act or practice in violation of the consumer protection act, chapter 19.86 RCW. The remedies and sanctions provided under chapter 19.86 RCW shall not preclude application of other available remedies and sanctions.

(4) No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement may be subject to penalties by reason of dissemination of any false, misleading, or deceptive advertisement, or for an advertisement that fails to meet the requirements of subsection (1) of this section, unless he or she has refused on the request of the director to furnish the name and address of the person purchasing the advertising. [1989 c 216 § 2.]

49.12.320 Definitions. For the purposes of RCW 49.12.300 and 49.12.310:

(1) "Employ" includes to engage, suffer, or permit to work, but does not include voluntary or donated services performed for no compensation, or without expectation or contemplation of compensation as the adequate consideration for the services performed, for an educational, charitable, religious, state or local government body or agency, or nonprofit organization, or services performed by a newspaper vendor or a person in the employ of his or her parent or stepparent.

(2) "House-to-house sales" includes a sale or other transaction in consumer goods, the demonstration of products or equipment, the obtaining of orders for consumer goods, or the obtaining of contracts for services, in which the employee personally solicits the sale or transaction at a place other than the place of business of the employer. [1989 c 216 § 3.]

49.12.330 Rules. The department shall adopt rules to implement RCW 49.12.300 through 49.12.320. [1989 c 216 § 4.]

49.12.350 Parental leave—Legislative findings. The legislature finds that employers often distinguish between biological parents, and adoptive parents and stepparents in their employee leave policies. Many employers who grant leave to their employees to care for a newborn child either have no policy or establish a more restrictive policy regarding whether an adoptive parent or stepparent can take similar leave. The legislature further finds that many employers establish different leave policies for men and women regarding the care of a newborn or newly placed child. The legislature recognizes that the bonding that occurs between a parent and child is important to the nurturing of that child, regardless of whether the parent is the child's biological parent and regardless of the gender of the parent. For these

reasons, the legislature declares that it is the public policy of this state to require that employers who grant leave to their employees to care for a newborn child make the same leave available upon the same terms for adoptive parents and stepparents, men and women. [1989 1st ex.s. c 11 § 22.]

Severability—Effective date—1989 1st ex.s. c 11: See RCW 49.78.900 and 49.78.901.

49.12.360 Parental leave—Discrimination prohibited. (1) An employer must grant an adoptive parent or a stepparent, at the time of birth or initial placement for adoption of a child under the age of six, the same leave under the same terms as the employer grants to biological parents. As a term of leave, an employer may restrict leave to those living with the child at the time of birth or initial placement.

(2) An employer must grant the same leave upon the same terms for men as it does for women.

(3) The department shall administer and investigate violations of this section. Notices of infraction, penalties, and appeals shall be administered in the same manner as violations under RCW 49.12.285.

(4) For purposes of this section, "employer" includes all private and public employers listed in RCW 49.12.005(3).

(5) For purposes of this section, "leave" means any leave from employment granted to care for a newborn or a newly adopted child at the time of placement for adoption.

(6) Nothing in this section requires an employer to:

(a) Grant leave equivalent to maternity disability leave; or

(b) Establish a leave policy to care for a newborn or newly placed child if no such leave policy is in place for any of its employees. [1989 1st ex.s. c 11 § 23.]

Severability—Effective date—1989 1st ex.s. c 11: See RCW 49.78.900 and 49.78.901.

49.12.370 Parental leave—Collective bargaining agreements or employee benefit plans—Application. In the case of employees covered by an unexpired collective bargaining agreement that expires on or after September 1, 1989, or by an employee benefit program or plan with a stated year ending on or after September 1, 1989, the effective date of RCW 49.12.360 shall be the later of: (1) The first day following expiration of the collective bargaining agreement; or (2) the first day of the next plan year. [1989 1st ex.s. c 11 § 24.]

Severability—Effective date—1989 1st ex.s. c 11: See RCW 49.78.900 and 49.78.901.

49.12.900 Severability—1973 2nd ex.s. c 16. If any provision of this 1973 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 16 § 20.]

(1989 Ed.)

Chapter 49.17 WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

Sections

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49.17.010 Purpose. The legislature finds that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the industrial insurance act. Therefore, in the public interest for the welfare of the people of the state of Washington and in order to assure, insofar as may reasonably be possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature in the exercise of its police power, and in keeping with the mandates of Article II, section 35 of the state Constitution, declares its purpose by the provisions of this chapter to create, maintain, continue, and enhance the industrial safety and health program of the state, which program shall equal or exceed the standards prescribed by the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590). [1973 c 80 § 1.]

[Title 49 RCW—p 11]

Industrial insurance: Title 51 RCW.

49.17.020 Definitions. For the purposes of this chapter:

(1) The term "director" means the director of the department of labor and industries, or his designated representative.

(2) The term "department" means the department of labor and industries.

(3) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: *Provided*, That any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee.

(4) The term "employee" means an employee of an employer who is employed in the business of his employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his personal labor for an employer under this chapter whether by way of manual labor or otherwise.

(5) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(6) The term "safety and health standard" means a standard which requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(7) The term "work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all work places covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(8) The term "working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this chapter, shall be computed by excluding the first working day and including the last working day. [1973 c 80 § 2.]

Department of labor and industries: Chapter 43.22 RCW.

49.17.030 Application of chapter—Fees and charges. This chapter shall apply with respect to employment performed in any work place within the state. The department of labor and industries shall provide by rule for a schedule of fees and charges to be paid by

each employer subject to this chapter who is not subject to or obtaining coverage under the industrial insurance laws and who is not a self-insurer. The fees and charges collected shall be for the purpose of defraying such employer's pro rata share of the expenses of enforcing and administering this chapter. [1973 c 80 § 3.]

49.17.040 Rules and regulations—Authority—Procedure. The director shall make, adopt, modify, and repeal rules and regulations governing safety and health standards for conditions of employment as authorized by this chapter after a public hearing in conformance with the administrative procedure act and the provisions of this chapter. At least thirty days prior to such public hearing, the director shall cause public notice of such hearing to be made in newspapers of general circulation in this state, of the date, time, and place of such public hearing, along with a general description of the subject matter of the proposed rules and information as to where copies of any rules and regulations proposed for adoption may be obtained and with a solicitation for recommendations in writing or suggestions for inclusion or changes in such rules to be submitted not later than five days prior to such public hearing. Any preexisting rules adopted by the department of labor and industries relating to health and safety standards in work places subject to the jurisdiction of the department shall remain effective insofar as such rules are not inconsistent with the provisions of this chapter. [1973 c 80 § 4.]

49.17.050 Rules and regulations—Guidelines—Standards. In the adoption of rules and regulations under the authority of this chapter, the director shall:

(1) Provide for the preparation, adoption, amendment, or repeal of rules and regulations of safety and health standards governing the conditions of employment of general and special application in all work places;

(2) Provide for the adoption of occupational health and safety standards which are at least as effective as those adopted or recognized by the United States secretary of labor under the authority of the Occupational Safety and Health Act of 1970 (Public Law 91-596; 84 Stat. 1590);

(3) Provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards at their work places and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(4) Provide for the promulgation of health and safety standards and the control of conditions in all work places concerning gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life; any such standards shall require where appropriate the use of protective devices or equipment and for monitoring or

measuring any such gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents;

(5) Provide for appropriate reporting procedures by employers with respect to such information relating to conditions of employment which will assist in achieving the objectives of this chapter;

(6) Provide for the frequency, method, and manner of the making of inspections of work places without advance notice; and,

(7) Provide for the publication and dissemination to employers, employees, and labor organizations and the posting where appropriate by employers of informational, education, or training materials calculated to aid and assist in achieving the objectives of this chapter;

(8) Provide for the establishment of new and the perfection and expansion of existing programs for occupational safety and health education for employers and employees, and, in addition institute methods and procedures for the establishment of a program for voluntary compliance solely through the use of advice and consultation with employers and employees with recommendations including recommendations of methods to abate violations relating to the requirements of this chapter and all applicable safety and health standards and rules and regulations promulgated pursuant to the authority of this chapter;

(9) Provide for the adoption of safety and health standards requiring the use of safeguards in trenches and excavations and around openings of hoistways, hatchways, elevators, stairways, and similar openings;

(10) Provide for the promulgation of health and safety standards requiring the use of safeguards for all vats, pans, trimmers, cut off, gang edger, and other saws, planers, presses, formers, cogs, gearing, belting, shafting, coupling, set screws, live rollers, conveyors, mangles in laundries, and machinery of similar description, which can be effectively guarded with due regard to the ordinary use of such machinery and appliances and the danger to employees therefrom, and with which the employees of any such work place may come in contact while in the performance of their duties and prescribe methods, practices, or processes to be followed by employers which will enhance the health and safety of employees in the performance of their duties when in proximity to machinery or appliances mentioned in this subsection. [1973 c 80 § 5.]

49.17.060 Employers—General safety standard—Compliance. Each employer:

(1) Shall furnish to each of his employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his employees: *Provided*, That no citation or order assessing a penalty shall be issued to any employer solely under the authority of this subsection except where no applicable rule or regulation has been adopted by the department covering the unsafe or unhealthful condition of employment at the work place; and

(2) Shall comply with the rules, regulations, and orders promulgated under this chapter. [1973 c 80 § 6.]

49.17.070 Right of entry—Inspections and investigations—Subpoenas—Contempt. The director, or his authorized representative, in carrying out his duties under this chapter, upon the presentation of appropriate credentials to the owner, manager, operator, or agent in charge, is authorized:

(1) To enter without delay and at all reasonable times the factory, plant, establishment, construction site, or other area, work place, or environment where work is performed by an employee of an employer; and

(2) To inspect, survey, and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such work place and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee;

(3) In making inspections and making investigations under this chapter the director may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the superior courts. In the case of contumacy, failure, or refusal of any person to obey such an order, any superior court within the jurisdiction of which such person is found, or resides, or transacts business, upon the application of the director, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof. [1973 c 80 § 7.]

49.17.080 Variances from safety and health standards—Application—Contents—Procedure. (1)

Any employer may apply to the director for a temporary order granting a variance from any safety and health standard promulgated by rule or regulation under the authority of this chapter. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection (2) of this section and establishes that the employer is unable to comply with a safety or health standard because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the safety and health standard or because necessary construction or alteration of facilities cannot be completed by the effective date of such safety and health standard, that he is taking all available steps to safeguard his employees against the hazards covered by the safety and health standard, and he has an effective program for coming into compliance with such safety and health standard as quickly as practicable. Any temporary order issued under the authority of this subsection shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the safety and health standard. Such a temporary order may be

granted only after notice to employees and an opportunity for a hearing upon request of the employer or any affected employee. The name of any affected employee requesting a hearing under the provisions of this subsection shall be confidential and shall not be disclosed without the consent of such employee. The director may issue one interim order to be effective until a determination is made or a decision rendered if a hearing is demanded. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter, except that such an order may be renewed not more than twice, so long as the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date of the order. No renewal of a temporary order may remain in effect for longer than one hundred eighty days.

(2) An application for a temporary order under this section shall contain:

(a) A specification of the safety and health standard or portion thereof from which the employer seeks a variance;

(b) A representation by the employer, supported by representations from qualified persons having first hand knowledge of the facts represented, that he is unable to comply with the safety and health standard or portion thereof and a detailed statement of the reasons therefor;

(c) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;

(d) A statement as to when the employer expects to be able to comply with the standard or portion thereof and what steps he has taken and will take, with dates specified, to come into compliance with the standard; and

(e) A certification that the employer, by the date of mailing or delivery of the application to the director, has informed his employees of the application by providing a copy thereof to his employees or their authorized representative by posting a copy of such application in a place or places reasonably accessible to all employees or by other appropriate means of notification and by mailing a copy to the authorized representative of such employees; the application shall set forth the manner in which the employees have been so informed. The application shall also advise employees and their employee representatives of their right to apply to the director to conduct a hearing upon the application for a variance. [1973 c 80 § 8.]

49.17.090 Variances from safety and health standards—Notice—Hearing—Order—Modification or revocation. Any employer may apply to the director for an order for a variance from any rule or regulation establishing a safety and health standard promulgated under this chapter. Affected employees shall be given notice of each such application and in the manner prescribed by RCW 49.17.080 shall be informed of their right to request a hearing on any such application. The director shall issue such order granting a variance, after opportunity for an inspection, if he determines or decides after a hearing has been held, if request for

hearing has been made, that the applicant for the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by such applicant employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the safety and health standard or standards from which the variance is sought. The order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. At any time after six months has elapsed from the date of the issuance of the order granting a variance upon application of an employer, employee, or the director on his own motion, after notice has been given in the manner prescribed for the issuance of such order may modify or revoke the order granting the variance from any standard promulgated under the authority of this chapter. [1973 c 80 § 9.]

49.17.100 Inspections—Employer and employee representatives. A representative of the employer and an employee representative authorized by the employees of such employer shall be given an opportunity to accompany the director, or his authorized representative, during the physical inspection of any work place for the purpose of aiding such inspection. Where there is no authorized employee representative, the director or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the work place. The director may adopt procedural rules and regulations to implement the provisions of this section: *Provided*, That neither this section, nor any other provision of this chapter, shall be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment which equal or exceed those established under the authority of this chapter. [1986 c 192 § 1; 1973 c 80 § 10.]

49.17.110 Compliance by employees—Violations—Notice—Review. Each employee shall comply with the provisions of this chapter and all rules, regulations, and orders issued pursuant to the authority of this chapter which are applicable to his own actions and conduct in the course of his employment. Any employee or representative of employees who in good faith believes that a violation of a safety or health standard, promulgated by rule under the authority of this chapter exists that threatens physical harm to employees, or that an imminent danger to such employees exists, may request an inspection of the work place by giving notice to the director or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent no later

than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to any provision of this chapter. If upon receipt of such notification the director determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection as soon as practicable, to determine if such violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employer and the employee or representative of the employees in writing of such determination.

Prior to or during any inspection of a work place, any employee or representative of employees employed in such work place may notify the director or any representative of the director responsible for conducting the inspection, in writing, of any violation of this chapter which he has reason to believe exists in such work place. The director shall, by rule, establish procedures for informal review of any refusal by a representative of the director to issue a citation with respect to any such alleged violation, and shall furnish the employee or representative of employees requesting such review a written statement of the reasons for the director's final disposition of the case. [1973 c 80 § 11.]

49.17.120 Violations—Citations. If upon inspection or investigation the director or his authorized representative believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rule adopted by the director, or the conditions of any order granting a variance pursuant to this chapter, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the statute, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health. Each citation, or a copy or copies thereof, issued under the authority of this section and RCW 49.17.130 shall be prominently posted, at or near each place a violation referred to in the citation occurred or as may otherwise be prescribed in regulations issued by the director. The director shall provide by rule for procedures to be followed by an employee representative upon written application to receive copies of citations and notices issued to any employer having employees who are represented by such employee representative. Such rule may prescribe the form of such application, the time for renewal of applications, and the eligibility of the applicant to receive copies of citations and notices. No citation may be issued under this section or RCW 49.17.130 after the expiration of six months following a compliance inspection, investigation, or survey revealing any such violation. [1973 c 80 § 12.]

49.17.130 Violations—Dangerous conditions—Citations and orders of immediate restraint—Restraining orders. (1) If upon inspection or investigation, the director, or his authorized representative, believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rules of the department, or any conditions of an order granting a variance, which violation is such that a danger exists from which there is a substantial probability that death or serious physical harm could result to any employee, the director or his authorized representative shall issue a citation and may issue an order immediately restraining any such condition, practice, method, process, or means in the work place. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation in order that the resumption of normal operations may be had without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. In addition, if any machine or equipment, or any part thereof, is in violation of a requirement of RCW 49.17.060 or any safety or health standard promulgated by rules of the department, and the operation of such machine or equipment gives rise to a substantial probability that death or serious physical harm could result to any employee, and an order of immediate restraint of the use of such machine or equipment has been issued under this subsection, the use of such machine or equipment is prohibited, and a notice to that effect shall be attached thereto by the director or his authorized representative.

(2) Whenever the director, or his authorized representative, concludes that a condition of employment described in subsection (1) of this section exists in any work place, he shall promptly inform the affected employees and employers of the danger.

(3) At any time that a citation or a citation and order restraining any condition of employment or practice described in subsection (1) of this section is issued by the director, or his authorized representative, he may in addition request the attorney general to make an application to the superior court of the county wherein such condition of employment or practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances. [1973 c 80 § 13.]

49.17.140 Appeal to board—Citation or notification of assessment of penalty—Final order—Procedure—Redetermination—Hearing. (1) If after an inspection or investigation the director or his authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer by certified

mail of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that he wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that he intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (3) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted in the citation for its correction, which period shall not begin to run until the entry of a final order in the case of any appeal proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the director shall notify the employer by certified mail of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that he wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that he intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If any employer notifies the director that he intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days, which redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, he shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of

penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the re-assumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the thirty-day period. A notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond his control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation. [1986 c 20 § 1; 1973 c 80 § 14.]

49.17.150 Appeal to superior court—Review or enforcement of orders. (1) Any person aggrieved by an order of the board of industrial insurance appeals issued under RCW 49.17.140(3) may obtain a review of such order in the superior court for the county in which the violation is alleged to have occurred, by filing in such court within thirty days following the communication of the board's order or denial of any petition or petitions for review, a written notice of appeal praying that the order be modified or set aside. Such appeal shall be perfected by filing with the clerk of the court and by serving a copy thereof by mail, or personally, on the director and on the board. The board shall thereupon transmit a copy of the notice of appeal to all parties who participated in proceedings before the board, and shall file in the court the complete record of the proceedings. Upon such filing the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings and the record of proceedings a decree affirming, modifying, or setting aside in all or in part, the decision of the board of industrial insurance appeals and enforcing the same to the extent that

such order is affirmed or modified. The commencement of appellate proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the board of industrial insurance appeals. No objection that has not been urged before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board or hearing examiner where the board has denied a petition or petitions for review with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact are supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and the judgment and decree shall be final, except as the same shall be subject to review by the supreme court. Appeals filed under this subsection shall be heard expeditiously.

(2) The director may also obtain review or enforcement of any final order of the board by filing a petition for such relief in the superior court for the county in which the alleged violation occurred. The provisions of subsection (1) of this section shall govern such proceeding to the extent applicable. If a notice of appeal, as provided in subsection (1) of this section, is not filed within thirty days after service of the board's order, the board's findings of fact, decision, and order or the examiner's findings of fact, decision, and order when a petition or petitions for review have been denied shall be conclusive in connection with any petition for enforcement which is filed by the director after the expiration of such thirty day period. In any such case, as well as in the case of an unappealed citation or a notification of the assessment of a penalty by the director, which has become a final order under subsection (1) or (2) of RCW 49.17.140 upon application of the director, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the citation and notice of assessment of penalty and shall transmit a copy of such decree to the director and the employer named in the director's petition. In any contempt proceeding brought to enforce a decree of the superior court entered pursuant to this subsection or subsection (1) of this section the superior court may assess the penalties provided in RCW 49.17.180, in addition to invoking any other available remedies. [1982 c 109 § 1; 1973 c 80 § 15.]

49.17.160 Discrimination against employee filing complaint, instituting proceedings or testifying prohibited—Procedure—Remedy. (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after such violation occurs, file a complaint with the director alleging such discrimination. Upon receipt of such complaint, the director shall cause such investigation to be made as he deems appropriate. If upon such investigation, the director determines that the provisions of this section have been violated, he shall bring an action in the superior court of the county wherein the violation is alleged to have occurred against the person or persons who is alleged to have violated the provisions of this section. If the director determines that the provisions of this section have not been violated, the employee may institute the action on his own behalf within thirty days of such determination. In any such action the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within ninety days of the receipt of the complaint filed under this section, the director shall notify the complainant of his determination under subsection (2) of this section. [1973 c 80 § 16.]

49.17.170 Injunctions—Temporary restraining orders. (1) In addition to and after having invoked the powers of restraint vested in the director as provided in RCW 49.17.130 the superior courts of the state of Washington shall have jurisdiction upon petition of the director, through the attorney general, to enjoin any condition or practice in any work place from which there is a substantial probability that death or serious physical harm could result to any employee immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation to resume normal operation without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(2) Upon the filing of any such petition the superior courts of the state of Washington shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of enforcement proceedings

pursuant to this chapter, except that no temporary restraining order issued without notice shall be effective for a period longer than five working days.

(3) Whenever and as soon as any authorized representative of the director concludes that a condition or practice described in subsection (1) exists in any work place, he shall inform the affected employees and employers of the danger and may recommend to the director that relief be sought under this section.

(4) If the director arbitrarily or capriciously fails to invoke his restraining authority under RCW 49.17.130 or fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the director in the superior court for the county in which the danger is alleged to exist for a writ of mandamus to compel the director to seek such an order and for such further relief as may be appropriate or seek the director to exercise his restraining authority under RCW 49.17.130. [1973 c 80 § 17.]

49.17.180 Violations—Civil penalties. (1) Any employer who wilfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed fifty thousand dollars for each violation.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (6) of this section, shall be assessed a civil penalty not to exceed five thousand dollars for each such violation.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (6) of this section, may be assessed a civil penalty not to exceed three thousand dollars for each such violation, unless such violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than five thousand

dollars for each day during which such failure or violation continues.

(5) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules promulgated by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall be assessed a penalty not to exceed three thousand dollars for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty not to exceed one thousand five hundred dollars for each such violation.

(6) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(7) The director, or his authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(8) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150. [1986 c 20 § 2; 1973 c 80 § 18.]

49.17.190 Violations—Criminal penalties. (1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months or by both.

(3) Any employer who wilfully and knowingly violates the requirements of RCW 49.17.060, any safety or health standard promulgated under this chapter, any existing rule or regulation governing the safety or health conditions of employment and adopted by the director, or any order issued granting a variance under RCW 49.17.080 or 49.17.090 and that violation caused death to any employee shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one hundred thousand dollars or by imprisonment for not more than six months or by both; except, that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than two hundred thousand dollars or by imprisonment for not more than one year, or by both.

(4) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or means in the work place, pursuant to RCW 49.17.130 or 49.17.170, and who nevertheless continues such condition, practice, method, process, or means, or who continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached, shall be guilty of a gross misdemeanor, and upon conviction shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months, or by both.

(5) Any employer who shall knowingly remove, displace, damage, or destroy, or cause to be removed, displaced, damaged, or destroyed any safety device or safeguard required to be present and maintained by any safety or health standard, rule, or order promulgated pursuant to this chapter, or pursuant to the authority vested in the director under RCW 43.22.050 shall, upon conviction, be guilty of a misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or by both.

(6) Whenever the director has reasonable cause to believe that any provision of this section defining a crime has been violated by an employer, the director shall cause a record of such alleged violation to be prepared, a copy of which shall be referred to the prosecuting attorney of the county wherein such alleged violation occurred, and the prosecuting attorney of such county shall in writing advise the director of the disposition he shall make of the alleged violation. [1986 c 20 § 3; 1973 c 80 § 19.]

49.17.200 Confidentiality—Trade secrets. All information reported to or otherwise obtained by the director, or his authorized representative, in connection with any inspection or proceeding under the authority of this chapter, which contains or which might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. [1973 c 80 § 20.]

Uniform trade secrets act: Chapter 19.108 RCW.

49.17.210 Research, experiments, and demonstrations for safety purposes—Variances. The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. The director, in his discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, which experiment is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment. [1973 c 80 § 21.]

49.17.220 Records—Reports—Notice to employee exposed to harmful materials. (1) Each employer shall make, keep, and preserve, and make available to the director such records regarding his activities relating to this chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The director shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health standards.

(2) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this chapter and shall inform any employee who is being thus exposed of the corrective action being taken. [1973 c 80 § 22.]

49.17.230 Compliance with federal act—Agreements and acceptance of grants authorized. The director

is authorized to adopt by rule any provision reasonably necessary to enable this state to qualify a state plan under section 18 of the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590) to enable this state to assume the responsibility for the development and enforcement of occupational safety and health standards in all work places within this state subject to the legislative jurisdiction of the state of Washington. The director is authorized to enter into agreement with the United States and to accept on behalf of the state of Washington grants of funds to implement the development and enforcement of this chapter and the Occupational Safety and Health Act of 1970. [1973 c 80 § 23.]

49.17.240 Safety and health standards. (1) The director in the promulgation of rules under the authority of this chapter shall establish safety and health standards for conditions of employment of general and/or specific applicability for all industries, businesses, occupations, crafts, trades, and employments subject to the provisions of this chapter, or those that are a national or accepted federal standard. In adopting safety and health standards for conditions of employment, the director shall solicit and give due regard to all recommendations by any employer, employee, or labor representative of employees.

(2) Any safety and health standard adopted by rule of the director shall, where appropriate, prescribe the use of labels or other forms of warning to insure that employees are apprised of all hazards to which they may be exposed, relevant symptoms, and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such rules shall so prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be reasonably necessary for the protection of employees. In addition, where appropriate, any such rule shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event that such medical examinations are in the nature of research, as determined by the director, such examinations may be furnished at the expense of the department. The results of such examinations or tests shall be furnished only to the director, other appropriate agencies of government, and at the request of the employee to his physician.

(3) Whenever the director adopts by rule any safety and health standard he may at the same time provide by rule the effective date of such standard which shall not be less than thirty days, excepting emergency rules, but may be made effective at such time in excess of thirty days from the date of adoption as specified in any rule adopting a safety and health standard. Any rule not

made effective thirty days after adoption, having a delayed effectiveness in excess of thirty days, may only be made upon a finding made by the director that such delayed effectiveness of the rule is reasonably necessary to afford the affected employers a reasonable opportunity to make changes in methods, means, or practices to meet the requirements of the adopted rule. Temporary orders granting a variance may be utilized by the director in lieu of the delayed effectiveness in the adoption of any rule. [1973 c 80 § 24.]

49.17.250 Voluntary compliance program—Consultation and advisory services. (1) In carrying out his responsibilities for the development of a voluntary compliance program under the authority of RCW 49.17.050(8) and the rendering of advisory and consultative services to employers, the director may grant an employer's application for advice and consultation, and for the purpose of affording such consultation and advice visit the employer's work place. Such consultation and advice shall be limited to the matters specified in the request affecting the interpretation and applicability of safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's work place. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or his authorized representative, may make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: *Provided*, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any work place which has been visited for

consultative purposes. However, in the event of a subsequent inspection, the director, or his authorized representative, may in his discretion take into consideration any information obtained during the consultation visit of that work place in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be advised of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. The director may provide by rule for the frequency, manner, and method of the rendering of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter. [1973 c 80 § 25.]

49.17.260 Statistics—Investigations—Reports.

In furtherance of the objects and purposes of this chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any work place subject to this chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this chapter, or any safety and health standard, rule, or order promulgated pursuant to this chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the superior court after notice to the director and an opportunity for hearing: *Provided*, That such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured workman or his legal representative or his labor organization representative, or to the legal representative or labor organization representative of a deceased workman who was the subject of an investigation, or to the employer of the injured or deceased workman or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action. [1973 c 80 § 26.]

49.17.270 Administration of chapter. The department shall be the sole and paramount administrative agency responsible for the administration of the provisions of this chapter, and any other agency of the state or any municipal corporation or political subdivision of

the state having administrative authority over the inspection, survey, investigation, or any regulatory or enforcement authority of safety and health standards related to the health and safety of employees in any work place subject to this chapter, shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter and subject to interagency agreement or agreements with the department made under the authority of the interlocal cooperation act (chapter 39.34 RCW) relative to the procedures to be followed in the enforcement of this chapter: *Provided*, That in relation to employers using or possessing sources of ionizing radiation the department of labor and industries and the department of social and health services shall agree upon mutual policies, rules, and regulations compatible with policies, rules, and regulations adopted pursuant to chapter 70.98 RCW insofar as such policies, rules, and regulations are not inconsistent with the provisions of this chapter. [1973 c 80 § 27.]

49.17.900 Short title. This act shall be known and cited as the Washington Industrial Safety and Health Act of 1973. [1973 c 80 § 29.]

49.17.910 Severability—1973 c 80. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 80 § 30.]

Chapter 49.22

SAFETY—CRIME PREVENTION

Sections

49.22.010	Definitions.
49.22.020	Late night retail establishments—Duties.
49.22.030	Enforcement.
49.22.900	Effective date—Implementation—1989 c 357.

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

(1) "Department" means the department of labor and industries.

(2) "Late night retail establishment" means any business or commercial establishment making sales to the public between the hours of eleven o'clock p.m. and six o'clock a.m., except restaurants, hotels, taverns, or any lodging facility.

(3) "Employer" means the operator, lessee, or franchisee of a late night retail establishment. [1989 c 357 § 1.]

49.22.020 Late night retail establishments—Duties. In addition to providing crime prevention training as provided in *section 2 of this act, all employers operating late night retail establishments shall:

(1) Post a conspicuous sign in the window or door which states that there is a safe on the premises and it is not accessible to the employees on the premises and that

the cash register contains only the minimal amount of cash needed to conduct business: *Provided*, That an employer shall not be subject to penalties under RCW 49.22.030 for having moneys in the cash register in excess of the minimal amount needed to conduct business;

(2) So arrange all material posted in the window or door so as to provide a clear and unobstructed view of the cash register, provided the cash register is otherwise in a position visible from the street;

(3) Have a drop-safe, limited access safe, or comparable device on the premises; and

(4) Operate the outside lights for that portion of the parking area that is necessary to accommodate customers during all night hours the late night retail establishment is open, if the late night retail establishment has a parking area for its customers. [1989 c 357 § 3.]

*Reviser's note: "Section 2 of this act" was vetoed by the governor.

49.22.030 Enforcement. The requirements of this chapter shall be implemented and enforced, including rules, citations, violations, penalties, appeals, and other administrative procedures by the director of the department of labor and industries pursuant to the Washington industrial safety and health act of 1973, chapter 49.17 RCW. [1989 c 357 § 4.]

49.22.900 Effective date—Implementation—1989 c 357. This act shall take effect January 1, 1990. The director of the department of labor and industries may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1989 c 357 § 7.]

Chapter 49.24

HEALTH AND SAFETY—UNDERGROUND WORKERS

Sections

49.24.010	Pressure, defined.
49.24.020	Compressed air safety requirements.
49.24.030	Medical and nursing attendants.
49.24.040	Examination as to physical fitness.
49.24.060	Penalty.
49.24.070	Enforcement.
49.24.080	Requirements for underground labor.
49.24.100	Lighting appliances.
49.24.110	Exhaust valves.
49.24.120	Fire prevention.
49.24.130	Air chambers—Hanging walks.
49.24.140	Locks.
49.24.150	Explosives and detonators.
49.24.160	Air plant—Feed water.
49.24.170	Electric power requirements.
49.24.180	Inspection.
49.24.190	Cars, cages, buckets—Employees riding or walking.
49.24.200	Speed of vehicles.
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49.24.220	Explosives, use of—Blasting.
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49.24.240	Inspection after blast.
49.24.250	Code of signals.
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49.24.270	Shields to be provided.
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49.24.300	Buckets in vertical shafts.
49.24.310	Telephone system for tunnels.
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49.24.330	Generators, transformers, etc., to be grounded.
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49.24.360	Insulators required.
49.24.370	Director to make rules and regulations.
49.24.380	Penalty.

Coal mining code: Title 78 RCW.

Protection of employees: State Constitution Art. 2 § 35.

Supervisor of safety: RCW 43.22.040.

49.24.010 Pressure, defined. The term "pressure" means gauge air pressure in pounds per square inch. [1937 c 131 § 1; RRS § 7666-1.]

49.24.020 Compressed air safety requirements. Every employer of persons for work in compressed air shall:

(1) Connect at least two air pipes with the working chamber and keep such pipes in perfect working condition;

(2) Attach to the working chamber in accessible positions all instruments necessary to show its pressure and keep such instruments in charge of competent persons, with a period of duty for each such person not exceeding six hours in any twenty-four;

(3) Place in each shaft a safe ladder extending its entire length;

(4) Light properly and keep clear such passageway;

(5) Provide independent lighting systems for the working chamber and shaft leading to it, when electricity is used for lighting;

(6) Guard lights other than electric lights;

(7) Protect workmen by a shield erected in the working chamber when such chamber is less than ten feet long and is suspended with more than nine feet space between its deck and the bottom of the excavation;

(8) Provide for and keep accessible to employees working in compressed air a dressing room heated, lighted and ventilated properly and supplied with benches, lockers, sanitary waterclosets, bathing facilities and hot and cold water;

(9) Establish and maintain a medical lock properly heated, lighted, ventilated and supplied with medicines and surgical implements, when the maximum air pressure exceeds seventeen pounds. [1937 c 131 § 2; RRS § 7666-2.]

49.24.030 Medical and nursing attendants. Every employer of persons for work in compressed air shall:

(1) Keep at the place of work at all necessary times a duly qualified medical officer to care for cases of illness and to administer strictly and enforce RCW 49.24.020 and 49.24.040;

(2) Keep at a medical lock required by RCW 49.24.020(9) a certified nurse selected by the medical officer required by subdivision (1) of this section and qualified to give temporary relief in cases of illness. [1937 c 131 § 3; RRS § 7666-3.]

49.24.040 Examination as to physical fitness. If an employee is a new employee, an absentee for ten or more

successive days, an employee who has worked in compressed air continuously for three months or a beginner in compressed air who has worked but a single shift [shift] as required by *RCW 49.24.050, the officer required by RCW 49.24.030(1) shall examine him and declare him physically fit to work in compressed air before permitting him to enter or reenter the working chamber. Excessive users of intoxicants shall not be permitted to work in compressed air. [1937 c 131 § 4; RRS § 7666-4.]

*Reviser's note: RCW 49.24.050 was repealed by 1963 c 105 § 1.

49.24.060 Penalty. Violation of or noncompliance with any provision of *this article by any employer, manager, superintendent, foreman or other person having direction or control of such work shall be a gross misdemeanor punishable by a fine of not less than two hundred and fifty dollars or by imprisonment for not more than one year or by both such fine and imprisonment. [1937 c 131 § 7; RRS § 7666-7.]

*Reviser's note: "this article" appears in the session law (1937 c 131), an eight section act which was not subdivided by "article" organization. Such act is codified herein as RCW 49.24.010 through 49.24.070.

49.24.070 Enforcement. The director of labor and industries through and by means of the division of industrial safety and health shall have the power and it shall be his duty to enforce the provisions of RCW 49.24.010 through 49.24.070. Any authorized inspector or agent of the division of industrial safety and health may issue and serve upon the employer or person in charge of such work, an order requiring compliance with a special provision or specific provisions of RCW 49.24.010 through 49.24.070 and directing the discontinuance of any employment of persons in compressed air in connection with such work until such specific provision or provisions have been complied with by such employer to the satisfaction of the division of industrial safety and health. [1973 1st ex.s. c 52 § 7; 1937 c 131 § 8; RRS § 7666-8.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

49.24.080 Requirements for underground labor. Every person, firm or corporation constructing, building or operating a tunnel, quarry, caisson or subway, excepting in connection with mines, with or without compressed air, shall in the employment of any labor comply with the following safety provisions:

(1) A safety miner shall be selected by the crew on each shift who shall check the conditions necessary to make the working place safe; such as loose rock, faulty timbers, poor rails, lights, ladders, scaffolds, fan pipes and firing lines.

(2) Ventilating fans shall be installed from twenty-five to one hundred feet outside the portal.

(3) No employee shall be allowed to "bar down" without the assistance of another employee.

(4) No employee shall be permitted to return to the heading until at least thirty minutes after blasting.

(5) Whenever persons are employed in wet places, the employer shall furnish such persons with rubbers, boots, coats and hats. All boots if worn previously by an employee shall be sterilized before being furnished to another: *Provided*, That RCW 49.24.080 through 49.24.380 shall not apply to the operation of a railroad except that new construction of tunnels, caissons or subways in connection therewith shall be subject to the provisions of RCW 49.24.080 through 49.24.380: *Provided, further*, That in the event of repair work being done in a railroad tunnel, no person shall be compelled to perform labor until the air has been cleared of smoke, gas and fumes. [1973 1st ex.s. c 154 § 89; 1965 c 144 § 1; 1941 c 194 § 1; Rem. Supp. 1941 § 7666-9.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

49.24.100 Lighting appliances. (1) All lighting in compressed air chambers shall be by electricity only. Wherever practicable there shall be two independent lighting systems with independent sources of supply.

(2) The exterior of all lamp sockets shall be entirely nonmetallic.

(3) All portable incandescent lamps used shall be guarded by a wire cage large enough to enclose both lamp and socket.

(4) All incandescent lamps shall be so placed that they cannot come in contact with any combustible material.

(5) Only heavy insulated or armored wire shall be used for light or power. [1941 c 194 § 3; Rem. Supp. 1941 § 7666-11.]

49.24.110 Exhaust valves. Exhaust valves shall be provided, having risers extending to the upper part of chamber, if necessary, and shall be operated at such times as may be required and especially after a blast, and persons shall not be required to resume work after a blast until the gas and smoke have cleared, for at least thirty minutes. [1973 1st ex.s. c 154 § 90; 1941 c 194 § 4; Rem. Supp. 1941 § 7666-12.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

49.24.120 Fire prevention. All reasonable precaution shall be taken against fire, and provisions shall be made so that water lines shall be available for use at all times. Fire hose connections with hose connected shall be installed in all power plants and work houses. There shall be fire hose connections within reasonable distance of all caissons. Fire hose shall be connected at either side of a tunnel bulkhead, with at least fifty feet of hose with nozzle connection. Water lines shall extend into each tunnel with hose connections every two hundred feet and shall be kept ready for use at all times. [1941 c 194 § 5; Rem. Supp. 1941 § 7666-13.]

49.24.130 Air chambers—Hanging walks. (1) Whenever the air pressure in a tunnel heading exceeds twenty-one pounds per square inch above atmospheric pressure, two air chambers shall always be in use, except

for such time as may be necessary when headings are being started from shafts; and whenever practicable the pressure in the outer chamber shall not exceed one-half the pressure in the heading;

(2) In all tunnels sixteen feet in diameter or over, hanging walks shall be provided from working face to nearest lock. An overhead clearance of six feet shall be maintained and suitable ramps provided under all safety screens. [1941 c 194 § 6; Rem. Supp. 1941 § 7666-14.]

49.24.140 Locks. (1) Each bulkhead in tunnels of twelve feet or more in diameter or equivalent area, shall have at least two locks in perfect working condition, one of which shall be used as a man lock. An additional lock for use in case of emergency shall be held in reserve.

(2) The man lock shall be large enough so that those using it are not compelled to be in a cramped position, and shall not be less than five feet in height. Emergency locks shall be large enough to hold an entire heading shift.

(3) All locks used for decompression shall be lighted by electricity and shall contain a pressure gauge, a time piece, a glass "bull's eye" in each door or in each end, and shall also have facilities for heating.

(4) Valves shall be so arranged that the locks can be operated both from within and from without. [1941 c 194 § 7; Rem. Supp. 1941 § 7666-15.]

49.24.150 Explosives and detonators. When locking explosives and detonators into the air chamber, they shall be kept at opposite ends of the lock. While explosives and detonators are being taken through, no men other than the lock tender and the carriers shall be permitted in the lock. [1941 c 194 § 8; Rem. Supp. 1941 § 7666-16.]

49.24.160 Air plant—Feed water. (1) A good and sufficient air plant for the compression of air shall be provided to meet not only ordinary conditions, but emergencies, and to provide margin for repairs at all times. Provision must be made for storing in tanks at each boiler house enough feed water for twelve hours' supply unless connection can be made with two independent and separately sufficient sources of supply.

(2) The plant shall be capable of furnishing to each working chamber a sufficient air supply for all pressure to enable work to be done. [1941 c 194 § 9; Rem. Supp. 1941 § 7666-17.]

49.24.170 Electric power requirements. When electric power is used for running compressors supplying air for compressed air tunnel work and such power is purchased from a local central station or power company—

(1) There shall be two or more sources of power from the power company's stations to the compressor plant. Such power feeders shall each have a capacity large enough to carry the entire compressor plant load and normal overload. The feeders shall preferably run from separate generating plants or substations and be carried to the compressor plant over separate routes and not

through the same duct lines and manholes so that the breakdown of one feeder shall not cause an interruption on the other feeder.

(2) There shall be duplicate feeder bus-bars, and feeder connections to the bus-bars shall be such that either feeder can feed to each separate bus-bar set, individually, or simultaneously to both sets.

(3) There shall be at least two compressors so connected to the bus-bars that they can be operated from either set of busses. The compressors shall be fed from different bus-bar sets, in such a way that a breakdown of a feeder or bus-bar would interrupt the operation of only part of the compressor plant.

(4) Duplicate air feed pipes shall be provided from the compressor plant to a point beyond the lock. [1941 c 194 § 10; Rem. Supp. 1941 § 7666-18.]

49.24.180 Inspection. While work is in progress, the employer shall employ a competent person who shall make a regular inspection at least once every working day of all engines, boilers, steam pipes, drills, air pipes, air gauges, air locks, dynamos, electric wiring, signaling apparatus, brakes, cages, buckets, hoists, cables, ropes, timbers, supports, and all other apparatus and appliances; and he shall immediately upon discovery of any defect, report same in writing to the employer, or his agent in charge. [1941 c 194 § 11; Rem. Supp. 1941 § 7666-19.]

49.24.190 Cars, cages, buckets—Employees riding or walking. No employee shall ride on any loaded car, cage or bucket, nor walk up or down any incline or shaft while any car, cage or bucket is above him. [1941 c 194 § 12; Rem. Supp. 1941 § 7666-20.]

49.24.200 Speed of vehicles. No vehicle shall be operated underground at a speed greater than five miles an hour, while construction work is going on. [1941 c 194 § 13; Rem. Supp. 1941 § 7666-21.]

49.24.210 Oil supply restricted. Oil for illumination or power shall not be taken into the underground workings of any tunnel or kept therein in greater quantities than one day's supply. [1941 c 194 § 14; Rem. Supp. 1941 § 7666-22.]

49.24.220 Explosives, use of—Blasting. (1) No greater quantity of explosives than that which is required for immediate use shall be taken into the working chamber.

(2) Explosives shall be conveyed in a suitable covered wooden box.

(3) Detonators shall be conveyed in a separate covered wooden box.

(4) Explosives and detonators shall be taken separately into the caissons.

(5) After blasting is completed, all explosives and detonators shall be returned at once to the magazine.

(6) No naked light shall be used in the vicinity of open chests or magazines containing explosives, nor near where a charge is being primed.

(7) No tools or other articles shall be carried with the explosives or with the detonators.

(8) All power lines and electric light wires shall be disconnected at a point outside the blasting switch before the loading of holes. No current by grounding of power or bonded rails shall be allowed beyond blasting switch after explosives are taken in preparatory to blasting, and under no circumstances shall grounded current be used for exploding blasts.

(9) Before drilling is commenced on any shift, all remaining holes shall be examined with a wooden stick for unexploded charges or cartridges, and if any are found, same shall be refired before work proceeds.

(10) No person shall be allowed to deepen holes that have previously contained explosives.

(11) All wires in broken rock shall be carefully traced and search made for unexploded cartridges.

(12) Whenever blasting is being done in a tunnel, at points liable to break through to where other men are at work, the foreman or person in charge shall, before any holes are loaded, give warning of danger to all persons that may be working where the blasts may break through, and he shall not allow any holes to be charged until warning is acknowledged and men are removed.

(13) Blasters when testing circuit through charged holes shall use sufficient leading wires to be at a safe distance and shall use only approved types of galvanometers. No tests of circuits in charged holes shall be made until men are removed to safe distance.

(14) No blasts shall be fired with fuse, except electrically ignited fuse, in vertical or steep shafts.

(15) In shaft sinking where the electric current is used for firing, a separate switch not controlling any electric lights must be used for blasting and proper safeguard similar to those in tunnels must be followed in order to insure against premature firing. [1941 c 194 § 15; Rem. Supp. 1941 § 7666-23.]

Explosives: Chapter 70.74 RCW.

49.24.230 Firing switch—Warning by blaster. When firing by electricity from power or lighting wires, a proper switch shall be furnished with lever down when "off".

The switch shall be fixed in a locked box to which no person shall have access except the blaster. There shall be provided flexible leads or connecting wires not less than five feet in length with one end attached to the incoming lines and the other end provided with plugs that can be connected to an effective ground. After blasting, the switch lever shall be pulled out, the wires disconnected and the box locked before any person shall be allowed to return, and shall remain so locked until again ready to blast.

In the working chamber all electric light wires shall be provided with a disconnecting switch, which must be thrown to disconnect all current from the wires in the working chamber before electric light wires are removed or the charge exploded.

Before blasting the blaster shall cause a sufficient warning to be sounded and shall compel all persons to retreat to a safe shelter, before he sets off the blast, and

shall permit no one to return until conditions are safe. [1941 c 194 § 16; Rem. Supp. 1941 § 7666-24.]

49.24.240 Inspection after blast. (1) After a blast is fired, loosened pieces of rock shall be scaled from the sides of the excavation and after the blasting is completed, the entire working chamber shall be thoroughly scaled.

(2) The person in charge shall inspect the working chamber and have all loose rock or ground removed and the chamber made safe before proceeding with the work.

(3) Drilling must not be started until all remaining butts of old holes are examined for unexploded charges. [1941 c 194 § 17; Rem. Supp. 1941 § 7666-25.]

49.24.250 Code of signals. Any code of signals used shall be printed and copies thereof, in such languages as may be necessary to be understood by all persons affected thereby, shall be kept posted in a conspicuous place near entrances to work places and in such other places as may be necessary to bring them to the attention of all persons affected thereby.

Effective and reliable signaling devices shall be maintained at all times to give instant communication between the bottom and top of the shaft. [1941 c 194 § 18; Rem. Supp. 1941 § 7666-26.]

49.24.260 Requirements as to caissons. All shafting used in pneumatic caissons shall be provided with ladders, which are to be kept clear and in good condition at all times. The distance between the centers of the rungs of a ladder shall not exceed fourteen inches and shall not vary more than one inch in any one piece of shafting. The length of the ladder rungs shall not be less than nine inches. The rungs of the ladder shall in no case be less than three inches from the wall or other obstruction in the shafting or opening in which the ladder shall be used. Under no circumstances shall a ladder inclining backward from the vertical be installed. A suitable ladder shall be provided from the top of all locks to the surface.

All man shafts shall be lighted at a distance of every ten feet with a guarded incandescent lamp.

All outside caisson air locks shall be provided with a platform not less than forty-two inches wide, and provided with a guard rail forty-two inches high.

All caissons in which fifteen or more men are employed shall have two locks, one of which shall be used as a man lock. Man locks and man shafts shall be in charge of a man whose duty it shall be to operate said lock and shaft. All caissons more than ten feet in diameter shall be provided with a separate man shaft, which shall be kept clear and in operating order at all times.

Locks shall be so located that the distance between the bottom door and water level shall be not less than three feet. [1941 c 194 § 19; Rem. Supp. 1941 § 7666-27.]

49.24.270 Shields to be provided. Wherever, in the prosecution of caisson work in which compressed air is employed, the working chamber is less than twelve feet

in length, and when such caissons are at any time suspended or hung while work is in progress, so that the bottom of the excavation is more than nine feet below the deck of the working chamber, a shield shall be erected therein for the protection of the workers. [1989 c 12 § 15; 1941 c 194 § 20; Rem. Supp. 1941 § 7666-28.]

49.24.280 Caissons to be braced. All caissons shall be properly and adequately braced before loading with concrete or other weight. [1941 c 194 § 21; Rem. Supp. 1941 § 7666-29.]

49.24.290 Cages—Hoisting apparatus. In all shafts where men are hoisted or lowered, an iron-bonneted cage shall be used for the conveyance of men, but this provision shall not apply to shafts in the process of sinking or during the dismantling of the shaft after work in the tunnel is substantially completed.

Cages shall be provided with bonnets consisting of two steel plates not less than three-sixteenths of an inch in thickness, sloping toward each side and so arranged that they may be readily pushed upward to afford egress to persons therein, and such bonnet shall cover the top of the cage in such manner as to protect persons in the cage from falling objects.

Cages shall be entirely enclosed on two sides with solid partition or wire mesh not less than No. 8 U.S. Standard gauge, no opening in which shall exceed two inches.

Cages shall be provided with hanging chains or other similar devices for hand holds.

Every cage shall be provided with an approved safety catch of sufficient strength to hold the cage with its maximum load at any point in the shaft.

All parts of the hoisting apparatus, cables, brakes, guides and fastenings shall be of the most substantial design and shall be arranged for convenient inspection. The efficiency of all safety devices shall be established by satisfactory tests before the cages are put into service and at least once every three months thereafter and a record thereof kept.

The test of the safety catch shall consist of releasing the cage suddenly in such manner that the safety catches shall have opportunity to grip the guides. [1941 c 194 § 22; Rem. Supp. 1941 § 7666-30.]

49.24.300 Buckets in vertical shafts. In all vertical shafts in which hoisting is done by means of a bucket, suitable guides shall be provided when the depth exceeds ten times the diameter or width of the shaft, but in no case shall the maximum depth without guides exceed one hundred and fifty feet. In connection with the bucket, there shall be a crosshead traveling between these guides. The height of the crosshead shall be at least two-thirds of its width, but the height in no case shall be less than thirty inches. [1941 c 194 § 23; Rem. Supp. 1941 § 7666-31.]

49.24.310 Telephone system for tunnels. Where tunnels are driven from shafts more than two hundred and fifty feet deep, a telephone system shall be established

and maintained, communicating with the surface at each such shaft, and with a station or stations readily and quickly accessible to the men at the working level. [1941 c 194 § 24; Rem. Supp. 1941 § 7666-32.]

49.24.320 Location of lights. (1) While work is in progress, tunnels, stairways, ladderways and all places on the surface where work is being conducted, shall be properly lighted. In shafts more than one hundred feet deep, the shaft below that point shall be lighted.

(2) All places where hoisting, pumping or other machinery is erected and in the proximity of which persons are working or moving about, shall be so lighted when the machine is in operation that the moving parts of such machine can be clearly distinguished. [1941 c 194 § 25; Rem. Supp. 1941 § 7666-33.]

49.24.330 Generators, transformers, etc., to be grounded. The frames and bed plates of generators, transformers, compensators, rheostats and motors installed underground shall be effectively grounded. All metallic coverings, armoring of cables, other than trailing cables, and the neutral wire of three-wire systems shall also be so grounded. [1941 c 194 § 26; Rem. Supp. 1941 § 7666-34.]

49.24.340 Electrical voltage. In electrical systems installed, no higher voltage than low voltage shall be used underground, except for transmission or other application to transformers, motors, generators or other apparatus in which the whole of the medium or high voltage apparatus is stationary. [1941 c 194 § 27; Rem. Supp. 1941 § 7666-35.]

49.24.350 Lamps to be held in reserve. Lamps or other proper lights shall be kept ready for use in all underground stations where a failure of electric light is likely to cause danger. [1941 c 194 § 28; Rem. Supp. 1941 § 7666-36.]

49.24.360 Insulators required. (1) All underground cables and wires, unless provided with grounded metallic covering, shall be supported by efficient insulators. The conductors connecting lamps to the power supply shall in all cases be insulated.

(2) Cables and wires unprovided with metallic coverings shall not be fixed to walls or timbers by means of uninsulated fastenings. [1941 c 194 § 29; Rem. Supp. 1941 § 7666-37.]

49.24.370 Director to make rules and regulations. The director of labor and industries shall establish such rules and regulations as he deems primarily necessary for the safety of the employees employed in tunnels, quarries, caissons and subways and shall be guided by the most modern published studies and researches made by persons or institutions into the correction of the evils chargeable to improper safeguards and inspection of the tools, machinery, equipment and places of work obtaining in the industries covered by RCW 49.24.080 through 49.24.380. [1941 c 194 § 32; Rem. Supp. 1941 § 7666-39.]

49.24.380 Penalty. Every person violating any of the provisions of RCW 49.24.080 through 49.24.380 shall be guilty of a misdemeanor. [1941 c 194 § 31; Rem. Supp. 1941 § 7666–38.]

Chapter 49.26

HEALTH AND SAFETY—ASBESTOS

Sections

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49.26.901	Effective dates—1988 c 271 §§ 6–18.

49.26.010 Legislative declaration. Air-borne asbestos dust and particles, such as those from sprayed asbestos slurry, asbestos-coated ventilating ducts, and certain other applications of asbestos are known to produce irreversible lung damage and bronchogenic carcinoma. One American of every four dying in urban areas of the United States has asbestos particles or dust in his lungs. The nature of this problem is such as to constitute a hazard to the public health and safety, and should be brought under appropriate regulation. [1973 c 30 § 1.]

49.26.013 Inspection of construction projects required. (1) Any owner or owner's agent who allows or authorizes any construction, renovation, remodeling, maintenance, repair, or demolition project which has a reasonable possibility, as defined by the department, of disturbing or releasing asbestos into the air, shall perform or cause to be performed, using practices approved by the department, a good faith inspection to determine whether the proposed project will disturb or release any material containing asbestos into the air.

An inspection under this section is not required if the owner or owner's agent is reasonably certain that asbestos will not be disturbed or assumes that asbestos will be disturbed by a project which involves construction, renovation, remodeling, maintenance, repair, or demolition and takes the maximum precautions as specified by all applicable federal and state requirements.

(2) Except as provided in RCW 49.26.125, the owner or owner's agent shall prepare and maintain a written report describing each inspection, or a statement of assumption of the presence or reasonable certainty of the absence of asbestos, and shall make a copy of the written

report or statement available upon written or oral request to: (1) The department of labor and industries; (2) contractors; and (3) the collective bargaining representatives or employee representatives, if any, of employees who may be exposed to any asbestos or material containing asbestos. A copy shall be posted as prescribed by the department in a place that is easily accessible to such employees. [1989 c 154 § 2. Prior: 1988 c 271 § 7.]

Purpose—1989 c 154: "The purpose of chapter 154, Laws of 1989 is to make corrections to chapter 271, Laws of 1988, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1989 c 154 § 1.]

Severability—1989 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 154 § 14.]

49.26.016 Inspection of construction projects—Penalties. (1) Any owner or owner's agent who allows the start of any construction, renovation, remodeling, maintenance, repair, or demolition without first (a) conducting the inspection and preparing and maintaining the report of the inspection, or preparing and maintaining a statement of assumption of the presence or reasonable certainty of the absence of asbestos, as required under RCW 49.26.013; and (b) preparing and maintaining the additional written description of the project as required under RCW 49.26.120 shall be subject to a mandatory fine of not less than two hundred fifty dollars for each violation. Each day the violation continues shall be considered a separate violation. In addition, any construction, renovation, remodeling, maintenance, repair, or demolition which was started without meeting the requirements of RCW 49.26.013 and RCW 49.26.120 shall be halted immediately and cannot be resumed before meeting such requirements.

(2) It is the responsibility of any contractor registered under chapter 18.27 RCW to request a copy of the written report or statement required under RCW 49.26.013 from the owner or the owner's agent. No contractor may commence any construction, renovation, remodeling, maintenance, repair or demolition project without receiving the copy of the written report or statement from the owner or the owner's agent. Any contractor who begins any project without the copy of the written report or statement shall be subject to a mandatory fine of not less than two hundred and fifty dollars per day. Each day the violation continues shall be considered a separate violation.

(3) Any partnership, firm, corporation or sole proprietorship that begins any construction, renovation, remodeling, maintenance, repair, or demolition without meeting the requirements of RCW 49.26.013 and the notification requirement under RCW 49.26.120 shall lose the exemptions provided in RCW 49.26.110 and 49.26.120 for a period of not less than six months.

(4) The certificate of any asbestos contractor who knowingly violates any provision of this chapter or any rule adopted under this chapter shall be revoked for a period of not less than six months.

(5) The penalties imposed in this section are in addition to any penalties under RCW 49.26.140. [1989 c 154 § 3. Prior: 1988 c 271 § 8.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.020 Asbestos use standards. Standards regulating the use of asbestos in construction or manufacturing shall be established by the director of the department of labor and industries, with the advice of the state health officer and the department of ecology. Standards to be adopted shall describe the types of asbestos that may be used in construction and manufacturing, the methods and procedures for their use, and such other requirements as may be needed to protect the public health and safety with respect to air-borne asbestos particles and asbestos dust. [1973 c 30 § 2.]

49.26.030 Containers for asbestos products. Products containing asbestos shall be stored in containers of types approved by the director of the department of labor and industries, with the advice of the state health officer and the department of ecology. Containers of asbestos shall be plainly marked "Asbestos—do not inhale" or other words to the same effect. [1973 c 30 § 3.]

49.26.040 Regulations—Enforcement. The asbestos use standards required under RCW 49.26.020 and the list of approved container types required under RCW 49.26.030 shall be adopted as regulations of the department of labor and industries. The department shall have the power to implement and enforce such regulations. [1973 c 30 § 4.]

49.26.100 Asbestos projects—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Asbestos project" means the construction, demolition, repair, maintenance, remodeling, or renovation of any public or private building or mechanical piping equipment or systems involving the demolition, removal, encapsulation, salvage, or disposal of material, or outdoor activity, releasing or likely to release asbestos fibers into the air.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries or the director's designee.

(4) "Person" means any individual, partnership, firm, association, corporation, sole proprietorship, or the state of Washington or its political subdivisions.

(5) "Certified asbestos supervisor" means an individual who is certified by the department to supervise an asbestos project.

(6) "Certified asbestos worker" means an individual who is certified by the department to work on an asbestos project.

(7) "Certified asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship registered under chapter 18.27 RCW that submits a bid or contracts to remove or encapsulate asbestos for

another and is certified by the department to remove or encapsulate asbestos.

(8) "Owner" means the owner of any public or private building, structure, facility or mechanical system, or the agent of such owner, but does not include individuals who work on asbestos projects on their own single-family residences no part of which is used for any commercial purpose. [1989 c 154 § 4. Prior: 1988 c 271 § 6; 1985 c 387 § 1.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.110 Asbestos projects—Workers' and supervisors' certificates. (1) No employee or other individual is eligible to do work governed by this chapter unless issued a certificate by the department except, in the case of an asbestos project undertaken by any partnership, firm, corporation or sole proprietorship which has not lost this exemption under RCW 49.26.016(3), and conducted in its own facility and by its own employees. In cases excepted under this section:

(a) Direct, on-site supervision by a certified asbestos supervisor shall be required for asbestos projects performed at one project location by workers who are not certified.

(b) If a project is conducted using only certified workers or if a certified worker functions as a foreman or lead person, supervision can be performed in the regular course of a supervisor's duties and need not be direct and on-site.

(c) The partnership, firm, corporation or sole proprietorship shall submit a written description to the department of the kinds of asbestos projects expected to be undertaken and the procedures to be used in undertaking asbestos projects, which description shall demonstrate competence in performing the work in compliance with the requirements of this chapter, rules adopted under this chapter, and any other requirements of law for the safe demolition, removal, encapsulation, salvage, and disposal of asbestos.

(2) To qualify for a certificate: (a) Certified asbestos workers and supervisors must have successfully completed a training course of at least thirty hours, provided or approved by the department, on the health and safety aspects of the removal and encapsulation of asbestos including but not limited to the federal and state standards regarding protective clothing, respirator use, disposal, air monitoring, cleaning, and decontamination, and shall meet such additional qualifications as may be established by the department by rule for the type of certification sought; and (b) all applicants for certification as asbestos workers or supervisors must pass an examination in the type of certification sought which shall be provided or approved by the department. These requirements are intended to represent the minimum requirements for certification and shall not preclude contractors or employers from providing additional education or training. The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor.

(3) The department shall provide for the reciprocal certification of any individual trained to engage in asbestos projects in another state when the prior training is shown to be substantially similar to the training required by the department. Nothing shall prevent the department from requiring such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate, as provided under RCW 49.26.140, for failure of the holder to comply with any requirement of this chapter or chapter 49.17 RCW, or any rule adopted under those chapters, or applicable health and safety standards and regulations. In addition to any penalty imposed under RCW 49.26.016, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

(a) The certificate was obtained through error or fraud; or

(b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

Before any certificate may be denied, suspended, or revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against such holder, and shall give him or her the opportunity to request a hearing before the department. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony.

(5) A denial, suspension, or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the denial, suspension, or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(6) Each person certified under this chapter shall display, upon the request of an authorized representative of the department, valid identification issued by the department. [1989 c 154 § 5. Prior: 1988 c 271 § 10; 1985 c 387 § 2.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.115 Asbestos projects—Contractor's certificate required. Before working on an asbestos project, a contractor shall obtain an asbestos contractor's certificate from the department and shall have in its employ at least one certified asbestos supervisor who is responsible for supervising all asbestos projects undertaken by the contractor and for assuring compliance with all state laws and regulations regarding asbestos. The contractor shall apply for certification renewal every year. The department shall ensure that the expiration of the contractor's registration and the expiration of his or her

asbestos contractor's certificate coincide. [1989 c 154 § 6. Prior: 1988 c 271 § 11.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.120 Asbestos projects—Qualified asbestos workers and supervisor—Prenotification to department—Fire personnel. (1) No person may assign any employee, contract with, or permit any individual or person to remove or encapsulate asbestos in any facility unless performed by a certified asbestos worker and under the direct, on-site supervision of a certified asbestos supervisor except, in the case of an asbestos project undertaken by any partnership, firm, corporation or sole proprietorship which has not lost this exemption under RCW 49.26.016(3), and conducted in its own facility and by its own employees. In cases excepted under this section:

(a) Direct, on-site supervision by a certified asbestos supervisor shall be required for asbestos projects performed at one project location by workers who are not certified.

(b) If a project is conducted using only certified workers or if a certified worker functions as a foreman or lead person, supervision can be performed in the regular course of a supervisor's duties and need not be direct and on-site.

(c) The partnership, firm, corporation or sole proprietorship shall submit a written description to the department of the kinds of asbestos projects expected to be undertaken and the procedures to be used in undertaking asbestos projects, which description shall demonstrate competence in performing the work in compliance with the requirements of this chapter, rules adopted under this chapter, and any other requirements of law for the safe demolition, removal, encapsulation, salvage, and disposal of asbestos.

(2) The department shall require persons undertaking asbestos projects to provide written notice to the department before the commencement of the project except as provided in RCW 49.26.125. The notice shall include a written description containing such information as the department requires by rule. The department may by rule allow a person to report multiple projects at one site in one report. The department shall by rule establish the procedure and criteria by which a person will be considered to have attempted to meet the prenotification requirement.

(3) The department shall consult with the state fire protection policy board, and may establish any additional policies and procedures for municipal fire department and fire district personnel who clean up sites after fires which have rendered it likely that asbestos has been or will be disturbed or released into the air. [1989 c 154 § 7. Prior: 1988 c 271 § 12; 1985 c 387 § 4.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.125 Prenotification to department—Exemptions. Prenotification to the department under RCW 49.26.120 shall not be required for:

(1) (a) Any asbestos project involving less than forty–eight square feet of surface area, or less than ten linear feet of pipe unless the surface area of the pipe is greater than forty–eight square feet. The person undertaking such a project shall keep the reports, or statements, and written descriptions required under RCW 49.26.013 and 49.26.120 which shall be available upon request of the department. Employees and employee representatives may request such reports under RCW 49.26.013(2).

(b) The director may waive the prenotification requirement upon written request of an owner for large–scale, on–going projects. In granting such a waiver, the director shall require the owner to provide prenotification if significant changes in personnel, methodologies, equipment, work site, or work procedures occur or are likely to occur. The director shall further require annual resubmittal of such notification.

(c) The director, upon review of an owner's reports, work practices, or other data available as a result of inspections, audits, or other authorized activities, may reduce the size threshold for prenotification required by this section. Such a change shall be based on the director's determination that significant problems in personnel, methodologies, equipment, work site, or work procedures are creating the potential for violations of this chapter or asbestos requirements under chapter 49.17 RCW. The new prenotification requirements shall be given in writing to the owner and shall remain in effect until modified or withdrawn in writing by the director.

(2) Emergency projects.

(a) As used in this section, "emergency project" means a project that was not planned and results from a sudden, unexpected event, and does not include operations that are necessitated by nonroutine failure of equipment or systems.

(b) Emergency projects which disturb or release any material containing asbestos into the air shall be reported to the department within three working days after the commencement of the project in the manner otherwise required under this chapter. A notice shall be clearly posted adjacent to the work site describing the nature of the emergency project. The employees' collective bargaining representatives, or employee representatives, or designated representatives, if any, shall be notified of the emergency as soon as possible by the person undertaking the emergency project.

Incremental phasing in the conduct or design of asbestos projects or otherwise designing or conducting asbestos projects of a size less than forty–eight square feet, or other threshold for exemption as provided under this section, with the intent of avoiding prenotification requirements is a violation of this chapter. [1989 c 154 § 8. Prior: 1988 c 271 § 13.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.130 Asbestos projects—Rules—Fees—Asbestos account. (1) The department shall administer this chapter.

(2) The director of the department shall adopt, in accordance with chapters 34.05 and 49.17 RCW, rules necessary to carry out this chapter.

(3) The department shall prescribe fees for the issuance and renewal of certificates, including recertification, and the administration of examinations, and for the review of training courses.

(4) The asbestos account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in the account. Moneys in the account shall be spent after appropriation only for costs incurred by the department in the administration and enforcement of this chapter. Disbursements from the account shall be on authorization of the director of the department or the director's designee. [1989 c 154 § 9. Prior: 1988 c 271 § 15; 1987 c 219 § 1; 1985 c 387 § 3.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.140 Asbestos projects—Enforcement—Penalties. (1) Unless specifically provided otherwise by statute, this chapter shall be implemented and enforced, including penalties, violations, citations, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW.

(2) A person or individual who previously has been assessed a civil penalty under this section, and who knowingly violates a provision of RCW 49.26.110 through 49.26.130 or a rule adopted pursuant to RCW 49.26.110 through 49.26.130 is guilty of a misdemeanor. [1987 c 219 § 2; 1985 c 387 § 5.]

49.26.150 Discrimination against employee filing complaint prohibited. Any employee who notifies the department of any activity the employee reasonably believes to be a violation of this chapter or any rule adopted under this chapter or who participates in any proceeding related thereto shall have the same rights and protections against discharge or discrimination as employees are afforded under chapter 49.17 RCW. [1989 c 154 § 10. Prior: 1988 c 271 § 16.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.900 Severability—1973 c 30. If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 30 § 5.]

49.26.901 Effective dates—1988 c 271 §§ 6–18. Sections 15, as reenacted and amended in 1989, and 18, chapter 271, Laws of 1988, are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect as of March 24, 1988. Sections 6 through 8, 10 through 13, and 16, chapter 271, Laws of 1988, as reenacted or amended and reenacted in 1989, shall take effect as of January 1, 1989. [1989 c 154 § 11. Prior: 1988 c 271 § 19.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

Chapter 49.28 HOURS OF LABOR

Sections

49.28.010	Eight hour day, 1899 act.
49.28.020	Eight hour day, 1899 act—Public works contracts—Emergency overtime.
49.28.030	Eight hour day, 1899 act—Penalty.
49.28.040	Eight hour day, 1903 act—Policy enunciated.
49.28.050	Eight hour day, 1903 act—Contracts, cancellation of, for violations.
49.28.060	Eight hour day, 1903 act—Stipulation in contracts—Duty of officers.
49.28.065	Public works employees—Agreements to work ten hour day.
49.28.080	Hours of domestic employees.
49.28.082	Hours of domestic employees—Exception.
49.28.084	Hours of domestic employees—Penalty.
49.28.100	Hours of operators of power equipment in waterfront operations.
49.28.110	Hours of operators of power equipment in waterfront operations—Penalty.
49.28.120	Employer's duty to provide time to vote.

Child labor: RCW 26.28.060, 26.28.070.

Hours of labor for public institutions personnel: RCW 72.01.042, 72.01.043.

Prevailing wages must be paid on public works: RCW 39.12.020.

49.28.010 Eight hour day, 1899 act. Hereafter eight hours in any calendar day shall constitute a day's work on any work done for the state or any county or municipality within the state, subject to conditions hereinafter provided. [1899 c 101 § 1; RRS § 7642.]

49.28.020 Eight hour day, 1899 act—Public works contracts—Emergency overtime. All work done by contract or subcontract on any building or improvements or works on roads, bridges, streets, alleys or buildings for the state or any county or municipality within the state, shall be done under the provisions of RCW 49.28.010 through 49.28.030: *Provided*, That in cases of extraordinary emergency such as danger to life or property, the hours for work may be extended, but in such case the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half times the rate of pay allowed for the same amount of time during eight hours' service. And for this purpose RCW 49.28.010 through 49.28.030 is made a part of all contracts, subcontracts or agreements for work done for the state or any county or municipality within the state. [1899 c 101 § 2; RRS § 7643.]

49.28.030 Eight hour day, 1899 act—Penalty. Any contractor, subcontractor, or agent of contractor or subcontractor, foreman or employer who shall violate the provisions of RCW 49.28.010 through 49.28.030, shall be deemed guilty of misdemeanor and upon conviction shall be fined in a sum not less than twenty-five dollars nor more than two hundred dollars, or with imprisonment in the county jail for a period of not less than ten days nor more than ninety days, or both such fine and

imprisonment, at the discretion of the court. [1899 c 101 § 3; RRS § 7644.]

49.28.040 Eight hour day, 1903 act—Policy enunciated. That it is a part of the public policy of the state of Washington that all work "by contract or day labor done" for it, or any political subdivision created by its laws, shall be performed in work days of not more than eight hours each, except in cases of extraordinary emergency. No case of extraordinary emergency shall be construed to exist in any case where other labor can be found to take the place of labor which has already been employed for eight hours in any calendar day. [1903 c 44 § 1; RRS § 7645.]

49.28.050 Eight hour day, 1903 act—Contracts, cancellation of, for violations. All contracts for work for the state of Washington, or any political subdivision created by its laws, shall provide that they may be canceled by the officers or agents authorized to contract for or supervise the execution of such work, in case such work is not performed in accordance with the policy of the state relating to such work. [1903 c 44 § 2; RRS § 7646.]

49.28.060 Eight hour day, 1903 act—Stipulation in contracts—Duty of officers. It is made the duty of all officers or agents authorized to contract for work to be done in behalf of the state of Washington, or any political subdivision created under its laws, to stipulate in all contracts as provided for in RCW 49.28.040 through 49.28.060, and all such officers and agents, and all officers and agents entrusted with the supervision of work performed under such contracts, are authorized, and it is made their duty, to declare any contract canceled, the execution of which is not in accordance with the public policy of this state as herein declared. [1903 c 44 § 3; RRS § 7647.]

49.28.065 Public works employees—Agreements to work ten hour day. Notwithstanding the provisions of RCW 49.28.010 through 49.28.060, a contractor or subcontractor in any public works contract subject to those provisions may enter into an agreement with his or her employees in which the employees work up to ten hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of RCW 49.28.020 shall not apply to the hours, up to forty hours per week, worked pursuant to agreements entered into under this section. [1988 c 121 § 1.]

49.28.080 Hours of domestic employees. No male or female household or domestic employee shall be employed by any person for a longer period than sixty hours in any one week. Employed time shall include minutes or hours when the employee has to remain subject to the call of the employer and when the employee is not free to follow his or her inclinations. [1937 c 129 § 1; RRS § 7651-1. FORMER PARTS OF SECTION:

(i) 1937 c 129 § 2; RRS § 7651-2, now codified as RCW 49.28.082. (ii) 1937 c 129 § 4; RRS § 7651-4, now codified as RCW 49.28.084.]

Severability—1937 c 129: "In the event any part of this act is held invalid such invalidity shall not affect the validity of the remainder of this act." [1937 c 129 § 3.] This applies to RCW 49.28.080 through 49.28.084.

49.28.082 Hours of domestic employees—Exception. In cases of emergency such employee may be employed for a longer period than sixty hours. [1937 c 129 § 2; RRS § 7651-2. Formerly RCW 49.28.080, part.]

49.28.084 Hours of domestic employees—Penalty. Any employer violating RCW 49.28.080 through 49.28.082 shall be guilty of a misdemeanor. [1937 c 129 § 4; RRS § 7651-4. Formerly RCW 49.28.080, part.]

49.28.100 Hours of operators of power equipment in waterfront operations. It shall be unlawful for any employer to permit any of his employees to operate on docks, in warehouses and/or in or on other waterfront properties any power driven mechanical equipment for the purpose of loading cargo on, or unloading cargo from, ships, barges, or other watercraft, or of assisting in such loading or unloading operations, for a period in excess of twelve and one-half hours at any one time without giving such person an interval of eight hours' rest: *Provided, however,* The provisions of this section and RCW 49.28.110 shall not be applicable in cases of emergency, including fire, violent storms, leaking or sinking ships or services required by the armed forces of the United States. [1953 c 271 § 1.]

49.28.110 Hours of operators of power equipment in waterfront operations—Penalty. Any person violating the provisions of RCW 49.28.100 is guilty of a misdemeanor. [1953 c 271 § 2.]

49.28.120 Employer's duty to provide time to vote. (1) Except as provided in subsection (2) of this section, every employer shall arrange employees' working hours on the day of a primary or election, general or special, so that each employee will have a reasonable time up to two hours available for voting during the hours the polls are open as provided by RCW 29.13.080.

If an employee's work schedule does not give the employee two free hours during the time the polls are open, not including meal or rest breaks, the employer shall permit the employee to take a reasonable time up to two hours from the employee's work schedule for voting purposes. In such a case, the employer shall add this time to the time for which the employee is paid.

(2) The provisions of this section apply only if, during the period between the time an employee is informed of his or her work schedule for a primary or election day and the date of the primary or election, there is insufficient time for an absentee ballot to be secured for that primary or election. [1987 c 296 § 1.]

Chapter 49.30 AGRICULTURAL LABOR

Sections

49.30.005	Intent—Duties—Report.
49.30.010	Definitions.
49.30.020	Hours and pay, recordkeeping.
49.30.030	Advisory committee on agricultural labor.
49.30.040	Violation of chapter—Civil infraction.
49.30.900	Severability—1989 c 380.
49.30.901	Conflict with federal requirements—1989 c 380.

49.30.005 Intent—Duties—Report. (1) It is the intent of the legislature that the department assist agricultural employers in mitigating the costs of the state's unemployment insurance program. The department shall work with members of the agricultural community to: Improve understanding of the program's operation; increase compliance with work-search requirements; provide prompt notification of potential claims against an employer's experience rating; inform employers of their rights; inform employers of the actions necessary to appeal a claim and to protect their rights; and reduce claimant and employer fraud. These efforts shall include:

(a) Conducting employer workshops and community seminars;

(b) Developing new educational materials; and

(c) Developing forms that use lay language.

(2) The employment security department, the department of labor and industries, the department of licensing, and the department of revenue shall develop a plan to implement voluntary combined reporting for agricultural employers by January 1, 1991. The departments shall submit the plan to the legislature by January 10, 1990, and include recommendations for legislation necessary to standardize and simplify statutory coverage and other requirements. Such standardization shall be as consistent with federal requirements as possible.

The departments shall consult with representatives of agricultural employer and labor associations and general business associations in the development of the plan and legislation. The departments shall ensure that they accommodate the needs of small agricultural employers in particular.

(3) The department shall report to the appropriate standing committees of the legislature by January 10, 1990, 1991, and 1992 and include a description of the activities of the department to carry out the intents of this section and provide quantitative data where possible on the effectiveness of the activities undertaken by the department to comply with the intents of this section during the previous calendar year. [1989 c 380 § 82.]

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

(1) "Agricultural employment" or "employment" means employment in agricultural labor as defined in RCW 50.04.150.

(2) "Department" means the department of labor and industries.

(3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that engages in any agricultural activity in this state and employs one or more employees.

(4) "Employee" means a person employed in agricultural employment, and includes a person who is working under an independent contract the essence of which is personal labor in agricultural employment whether by way of manual labor or otherwise. However, "employee" shall not include immediate family members of the officers of any corporation, partnership, sole proprietorship, or other business entity, or officers of any closely held corporation engaged in agricultural production of crops or livestock.

(5) "Minor" means an employee who is under the age of eighteen years. [1989 c 380 § 83.]

49.30.020 Hours and pay, recordkeeping. (1) Each employer required to keep employment records under RCW 49.46.070, shall retain such records for three years.

(2) Each employer shall furnish to each employee at the time the employee's wages are paid an itemized statement showing the pay basis in hours or days worked, the rate or rates of pay, the gross pay, and all deductions from the pay for the respective pay period. [1989 c 380 § 84.]

49.30.030 Advisory committee on agricultural labor. The department shall establish an advisory committee on agricultural labor to develop recommendations for rules to provide labor standards for agricultural employment of minors. The advisory committee shall be composed of: A representative of the department of labor and industries; a representative of the department of agriculture; representatives of the agricultural employer and employee communities; and one legislator from each caucus of the house of representatives and the senate, to be appointed by the speaker of the house of representatives and president of the senate, respectively.

Based upon the recommendations of the advisory committee and considerations as to the nature of agricultural employment and usual crop cultural and harvest requirements, the director shall adopt rules under chapter 34.05 RCW which only address the following:

(1) The employment of minors, providing for annual notification to the department of intent to hire minors, and including provisions that both encourage school attendance and provide flexible hours that will meet the requirements of agricultural employment; and

(2) The provision of rest and meal periods for agricultural employees, taking into account naturally occurring work breaks where possible. The initial rules shall be adopted no later than July 1, 1990. [1989 c 380 § 85.]

49.30.040 Violation of chapter—Civil infraction. Any violation of the provisions of this chapter or rules adopted hereunder shall be a class I civil infraction. The director shall have the authority to issue and enforce

civil infractions according to chapter 7.80 RCW. [1989 c 380 § 86.]

49.30.900 Severability—1989 c 380. See RCW 15.58.942.

49.30.901 Conflict with federal requirements—1989 c 380. See note following RCW 50.04.150.

Chapter 49.32

INJUNCTIONS IN LABOR DISPUTES

Sections

49.32.011	Injunctions in labor disputes.
49.32.020	Policy enunciated.
49.32.030	Undertakings and promises unenforceable.
49.32.050	Jurisdiction of courts.
49.32.060	Concert of action immaterial.
49.32.070	Responsibility of associations.
49.32.072	Injunctions—Hearings and findings—Temporary orders—Security.
49.32.073	Injunctions—Complaints, conditions precedent.
49.32.074	Injunctions—Findings and order essential.
49.32.080	Appellate review.
49.32.090	Contempts—Speedy jury trial.
49.32.100	Contempts—Retirement of judge.
49.32.110	Definitions.
49.32.900	Severability—1933 ex.s. c 7.
49.32.910	General repealer.

Labor unions—Injunctions in labor disputes—1919 act: Chapter 49.36 RCW.

49.32.011 Injunctions in labor disputes. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter. [1933 ex.s. c 7 § 1; RRS § 7612-1. Cf. 1919 c 185 § 2. Formerly RCW 49.32.040.]

Injunctions in labor disputes: RCW 49.36.015.

49.32.020 Policy enunciated. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the state of Washington, as such jurisdiction and authority are herein defined and limited, the public policy of the state of Washington is hereby declared as follows:

WHEREAS, Under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or

coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protections; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the state of Washington are hereby enacted. [1933 ex.s. c 7 § 2; RRS § 7612-2.]

49.32.030 Undertakings and promises unenforceable.

Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in RCW 49.32.020, is hereby declared to be contrary to the public policy of the state of Washington, shall not be enforceable in any court of the state of Washington, and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation and any employee or prospective employee of the same, whereby—

(1) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(2) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization. [1933 ex.s. c 7 § 3; RRS § 7612-3.]

49.32.050 Jurisdiction of courts. No court of the state of Washington shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute or prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(1) Ceasing or refusing to perform any work or to remain in any relation of employment;

(2) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in RCW 49.32.030;

(3) Paying or giving to, or withholding from, any person participating or interested in such labor dispute any strike or unemployment benefits or insurance or other moneys or things of value;

(4) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state;

(5) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(6) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(7) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(8) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(9) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in RCW 49.32.030. [1933 ex.s. c 7 § 4; RRS § 7612-4.]

49.32.060 Concert of action immaterial. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in RCW 49.32.050. [1933 ex.s. c 7 § 5; RRS § 7612-5.]

49.32.070 Responsibility of associations. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the state of Washington for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. [1933 ex.s. c 7 § 6; RRS § 7612-6.]

49.32.072 Injunctions—Hearings and findings—Temporary orders—Security. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(1) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(2) That substantial and irreparable injury to complainant's property will follow;

(3) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(4) That complainant has no adequate remedy at law; and

(5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. [1933 ex.s. c 7 § 7; RRS § 7612-7.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936).

49.32.073 Injunctions—Complaints, conditions precedent. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. [1933 ex.s. c 7 § 8; RRS § 7612-8.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936).

(1989 Ed.)

49.32.074 Injunctions—Findings and order essential. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute, shall include only a prohibition of such specific act or acts as may be expressly complained of in the complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein. [1933 ex.s. c 7 § 9; RRS § 7612-9.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936).

49.32.080 Appellate review. Whenever any court of the state of Washington shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on his filing the usual bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the supreme court or the court of appeals for its review. Upon the filing of such record in the supreme court or the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character. [1971 c 81 § 116; 1933 ex.s. c 7 § 10; RRS § 7612-10.]

Rules of court: Appeal procedure superseded by RAP 2.1, 2.2, 18.22.

49.32.090 Contempts—Speedy jury trial. In all cases arising under this chapter in which a person shall be charged with contempt in a court of the state of Washington, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders, or process of the court. [1933 ex.s. c 7 § 11; RRS § 7612-11.]

49.32.100 Contempts—Retirement of judge. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as provided by law. The demand shall

be filed prior to the hearing of the contempt proceeding. [1933 ex.s. c 7 § 12; RRS § 7612-12.]

Civil procedure—Prejudice of judge—Change of venue: RCW 4.12.040.

49.32.110 Definitions. When used in this chapter, and for the purpose of this chapter—

(1) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (a) between one or more employers or associations of employers and one or more employees or associations of employees; (b) between one or more employers or associations of employers and one or more employers or association of employers; or (c) between one or more employees or association of employees and one or more employees or association of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which dispute occurs, or has a direct or indirect interest therein or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(3) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee. [1933 ex.s. c 7 § 13; RRS § 7612-13. Formerly RCW 49.32.010.]

49.32.900 Severability—1933 ex.s. c 7. If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional, or otherwise invalid, the remaining provisions of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby. [1933 ex.s. c 7 § 14; RRS § 7612-14.]

49.32.910 General repealer. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed. [1933 ex.s. c 7 § 15; RRS § 7612-15.]

Chapter 49.36 LABOR UNIONS

Sections

49.36.010	Unions legalized.
49.36.015	Injunctions in labor disputes.
49.36.020	Employment contracts—Remedy for violation.
49.36.030	Prosecutions prohibited.

Collective bargaining with employees of city owned utilities: RCW 35.22.350.

Discrimination—Unfair practices: RCW 49.60.180 through 49.60-215, 49.60.220.

Prohibited practices: Chapter 49.44 RCW.

Supervisor of industrial relations: RCW 43.22.260.

49.36.010 Unions legalized. It shall be lawful for working men and women to organize themselves into, or carry on labor unions for the purpose of lessening the hours of labor or increasing the wages or bettering the conditions of the members of such organizations; or carry out their legitimate purposes by any lawful means. [1919 c 185 § 1; RRS § 7611.]

49.36.015 Injunctions in labor disputes. No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employee or between employer and employees or between employees or between persons employed and persons seeking employment involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable damage to property or to a personal right or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such petition must be in writing describing such damage or injury feared by the applicant, and sworn to by the applicant or his agent or attorney. No such restraining order or injunction shall prohibit any such person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor; or from paying or giving to, or withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this section be considered or held to be illegal or unlawful in any court of the state. [1919 c 185 § 2; RRS § 7612.]

Labor disputes: Chapter 49.32 RCW.

49.36.020 Employment contracts—Remedy for violation. The labor of a human being is not a commodity or article of commerce, and the right to enter into the relation of employer and employee or to change that relation except in violation of contract is a legal right. In all cases involving the violation of the contract of employment, either by the employee or employer where no irreparable damage is about to be done to the property, personal rights or property rights of either, no injunction shall be granted, but the parties shall be left to their remedy at law. [1919 c 185 § 3; RRS § 7613.]

Injunctions in labor disputes: RCW 49.32.011.

49.36.030 Prosecutions prohibited. No person shall be indicted, prosecuted, or tried in any court of this state for entering into or carrying on any lawful arrangement, agreement, or combination between themselves made with a view of lessening the number of hours of labor or increasing wages or bettering the conditions of working

men and women, or for any lawful act done in pursuance thereof. [1919 c 185 § 4; RRS § 7614.]

Chapter 49.38 THEATRICAL ENTERPRISES

Sections

49.38.010	Definitions.
49.38.020	Payment of wages—Cash deposit or bond required.
49.38.030	Action to require cash deposit or bond.
49.38.040	Payment of wages—Action against cash deposit or bond—Limitations.
49.38.050	Recovery of attorney's fees and costs.
49.38.060	Penalty.
49.38.070	Department to adopt rules.
49.38.900	Severability—1984 c 89.

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

(1) Department means the department of labor and industries.

(2) Theatrical enterprise means the production of any circus, vaudeville, carnival, revue, variety show, musical comedy, operetta, opera, drama, endurance contest, marathon, walkathon, or any other entertainment event where persons are a part of the enterprise's presentation. Theatrical enterprise does not include a program of a radio or television station operating pursuant to a license issued by the federal communications commission or any event produced by a nonprofit cultural or artistic organization that has been located in a community for at least two years. [1984 c 89 § 1.]

49.38.020 Payment of wages—Cash deposit or bond required. (1) Any person engaged in the business of promoting a theatrical enterprise in this state shall deposit with the department the cash or a bond issued by a surety company authorized to do business in this state in an amount determined sufficient by the department to pay the wages of every person involved in the production of the theatrical enterprise for the period for which a single payment of wages is made, but not to exceed one week.

(2) The deposit required under subsection (1) of this section shall be on file with the department seven calendar days before the commencement of the theatrical enterprise. [1984 c 89 § 2.]

49.38.030 Action to require cash deposit or bond. If a person engaged in the business of promoting a theatrical enterprise fails to deposit cash or the bond required under RCW 49.38.020, the department may bring an action in the superior court to compel such person to deposit the cash or bond or cease doing business until he or she has done so. [1984 c 89 § 3.]

49.38.040 Payment of wages—Action against cash deposit or bond—Limitations. Any person having a claim for wages against a person engaged in the business of promoting a theatrical enterprise may bring an action

against the bond or cash deposit in the district or superior court of the county in which the theatrical enterprise is produced or any county in which the principal on the bond resides or conducts business. An action against the bond may be brought against the named surety without joining the principal named in the bond. The liability of the surety shall not exceed the amount named in the bond. Any action brought under this chapter shall be commenced within one year after the completion of the work for which wages are alleged to be due and owing under this chapter. If a cash deposit has been made in lieu of a surety bond and if judgment is entered against the depositor and deposit, then the department shall upon receipt of a certified copy of a final judgment within one year of the date of entry of such judgment pay the judgment from the deposit. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit. [1984 c 89 § 4.]

49.38.050 Recovery of attorney's fees and costs. In an action brought pursuant to RCW 49.38.040, the prevailing party is entitled to reasonable attorney's fees and costs. [1984 c 89 § 5.]

49.38.060 Penalty. Any person who violates this chapter is guilty of a gross misdemeanor. [1984 c 89 § 6.]

49.38.070 Department to adopt rules. The department may adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter. [1984 c 89 § 7.]

49.38.900 Severability—1984 c 89. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 89 § 8.]

Chapter 49.40 SEASONAL LABOR

Sections

49.40.010	Seasonal labor defined.
49.40.020	Contracts to be in writing—Advances.
49.40.030	Fraud in securing advances—Penalty.
49.40.040	Disputes determined by director of labor and industries.
49.40.050	Hearings.
49.40.060	Findings and award.
49.40.070	Appeal.
49.40.080	Findings and award as evidence.

49.40.010 Seasonal labor defined. For the purpose of this chapter the term "seasonal labor" shall include all work performed by any person employed for a period of time greater than one month and where the wages for such work are not to be paid at any fixed interval of time, but at the termination of such employment, and where such person is hired within this state for work to be performed outside the state and the wages earned during said employment are to be paid in this state at

the termination of such employment: *Provided*, That this chapter shall not apply to wages earned by seamen or other persons where the payment of their wages is regulated by federal statutes. [1919 c 191 § 1; RRS § 7603.]

49.40.020 Contracts to be in writing—Advances. Every contract for seasonal labor shall be in writing and signed by the employer and the employee, and may provide for advances of moneys to be earned under such contract or for the furnishing of supplies to the employee before the wages are earned, and for the payment of money or the furnishing of supplies during the season. [1919 c 191 § 2; RRS § 7604.]

49.40.030 Fraud in securing advances—Penalty. Every employee who with intent to defraud shall have secured advances of money or supplies under a contract for reasonable labor and who with intent to defraud shall wilfully fail to perform sufficient labor to compensate for such advances and supplies made under such contract shall be guilty of a gross misdemeanor. [1919 c 191 § 3; RRS § 7605.]

49.40.040 Disputes determined by director of labor and industries. Upon the written petition of either the employer or the employee setting forth in ordinary and concise language the facts and questions in dispute, the director of labor and industries shall, in person or by his duly authorized deputy, and is hereby authorized to hear and determine all disputes concerning wages earned at seasonal labor, and allow or reject deductions made from such wages for moneys advanced or supplies furnished before the wages are earned for money paid or supplies furnished during the season or for money paid to third persons upon the written order of the employee. [1919 c 191 § 4; RRS § 7606.]

49.40.050 Hearings. Upon the filing of any such petition, the director of labor and industries shall notify the other party to the dispute of the time and place when and where such petition will be heard, and may set said petition for a hearing before a regularly appointed deputy at such place in the state as he shall determine is most convenient for the parties, and the director or his deputy shall have power and authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers and records at such hearing, and to administer oaths. Obedience to such subpoenas shall be enforced by the courts of the county where such hearing is held. [1919 c 191 § 5; RRS § 7607.]

49.40.060 Findings and award. The director of labor and industries, or his deputy holding the hearing shall, after such hearing, determine the amount due from the employer to the employee, and shall make findings of fact and an award in accordance therewith, which findings and award shall be filed in the office of the director and a copy thereof served upon the employer and upon the employee by registered mail directed to their last known post office address. [1919 c 191 § 6; RRS § 7608.]

49.40.070 Appeal. Any person aggrieved by the finding or award of the director of labor and industries has the right of appeal in the manner provided in chapter 34.05 RCW. [1987 c 202 § 217; 1919 c 191 § 7; RRS § 7609.]

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

49.40.080 Findings and award as evidence. In case no appeal is taken from the award of the director of labor and industries and suit shall be brought upon the contract for seasonal labor in any court of competent jurisdiction, the findings and award of the director made in any proceeding under this chapter at a hearing at which both parties to such suit shall have appeared may be introduced in evidence in such suit, for the information of the court in which the suit is pending, and may, in the discretion of the court, be submitted to the jury as a part of the evidence in the case; but such findings and award shall not be conclusive or binding upon the court or the jury in any such case. [1919 c 191 § 8; RRS § 7610.]

Chapter 49.44

VIOLATIONS—PROHIBITED PRACTICES

Sections

49.44.010	Blacklisting—Penalty.
49.44.020	Bribery of labor representative.
49.44.030	Labor representative receiving bribe.
49.44.040	Obtaining employment by false letter or certificate.
49.44.050	Fraud by employment agent.
49.44.060	Corrupt influencing of agent.
49.44.070	Grafting by employee.
49.44.080	Endangering life by refusal to labor.
49.44.090	Unfair practices in employment because of age of employee or applicant—Exceptions.
49.44.100	Bringing in out of state persons to replace employees involved in labor dispute.
49.44.110	Bringing in out of state persons to replace employees involved in labor dispute—Penalty.
49.44.120	Requiring lie detector tests.
49.44.130	Requiring lie detector tests—Criminal penalty.
49.44.135	Requiring lie detector tests—Civil penalty and damages—Attorneys' fees.
49.44.140	Requiring assignment of employee's rights to inventions—Conditions.
49.44.150	Requiring assignment of employee's rights to inventions—Disclosure of inventions by employee.

Blind or handicapped persons, discriminating against in public employment: RCW 70.84.080.

Discrimination—Unfair practices: RCW 49.60.180 through 49.60.200.

49.44.010 Blacklisting—Penalty. Every person in this state who shall wilfully and maliciously, send or deliver, or make or cause to be made, for the purpose of being delivered or sent or part with the possession of any paper, letter or writing, with or without name signed thereto, or signed with a fictitious name, or with any letter, mark or other designation, or publish or cause to be published any statement for the purpose of preventing any other person from obtaining employment in this state or elsewhere, and every person who shall wilfully and maliciously "blacklist" or cause to be "blacklisted" any person or persons, by writing, printing or publishing, or causing the same to be done, the name, or mark, or

designation representing the name of any person in any paper, pamphlet, circular or book, together with any statement concerning persons so named, or publish or cause to be published that any person is a member of any secret organization, for the purpose of preventing such person from securing employment, or who shall wilfully and maliciously make or issue any statement or paper that will tend to influence or prejudice the mind of any employer against the person of such person seeking employment, or any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, individual or individuals, shall, on conviction thereof, be adjudged guilty of misdemeanor and punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than one year, or by both such fine and imprisonment. [1899 c 23 § 1; RRS § 7599.]

Interference with or discharge from employment of member of organized militia: RCW 38.40.040, 38.40.050.

Libel and slander: Chapter 9.58 RCW.

49.44.020 Bribery of labor representative. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any duly constituted representative of a labor organization, with intent to influence him in respect to any of his acts, decisions or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, shall be guilty of a gross misdemeanor. [1909 c 249 § 424; RRS § 2676.]

49.44.030 Labor representative receiving bribe. Every person who, being the duly constituted representative of a labor organization, shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that any of his acts, decisions or other duties as such representative, or any act to prevent or cause a strike of the employees of any person or corporation shall be influenced thereby, shall be guilty of a gross misdemeanor. [1909 c 249 § 425; RRS § 2677.]

49.44.040 Obtaining employment by false letter or certificate. Every person who shall obtain employment or appointment to any office or place of trust, by color or aid of any false or forged letter or certificate of recommendation, shall be guilty of a misdemeanor. [1909 c 249 § 371; RRS § 2623.]

49.44.050 Fraud by employment agent. Every employment agent or broker who, with intent to influence the action of any person thereby, shall misstate or misrepresent verbally, or in any writing or advertisement, any material matter relating to the demand for labor, the conditions under which any labor or service is to be performed, the duration thereof or the wages to be paid therefor, shall be guilty of a misdemeanor. [1909 c 249 § 372; RRS § 2624.]

Discrimination—Unfair practices of employment agencies: RCW 49.60.200.

False advertising: RCW 9.04.010.

49.44.060 Corrupt influencing of agent. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any agent, employee or servant of any person or corporation, with intent to influence his action in relation to his principal's, employer's or master's business, shall be guilty of a gross misdemeanor. [1909 c 249 § 426; RRS § 2678.]

49.44.070 Grafting by employee. Every agent, employee or servant of any person or corporation who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that he shall act in any particular manner in connection with his principal's, employer's or master's business; or who, being authorized to purchase or contract for materials, supplies or other articles or to employ servants or labor for his principal, employer or master, shall ask or receive, directly or indirectly, for himself or another, a commission, discount, bonus or promise thereof from any person with whom he may deal in relation to such matters, shall be guilty of a gross misdemeanor. [1909 c 249 § 427; RRS § 2679.]

49.44.080 Endangering life by refusal to labor. Every person who shall wilfully and maliciously, either alone or in combination with others, break a contract of service or employment, knowing or having reasonable cause to believe that the consequence of his so doing will be to endanger human life or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, shall be guilty of a misdemeanor. [1909 c 249 § 281; RRS § 2533.]

Injunctions in labor disputes: Chapter 49.32 RCW.

Labor unions—Injunctions in labor disputes: RCW 49.36.015.

49.44.090 Unfair practices in employment because of age of employee or applicant—Exceptions. It shall be an unfair practice:

(1) For an employer or licensing agency, because an individual is between the ages of forty and seventy, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment: *Provided*, That employers or licensing agencies may establish reasonable minimum and/or maximum age limits with respect to candidates for positions of employment, which positions are of such a nature as to require extraordinary physical effort, endurance, condition or training, subject to the approval of the executive secretary of the Washington state human rights commission or the director of labor and industries through the division of industrial relations.

(2) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment

or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination respecting individuals between the ages of forty and seventy: *Provided*, That nothing herein shall forbid a requirement of disclosure of birth date upon any form of application for employment or by the production of a birth certificate or other sufficient evidence of the applicant's true age.

Nothing contained in this section or in RCW 49.60.180 as to age shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section; nor shall anything in this section or in RCW 49.60.180 be deemed to preclude the varying of insurance coverages according to an employee's age; nor shall this section be construed as applying to any state, county, or city law enforcement agencies, or as superseding any law fixing or authorizing the establishment of reasonable minimum or maximum age limits with respect to candidates for certain positions in public employment which are of such a nature as to require extraordinary physical effort, or which for other reasons warrant consideration of age factors. [1985 c 185 § 30; 1983 c 293 § 2; 1961 c 100 § 5.]

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Unfair practices, discrimination because of age: RCW 49.60.180 through 49.60.205.

49.44.100 Bringing in out of state persons to replace employees involved in labor dispute. It shall be unlawful for any person, firm or corporation not directly involved in a labor strike or lockout to recruit and bring into this state from outside this state any person or persons for employment, or to secure or offer to secure for such person or persons any employment, when the purpose of such recruiting, securing or offering to secure employment, is to have such persons take the place in employment of employees in a business owned by a person, firm or corporation involved in a labor strike or lockout, or to have such persons act as pickets of a business owned by a person, firm or corporation where a labor strike or lockout exists: *Provided*, That this section and RCW 49.44.110 shall not apply to activities and services offered by or through the Washington employment security department. [1961 c 180 § 1.]

49.44.110 Bringing in out of state persons to replace employees involved in labor dispute—Penalty. Any person violating the provisions of RCW 49.44.100 shall be guilty of a gross misdemeanor. [1961 c 180 § 2.]

49.44.120 Requiring lie detector tests. It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require, directly or indirectly, that any employee or prospective employee take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: *Provided*, That this

section shall not apply to persons making initial application for employment with any law enforcement agency: *Provided further*, That this section shall not apply to either the initial application for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security.

Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83-.010. [1985 c 426 § 1; 1973 c 145 § 1; 1965 c 152 § 1.]

49.44.130 Requiring lie detector tests—Criminal penalty. (1) Any person violating the provisions of RCW 49.44.120 shall be guilty of a misdemeanor.

(2) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(3) Nothing in this section or RCW 49.44.120 may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under RCW 49.44.120 for purposes of any civil action or injunctive relief. [1985 c 426 § 2; 1965 c 152 § 2.]

49.44.135 Requiring lie detector tests—Civil penalty and damages—Attorneys' fees. In a civil action alleging a violation of RCW 49.44.120, the court may:

(1) Award a penalty in the amount of five hundred dollars to a prevailing employee or prospective employee in addition to any award of actual damages;

(2) Award reasonable attorneys' fees and costs to the prevailing employee or prospective employee; and

(3) Pursuant to RCW 4.84.185, award any prevailing party against whom an action has been brought for a violation of RCW 49.44.120 reasonable expenses and attorneys' fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause. [1985 c 426 § 3.]

49.44.140 Requiring assignment of employee's rights to inventions—Conditions. (1) A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this state and is to that extent void and unenforceable.

(2) An employer shall not require a provision made void and unenforceable by subsection (1) of this section as a condition of employment or continuing employment.

(3) If an employment agreement entered into after September 1, 1979, contains a provision requiring the

employee to assign any of the employee's rights in any invention to the employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. [1979 ex.s. c 177 § 2.]

49.44.150 Requiring assignment of employee's rights to inventions—Disclosure of inventions by employee. Even though the employee meets the burden of proving the conditions specified in RCW 49.44.140, the employee shall, at the time of employment or thereafter, disclose all inventions being developed by the employee, for the purpose of determining employer or employee rights. The employer or the employee may disclose such inventions to the department of employment security, and the department shall maintain a record of such disclosures for a minimum period of five years. [1979 ex.s. c 177 § 3.]

Chapter 49.46 MINIMUM WAGE ACT

Sections	
49.46.005	Declaration of necessity and police power.
49.46.010	Definitions.
49.46.020	Minimum hourly wage.
49.46.025	College student exemption.
49.46.040	Investigations—Services of federal agencies—Employer's records—Industrial homework.
49.46.060	Exceptions for learners, apprentices, messengers, disabled.
49.46.065	Individual volunteering labor to state or local governmental agency—Amount reimbursed for expenses or received as nominal compensation not deemed salary for rendering services or affecting public retirement rights.
49.46.070	Records of employer—Contents—Inspection—Sworn statement.
49.46.080	New or modified regulations—Judicial review—Stay.
49.46.090	Payment of wages less than chapter requirements—Employer's liability—Assignment of wage claim.
49.46.100	Prohibited acts of employer—Penalty.
49.46.110	Collective bargaining not impaired.
49.46.120	Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected.
49.46.130	Minimum rate of compensation for employment in excess of forty hour work week—Exceptions.
49.46.140	Notification of employers.
49.46.150	Review and recommendations for increase.
49.46.900	Severability—1959 c 294.
49.46.910	Short title.
49.46.920	Effective date—1975 1st ex.s. c 289.

Enforcement of wage claims: RCW 49.48.040.

49.46.005 Declaration of necessity and police power. Whereas the establishment of a minimum wage for employees is a subject of vital and imminent concern to the

people of this state and requires appropriate action by the legislature to establish minimum standards of employment within the state of Washington, therefore the legislature declares that in its considered judgment the health, safety and the general welfare of the citizens of this state require the enactment of this measure, and exercising its police power, the legislature endeavors by this chapter to establish a minimum wage for employees of this state to encourage employment opportunities within the state. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health, safety and welfare of the people of this state. [1961 ex.s. c 18 § 1.]

49.46.010 Definitions. As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by regulations of the director;

(3) "Employ" includes to permit to work;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman as those terms are defined and delimited by regulations of the director. However, those terms shall be defined and delimited by the state personnel board pursuant to chapter 41.06 RCW and the higher education personnel board pursuant to chapter 28B.16 RCW for employees employed under their respective jurisdictions;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service

rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed. [1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); 1984 c 7 § 364; 1977 ex.s. c 69 § 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.]

Effective date—1989 c 1 (Initiative Measure No. 518, approved November 8, 1988): "This act shall take effect January 1, 1989." [1989 c 1 § 5.]

Reviser's note: "This act" consisted of the 1989 c 1 amendments to RCW 49.46.010, 49.46.020, and 49.12.121 and the enactment of RCW 49.46.150.

Severability—1984 c 7: See note following RCW 47.01.141.

49.46.020 Minimum hourly wage. Every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not

less than three dollars and eighty-five cents per hour except as may be otherwise provided under this section. Beginning January 1, 1990, the state minimum wage shall be four dollars and twenty-five cents per hour. The director shall by regulation establish the minimum wage for employees under the age of eighteen years. [1989 c 1 § 2 (Initiative Measure No. 518, approved November 8, 1988); 1975 1st ex.s. c 289 § 2; 1973 2nd ex.s. c 9 § 1; 1967 ex.s. c 80 § 1; 1961 ex.s. c 18 § 3; 1959 c 294 § 2.]

Effective date—1989 c 1 (Initiative Measure No. 518): See note following RCW 49.46.010.

Notification of employers: RCW 49.46.140.

49.46.025 College student exemption. The provisions of RCW 49.46.020, as amended by *1961 ex.s. c 18 § 2, shall not apply to any student enrolled in an institution of higher education who is employed by such institution. [1961 ex.s. c 18 § 5.]

***Reviser's note:** The reference to "1961 ex.s. c 18 § 2" appears to be erroneous. RCW 49.46.020 was amended by 1961 ex.s. c 18 § 3.

49.46.040 Investigations—Services of federal agencies—Employer's records—Industrial homework. (1) The director or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

(2) With the consent and cooperation of federal agencies charged with the administration of federal labor laws, the director may, for the purpose of carrying out his functions and duties under this chapter, utilize the services of federal agencies and their employees and, notwithstanding any other provision of law, may reimburse such federal agencies and their employees for services rendered for such purposes.

(3) Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make reports therefrom to the director as he shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations thereunder.

(4) The director is authorized to make such regulations regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations of the director relating to industrial homework are hereby continued in full force and effect. [1959 c 294 § 4.]

49.46.060 Exceptions for learners, apprentices, messengers, disabled. The director, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for (1) the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the director, at such wages lower than the minimum wage applicable under RCW 49.46.020 and subject to such limitations as to time, number, proportion, and length of service as the director shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the minimum wage applicable under RCW 49.46.020 and for such period as shall be fixed in such certificates. [1959 c 294 § 6.]

49.46.065 Individual volunteering labor to state or local governmental agency—Amount reimbursed for expenses or received as nominal compensation not deemed salary for rendering services or affecting public retirement rights. When an individual volunteers his or her labor to a state or local governmental body or agency and receives pursuant to a statute or policy or an ordinance or resolution adopted by or applicable to the state or local governmental body or agency reimbursement in lieu of compensation at a nominal rate for normally incurred expenses or receives a nominal amount of compensation per unit of voluntary service rendered such reimbursement or compensation shall not be deemed a salary for the rendering of services or for purposes of granting, affecting or adding to any qualification, entitlement or benefit rights under any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW. [1977 ex.s. c 69 § 2.]

49.46.070 Records of employer—Contents—Inspection—Sworn statement. Every employer subject to any provision of this chapter or of any regulation issued under this chapter shall make, and keep in or about the premises wherein any employee is employed, a record of the name, address, and occupation of each of his employees, the rate of pay, and the amount paid each pay period to each such employee, the hours worked each day and each work week by such employee, and such other information as the director shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or of the regulations thereunder. Such records shall be open for inspection or transcription by the director or his authorized representative at any reasonable time. Every such employer shall furnish to the director or to his authorized representative on demand a sworn statement of such records and information upon forms prescribed or approved by the director. [1959 c 294 § 7.]

49.46.080 New or modified regulations—Judicial review—Stay. (1) As new regulations or changes or modification of previously established regulations are

proposed, the director shall call a public hearing for the purpose of the consideration and establishment of such regulations following the procedures used in the promulgation of standards of safety under chapter 49.17 RCW.

(2) Any interested party may obtain a review of the director's findings and order in the superior court of county of petitioners' residence by filing in such court within sixty days after the date of publication of such regulation a written petition praying that the regulation be modified or set aside. A copy of such petition shall be served upon the director. The finding of facts, if supported by evidence, shall be conclusive upon the court. The court shall determine whether the regulation is in accordance with law. If the court determines that such regulation is not in accordance with law, it shall remand the case to the director with directions to modify or revoke such regulation. If application is made to the court for leave to adduce additional evidence by any aggrieved party, such party shall show to the satisfaction of the court that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence before the director. If the court finds that such evidence is material and that reasonable grounds exist for failure of the aggrieved party to adduce such evidence in prior proceedings, the court may remand the case to the director with directions that such additional evidence be taken before the director. The director may modify the findings and conclusions, in whole or in part, by reason of such additional evidence.

(3) The judgment and decree of the court shall be final except that it shall be subject to review by the supreme court or the court of appeals as in other civil cases.

(4) The proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of an administrative regulation issued under the provisions of this chapter. The court shall not grant any stay of an administrative regulation unless the person complaining of such regulation shall file in the court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the regulation, in the event such regulation is affirmed, of the amount by which the compensation such employees are entitled to receive under the regulation exceeds the compensation they actually receive while such stay is in effect. [1983 c 3 § 157; 1971 c 81 § 117; 1959 c 294 § 8.]

49.46.090 Payment of wages less than chapter requirements—Employer's liability—Assignment of wage claim. (1) Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer to work for less than such wage rate shall be no defense to such action.

(2) At the written request of any employee paid less than the wages to which he is entitled under or by virtue

of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. [1959 c 294 § 9.]

49.46.100 Prohibited acts of employer—Penalty.

(1) Any employer who hinders or delays the director or his authorized representatives in the performance of his duties in the enforcement of this chapter, or refuses to admit the director or his authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the director, or his authorized representatives that he has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor. [1959 c 294 § 10.]

49.46.110 Collective bargaining not impaired. Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter. [1959 c 294 § 11.]

49.46.120 Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected. This chapter establishes a minimum standard for wages and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more

favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law. [1961 ex.s. c 18 § 4; 1959 c 294 § 12.]

49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions.

(1) No employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed, except that the provisions of this subsection (1) shall not apply to any person exempted pursuant to RCW 49.46.010(5) as now or hereafter amended and the provision of this subsection shall not apply to employees who request compensating time off in lieu of overtime pay nor to any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel, nor to seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year, nor to any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay, nor to an individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week.

(2) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred and forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he is employed: *Provided*, That this section shall not apply to any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management

of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption: *Provided further*, That in any industry in which federal law provides for an overtime payment based on a work week other than forty hours then provisions of this section shall not apply; however the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state: *Provided further*, That "industry" as that term is used in this section shall mean a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259). [1989 c 104 § 1. Prior: 1977 ex.s. c 4 § 1; 1977 ex.s. c 74 § 1; 1975 1st ex.s. c 289 § 3.]

49.46.140 Notification of employers. The director of the department of labor and industries and the commissioner of employment security shall each notify employers of the requirements of *this act through their regular quarterly notices to employers. [1975 1st ex.s. c 289 § 4.]

***Reviser's note:** "this act" [1975 1st ex.s. c 289] consists of RCW 49.46.130, 49.46.140 and 49.46.920 and amendments to RCW 49.46.010 and 49.46.020.

49.46.150 Review and recommendations for increase. Beginning January 1, 1991, and prior to January 1 of each odd-numbered year thereafter, the office of financial management shall review the state minimum wage and make recommendations to the legislature and the governor regarding its increase. [1989 c 1 § 4 (Initiative Measure No. 518, approved November 8, 1988).]

Effective date—1989 c 1 (Initiative Measure No. 518): See note following RCW 49.46.010.

49.46.900 Severability—1959 c 294. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter and the application thereof to other persons or circumstances shall not be affected thereby. [1959 c 294 § 13.]

49.46.910 Short title. This chapter may be known and cited as the "Washington Minimum Wage Act." [1961 ex.s. c 18 § 6; 1959 c 294 § 14.]

49.46.920 Effective date—1975 1st ex.s. c 289. This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect September 1, 1975. [1975 1st ex.s. c 289 § 5.]

Chapter 49.48

WAGES—PAYMENT—COLLECTION

Sections

49.48.010	Payment of wages due to employee ceasing work to be at end of pay period—Exceptions—Authorized deductions or withholdings.
49.48.020	Penalty for noncompliance with RCW 49.48.010 through 49.48.030 and 49.48.060.
49.48.030	Attorney's fee in action on wages—Exception.
49.48.040	Enforcement of wage claims—Issuance of subpoenas—Compliance.
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49.48.100	Written consent of spouse required.
49.48.115	Employer defined.
49.48.120	Payment on employee's death.

Chattel liens: Chapter 60.08 RCW.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

49.48.010 Payment of wages due to employee ceasing work to be at end of pay period—Exceptions—Authorized deductions or withholdings. When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period: *Provided, however*, That this paragraph shall not apply when workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers or some of them cooperate to establish a plan for the weekly payment of wages at a central place or places and in accordance with a unified schedule of paydays providing for at least one payday each week; but this subsection shall not apply to any such plan until ten days after notice of their intention to set up such a plan shall have been given to the director of labor and industries by the employers who cooperate to establish the plan; and having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the director of labor and industries by the employers intending to abandon the plan: *Provided further*, That the duty to pay an employee forthwith shall not apply if the labor-management agreement under which the employee has been employed provides otherwise.

It shall be unlawful for any employer to withhold or divert any portion of an employee's wages unless the deduction is:

- (1) Required by state or federal law; or
- (2) Specifically agreed upon orally or in writing by the employee and employer; or
- (3) For medical, surgical or hospital care or service, pursuant to any rule or regulation: *Provided, however,* That the deduction is openly, clearly and in due course recorded in the employer's books and records.

Paragraph *three of this section shall not be construed to affect the right of any employer or former employer to sue upon or collect any debt owed to said employer or former employer by his employees or former employees. [1971 ex.s. c 55 § 1; 1947 c 181 § 1; 1905 c 112 § 1; 1888 c 128 § 1; Rem. Supp. 1947 § 7594.]

***Reviser's note:** The reference to paragraph three of this section appears to be erroneous. An amendment to Engrossed Senate Bill No. 137 [1971 ex.s. c 55] deleted the first paragraph of the section without making a corresponding change in the reference to "paragraph three." It was apparently intended that the phrase "paragraph three of this section" refers to the paragraph beginning "It shall be unlawful ...", which now appears as the second paragraph of the section.

Saving—1888 c 128: "This act is not to be construed as affecting any bona fide contract heretofore entered into contrary to its provisions and existing at the date of the passage hereof, and continuing by reason of limitation of said contract being still in force." [1888 c 128 § 4; no RRS.]

Effective date—1888 c 128: "This act is to take effect on and after its approval." [1888 c 128 § 5; no RRS.]

General repealer—1888 c 128: "All laws or parts of laws in conflict with this act be and the same are hereby repealed." [1888 c 128 § 6; no RRS.]

The foregoing annotations apply to RCW 49.48.010 through 49.48.030.

49.48.020 Penalty for noncompliance with RCW 49.48.010 through 49.48.030 and 49.48.060. Any person, firm, or corporation which violates any of the provisions of RCW 49.48.010 through 49.48.030 and 49.48.060 shall be guilty of a misdemeanor. [1971 ex.s. c 55 § 2; 1933 ex.s. c 20 § 1; 1888 c 128 § 2; RRS § 7595.]

Wages—Deductions—Rebates, authorized withholding: RCW 49.52.060.

49.48.030 Attorney's fee in action on wages—Exception. In any action in which any person is successful in recovering judgment for wages or salary owed to him, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer or former employer: *Provided, however,* That this section shall not apply if the amount of recovery is less than or equal to the amount admitted by the employer to be owing for said wages or salary. [1971 ex.s. c 55 § 3; 1888 c 128 § 3; RRS § 7596.]

49.48.040 Enforcement of wage claims—Issuance of subpoenas—Compliance. (1) The department of labor and industries may:

(a) Upon obtaining information indicating an employer may be committing a violation under chapters 39.12, 49.46, and 49.48 RCW, conduct investigations to ensure compliance with chapters 39.12, 49.46, and 49.48 RCW;

(b) Order the payment of all wages owed the workers and institute actions necessary for the collection of the sums determined owed; and

(c) Take assignments of wage claims and prosecute actions for the collection of wages of persons who are financially unable to employ counsel when in the judgment of the director of the department the claims are valid and enforceable in the courts.

(2) The director of the department or any authorized representative may, for the purpose of carrying out RCW 49.48.040 through 49.48.080: (a) Issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, or records; (b) administer oaths and examine witnesses under oath; (c) take the verification of proof of instruments of writing; and (d) take depositions and affidavits. If assignments for wage claims are taken, court costs shall not be payable by the department for prosecuting such suits.

(3) The director shall have a seal inscribed "Department of Labor and Industries—State of Washington" and all courts shall take judicial notice of such seal. Obedience to subpoenas issued by the director or authorized representative shall be enforced by the courts in any county.

(4) The director or authorized representative shall have free access to all places and works of labor. Any employer or any agent or employee of such employer who refuses the director or authorized representative admission therein, or who, when requested by the director or authorized representative, wilfully neglects or refuses to furnish the director or authorized representative any statistics or information pertaining to his or her lawful duties, which statistics or information may be in his or her possession or under the control of the employer or agent, shall be guilty of a misdemeanor. [1987 c 172 § 1; 1935 c 96 § 1; RRS § 7596–1.]

49.48.050 Remedy cumulative. Nothing herein contained shall be construed to limit the authority of the prosecuting attorney of any county to prosecute actions, both civil and criminal, for such violations of RCW 49.48.040 through 49.48.080 as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the director of labor and industries. [1935 c 96 § 2; RRS § 7596–2.]

49.48.060 Director may require bond after assignment of wage claims—Court action—Penalty for failure to pay wage claim. (1) If upon investigation by the director, after taking assignments of any wage claim under RCW 49.48.040, it appears to the director that the employer is representing to his employees that he is able to pay wages for their services and that the employees are not being paid for their services, the director may require the employer to give a bond in such sum as the director deems reasonable and adequate in the circumstances, with sufficient surety, conditioned that the employer will for a definite future period not exceeding six months conduct his business and pay his employees in accordance with the laws of the state of Washington.

(2) If within ten days after demand for such bond the employer fails to provide the same, the director may commence a suit against the employer in the superior court of appropriate jurisdiction to compel him to furnish such bond or cease doing business until he has done so. The employer shall have the burden of proving the amount thereof to be excessive.

(3) If the court finds that there is just cause for requiring such bond and that the same is reasonable, necessary or appropriate to secure the prompt payment of the wages of the employees of such employer and his compliance with RCW 49.48.010 through 49.48.080, the court shall enjoin such employer from doing business in this state until the requirement is met, or shall make other, and may make further, orders appropriate to compel compliance with the requirement.

Upon being informed of a wage claim against an employer or former employer, the director shall, if such claim appears to be just, immediately notify the employer or former employer, of such claim by mail. If the employer or former employer fails to pay the claim or make satisfactory explanation to the director of his failure to do so, within thirty days thereafter, the employer or former employer shall be liable to a penalty of ten percent of that portion of the claim found to be justly due. The director shall have a cause of action against the employer or former employer for the recovery of such penalty, and the same may be included in any subsequent action by the director on said wage claim, or may be exercised separately after adjustment of such wage claim without court action. [1971 ex.s. c 55 § 4; 1935 c 96 § 3; RRS § 7596-3.]

49.48.070 Enforcement. It shall be the duty of the director of labor and industries to inquire diligently for any violations of RCW 49.48.040 through 49.48.080, and to institute the actions for penalties herein provided, and to enforce generally the provisions of RCW 49.48-.040 through 49.48.080. [1935 c 96 § 4; RRS § 7596-4.]

49.48.075 Reciprocal enforcement agreements with other states. (1) The director of labor and industries, or the director's designee, may enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of such department or agency, for the collection in such other states of claims or judgments for wages and other demands based upon claims assigned to the director.

(2) The director, or the director's designee, may, to the extent provided for by any reciprocal agreement entered into by law or with an agency of another state as herein provided, maintain actions in the courts of such other state for the collection of claims for wages, judgments, and other demands and may assign such claims, judgments, and demands to the labor department or agency of such other state for collection to the extent that such an assignment may be permitted or provided for by the law of such state or reciprocal agreement.

(3) The director, or the director's designee, may, upon the written consent of the labor department or corresponding agency of any other state or of the person, board, officer, or commission of such state authorized to act on behalf of such labor department or corresponding agency, maintain actions in the courts of Washington upon assigned claims for wages, judgments, and demands arising in such other state in the same manner and to the same extent that such actions by the director are authorized when arising in Washington. Such actions may be maintained only in cases where such other state by law or reciprocal agreement extends a like comity to cases arising in Washington. [1985 c 48 § 1.]

49.48.080 Public employees excluded. Nothing in RCW 49.48.040 through 49.48.080 shall apply to the payment of wages or compensation of employees directly employed by any county, incorporated city or town, or other municipal corporation. Nor shall anything herein apply to employees, directly employed by the state, any department, bureau, office, board, commission or institution hereof. [1935 c 96 § 5; RRS § 7596-5.]

49.48.090 Assignment of wages—Requisites to validity. No assignment of, or order for, wages to be earned in the future to secure a loan of less than three hundred dollars, shall be valid against an employer of the person making said assignment or order unless said assignment or order is accepted in writing by the employer, and said assignment or order, and the acceptance of the same, have been filed and recorded with the county auditor of the county where the party making said assignment or order resides, if a resident of the state, or in which he is employed, if not a resident of the state. [1909 c 32 § 1; RRS § 7597.]

49.48.100 Written consent of spouse required. No assignment of, or order for, wages to be earned in the future shall be valid, when made by a married person, unless the written consent of the other spouse to the making of such assignment or order is attached thereto. [1972 ex.s. c 108 § 7; 1909 c 32 § 2; RRS § 7598.]

49.48.115 Employer defined. For the purposes of RCW 49.48.120 the word "employer" shall include every person, firm, partnership, corporation, the state of Washington, and all municipal corporations. [1939 c 139 § 1; RRS § 1464-1. Formerly RCW 49.48.120, part.]

49.48.120 Payment on employee's death. If at the time of the death of any person, his employer is indebted to him for work, labor, and services performed, and no executor or administrator of his estate has been appointed, such employer shall upon the request of the surviving spouse forthwith pay said indebtedness, in such an amount as may be due not exceeding the sum of two thousand five hundred dollars, to the said surviving spouse or if the decedent leaves no surviving spouse, then to the child or children, or if no children, then to the father or mother of said decedent: *Provided, however,* That if by virtue of a community property agreement

between the decedent and the surviving spouse, which meets the requirements of RCW 26.16.120, the right to such indebtedness became the sole property of the surviving spouse upon the death of the decedent, the employer shall pay to the surviving spouse the total of such indebtedness or that portion which is governed by the community property agreement upon presentation of said agreement accompanied by affidavit of the surviving spouse stating that such agreement was executed in good faith between the parties thereto and had not been rescinded by the parties prior to the death of the decedent: *Provided further*, That in all cases the employer shall require proof of claimant's relationship to decedent by affidavit, and shall require claimant to acknowledge receipt of such payment in writing. Any payments made by an employer pursuant to the provisions of RCW 49.48.115 and 49.48.120 shall operate as a full and complete discharge of the employer's indebtedness to the extent of said payment, and no employer shall thereafter be liable therefor to the decedent's estate, or the decedent's executor or administrator thereafter appointed. The employer may also pay the indebtedness upon presentation of an affidavit as provided in RCW 11.62.010. [1981 c 333 § 2; 1974 ex.s. c 117 § 42; 1967 c 210 § 1; 1939 c 139 § 2; RRS § 1464-2. FORMER PART OF SECTION: 1939 c 139 § 1; RRS § 1464-1 now codified as RCW 49.48.115.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Chapter 49.52

WAGES—DEDUCTIONS— CONTRIBUTIONS—REBATES

Sections

49.52.010	Employees' benefit deductions and employer contributions are trust funds—Enforcement.
49.52.020	Lien of party rendering service.
49.52.030	Deductions in extrahazardous employment—Medical aid fund deductions excluded.
49.52.040	Actions to recover for service—Lien—Priority.
49.52.050	Rebates of wages—False records—Penalty.
49.52.060	Authorized withholding.
49.52.070	Civil liability for double damages.
49.52.080	Presumption as to intent.
49.52.090	Rebates of wages on public works—Penalty.

Chattel liens: Chapter 60.08 RCW.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

Mutual savings bank employees, pension benefits: RCW 32.04.082.

Public employees, payroll deductions: RCW 41.04.020, 41.04.030, 41.04.035 and 41.04.036.

49.52.010 Employees' benefit deductions and employer contributions are trust funds—Enforcement. All moneys collected by any employer from his or its employees and all money to be paid by any employer as his contribution for furnishing, either directly, or through contract, or arrangement with a hospital association, corporation, firm or individual, of medicine, medical or surgical treatment, nursing, hospital service, ambulance service, dental service, burial service, or any or all of the

above enumerated services, or any other necessary service, contingent upon sickness, accident or death, are hereby declared to be a trust fund for the purposes for which the same are collected. The trustees (or their administrator, representative, or agent under direction of the trustees) of such fund are authorized to take such action as is deemed necessary to ensure that the employer contributions are made including, but not limited to filing actions at law, and filing liens against moneys due to the employer from the performance of labor or furnishing of materials to which the employees contributed their services. Such trust fund is subject to the provisions of *chapter 48.52 RCW. [1975 c 34 § 1; 1927 c 307 § 1; RRS § 7614-1.]

Reviser's note: Chapter 48.52 RCW was repealed by 1979 ex.s. c 34 § 1.

49.52.020 Lien of party rendering service. In case any employer collecting moneys from his employees or making contributions to any type of benefit plan for any or all of the purposes specified in RCW 49.52.010, shall enter into a contract or arrangement with any hospital association, corporation, firm or individual, to furnish any such service to its employees, the association, corporation, firm or individual contracting to furnish such services, shall have a lien upon such trust fund prior to all other liens except taxes. The lien hereby created shall attach from the date of the arrangement or contract to furnish such services and may be foreclosed in the manner provided by law for the foreclosure of other liens on personal property. [1975 c 34 § 2; 1927 c 307 § 2; RRS § 7614-2.]

49.52.030 Deductions in extrahazardous employment—Medical aid fund deductions excluded. All moneys realized by any employer from the employer's employees either by collection or by deduction from the wages or pay of employees intended or to be used for the furnishing to workers engaged in extrahazardous work, their families or dependents, of medical, surgical or hospital care and treatment, or for nursing, ambulance service, burial or any or all of the above enumerated services, or any service incidental to or furnished or rendered because of sickness, disease, accident or death, and all moneys owing by any employer therefor, shall be and remain a fund for the purposes for which such moneys are intended to be used, and shall not constitute or become any part of the assets of the employer making such collections or deductions: *Provided, however*, That RCW 49.52.030 and 49.52.040 shall not apply to moneys collected or deducted as aforesaid for, or owing by employers to the state medical aid fund. Such moneys shall be paid over promptly to the physician or surgeon or hospital association or other parties to which such moneys are due and for the purposes for which such collections or deductions were made. [1989 c 12 § 16; 1929 c 136 § 1; RRS § 7713-1.]

49.52.040 Actions to recover for service—Lien—Priority. If any such employer shall default in any such payment to any physician, surgeon, hospital,

hospital association or any other parties to whom any such payment is due, the sum so due may be collected by an action at law in the name of the physician, surgeon, hospital, hospital association or any other party to whom such payment is owing, or their assigns and against such defaulting employer, and in addition to such action, such claims shall have the same priority and lien rights as granted to the state for claims due the accident and medical aid funds by section 7682 of Remington's Compiled Statutes of Washington, 1922 [RCW 51.16.150 through 51.16.170], and acts amendatory thereto, which priority and lien rights shall be enforced in the same manner and under the same conditions as provided in said section 7682 [RCW 51.16.150 through 51.16.170]: *Provided, however,* That the said claims for physicians, surgeons, hospitals and hospital associations and others shall be secondary and inferior to any claims of the state and to any claims for labor. Such right of action shall be in addition to any other right of action or remedy. [1929 c 136 § 2; RRS § 7713-2.]

49.52.050 Rebates of wages—False records—

Penalty. Any employer or officer, vice principal or agent of any employer, whether said employer be in private business or an elected public official, who

(1) Shall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee; or

(2) Wilfully and with intent to deprive the employee of any part of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract; or

(3) Shall wilfully make or cause another to make any false entry in any employer's books or records purporting to show the payment of more wages to an employee than such employee received; or

(4) Being an employer or a person charged with the duty of keeping any employer's books or records shall wilfully fail or cause another to fail to show openly and clearly in due course in such employer's books and records any rebate of or deduction from any employee's wages; or

(5) Shall wilfully receive or accept from any employee any false receipt for wages;

Shall be guilty of a misdemeanor. [1941 c 72 § 1; 1939 c 195 § 1; Rem. Supp. 1941 § 7612-21.]

Severability—1939 c 195: "If any section, sub-section, sentence or clause of this act shall be adjudged unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, sub-section, sentence or clause thereof not adjudged unconstitutional." [1939 c 195 § 5; RRS § 7612-25.] This applies to RCW 49.52.050 through 49.52.080.

49.52.060 Authorized withholding. The provisions of RCW 49.52.050 shall not make it unlawful for an employer to withhold or divert any portion of an employee's wages when required or empowered so to do by state or federal law or when a deduction has been expressly authorized in writing in advance by the employee for a lawful purpose accruing to the benefit of such employee

nor shall the provisions of RCW 49.52.050 make it unlawful for an employer to withhold deductions for medical, surgical, or hospital care or service, pursuant to any rule or regulation: *Provided,* That the employer derives no financial benefit from such deduction and the same is openly, clearly and in due course recorded in the employer's books. [1939 c 195 § 2; RRS § 7612-22.]

Penalty for coercion as to purchase of goods, meals, etc.: RCW 49.48.020.

Public employment, payroll deductions: RCW 41.04.020, 41.04.030, 41.04.035 and 41.04.036.

Wages to be paid in lawful money or negotiable order, penalty: RCW 49.48.010.

49.52.070 Civil liability for double damages. Any employer and any officer, vice principal or agent of any employer who shall violate any of the provisions of subdivisions (1) and (2) of RCW 49.52.050 shall be liable in a civil action by the aggrieved employee or his assignee to judgment for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees: *Provided, however,* That the benefits of this section shall not be available to any employee who has knowingly submitted to such violations. [1939 c 195 § 3; RRS § 7612-23.]

49.52.080 Presumption as to intent. The violations by an employer or any officer, vice principal, or agent of any employer of any of the provisions of subdivisions (3), (4), and (5) of RCW 49.52.050 shall raise a presumption that any deduction from or underpayment of any employee's wages connected with such violation was wilful. [1939 c 195 § 4; RRS § 7612-24.]

49.52.090 Rebates of wages on public works—

Penalty. Every person, whether as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes or receives, or conspires with another to take or receive, for his own use or the use of any other person acting with him any part or portion of the wages paid to any laborer, workman or mechanic, including a piece worker and working subcontractor, in connection with services rendered upon any public work within this state, whether such work is done directly for the state, or public body or officer thereof, or county, city and county, city, town, township, district or other political subdivision of the said state or for any contractor or subcontractor engaged in such public work for such an awarding or public body or officer, shall be guilty of a gross misdemeanor. [1935 c 29 § 1; RRS § 10320-1.]

Prevailing wages must be paid on public works: RCW 39.12.020.

Chapter 49.56

WAGES—PRIORITIES—PREFERENCES

Sections	
49.56.010	Priority of wages in insolvency.
49.56.020	Preference on death of employer.
49.56.030	Priority in executions, attachments, etc.

49.56.040 Labor claims paramount to claims by state agencies.

Chattel liens: Chapter 60.08 RCW.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

49.56.010 Priority of wages in insolvency. In all assignments of property made by any person to trustees or assignees on account of the inability of the person at the time of the assignment to pay his debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks or laborers employed by such persons to the amount of one hundred dollars, each, and for services rendered within sixty days previously, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of the assignor. [Code 1881 § 1972; 1877 p 223 § 34; RRS § 1204.]

Construction—1877 p 224: "In construing the provisions of this act, words used in the masculine gender include the feminine and neuter, the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person, and the word writing includes printing." [1877 p 224 § 37.]

Construction—1877 p 224: "This act establishes the law of this territory respecting the subject to which it relates and its provisions and all proceedings under it are to be liberally construed with a view to effect its object." [1877 p 224 § 39.]

Repeal and saving—1877 p 224: "All acts relating to any kind or class of liens provided for in this act are hereby repealed, but no action or proceeding commenced before this act takes effect, and no right accrued is affected by such repeal but the proceedings therein must conform to the requirements of this act as far as applicable." [1877 p 224 § 38.]

Effective date—1877 p 224: "This act shall take effect and be in force from and after its passage and the approval thereof by the governor." (Approved, November 8th, 1877.) [1877 p 224 § 40.]

49.56.020 Preference on death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant and laborer for services rendered within sixty days next preceding the death of the employer, not exceeding one hundred dollars, rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person. [Code 1881 § 1973; 1877 p 223 § 35; RRS § 1205.]

49.56.030 Priority in executions, attachments, etc. In cases of executions, attachments and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks and laborers who have claims against the defendant for labor done, may give notice of their claims and the amount thereof, sworn to by the person making the claim to the creditor and the officer executing either of such writs at any time before the actual sale of property levied on, and unless such claim is disputed by the debtor or a creditor, such officer must pay to such person out of the proceeds of the sale, the amount each is entitled to receive for services rendered within sixty days next preceding the levy of the writ, not exceeding one hundred dollars. If any or all the claims so presented and claiming preference under this chapter, are disputed by either the debtor or a creditor, the person presenting

the same must commence an action within ten days from the recovery thereof, and must prosecute his action with due diligence, or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim, until the determination of such action; and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim. [Code 1881 § 1974; 1877 p 223 § 36; RRS § 1206.]

49.56.040 Labor claims paramount to claims by state agencies. In distraint or insolvency proceedings affecting the assets of an employer, claims for labor, salaries or wages not to exceed six hundred dollars to each claimant which have been earned within three months before the date of the distraint or commencement of the proceeding shall be paramount and superior to any claim preferred or presented by an agency of the state: *Provided*, That this section shall not apply to any compensation payable to an employer or to an officer, director, or stockholder of a corporate employer. [1967 ex.s. c 86 § 1.]

Chapter 49.60

DISCRIMINATION—HUMAN RIGHTS COMMISSION

Sections	
49.60.010	Purpose of chapter.
49.60.020	Construction of chapter—Election of other remedies.
49.60.030	Freedom from discrimination—Declaration of civil rights.
49.60.040	Definitions.
49.60.050	Commission created.
49.60.051	Board name changed to Washington State Human Rights Commission.
49.60.060	Membership of commission.
49.60.070	Compensation and reimbursement for travel expenses of commission members.
49.60.080	Official seal.
49.60.090	Offices of commission.
49.60.100	Reports of commission.
49.60.110	Commission to formulate policies.
49.60.120	Certain powers and duties of commission.
49.60.130	May create advisory agencies and conciliation councils.
49.60.140	Commission may hold hearings and subpoena witnesses.
49.60.150	Witnesses compelled to testify.
49.60.160	Refusals may be punished as contempt of court.
49.60.170	Witness fees—Deposition fees.
49.60.172	Unfair practices with respect to HIV infection.
49.60.174	Evaluation of claim of discrimination—Actual or perceived HIV infection.
49.60.175	Unfair practices of financial institutions.
49.60.176	Unfair practices with respect to credit transactions.
49.60.178	Unfair practices with respect to insurance transactions.
49.60.180	Unfair practices of employer defined.
49.60.190	Unfair practices of labor unions defined.
49.60.200	Unfair practices of employment agencies.
49.60.205	Age discrimination—Limitation.
49.60.210	Unfair to discriminate against person opposing unfair practice.
49.60.215	Unfair practices of places of public resort, accommodation, assemblage, amusement.
49.60.220	Unfair practice to aid violation.
49.60.222	Unfair practices with respect to real estate transactions, facilities, or services.

- 49.60.223 Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, handicap, etc.
- 49.60.224 Provisions of real property contract restricting conveyance, encumbrance, occupancy, or use to persons of particular race, handicap, etc., void—Unfair practice.
- 49.60.225 Award to complainant for loss of rights secured.
- 49.60.226 Cooperative agreements between units of government for processing complaints.
- 49.60.227 Declaratory judgment action to strike discriminatory provisions of real property contracts.
- 49.60.230 Complaint may be filed with commission.
- 49.60.240 Complaint investigated—Conference, conciliation—Agreement, findings.
- 49.60.250 Hearing of complaint by administrative law judge—Order.
- 49.60.260 Enforcement of orders of administrative law judge—Appellate review of court order.
- 49.60.270 Appeal from orders of administrative law judge.
- 49.60.280 Court shall expeditiously hear and determine.
- 49.60.310 Misdemeanor to interfere with or resist commission.
- 49.60.320 Governor may act on orders against state or political subdivisions.
- 49.60.330 First class cities of over one hundred twenty-five thousand population—Administrative remedies authorized.

Application forms—Licenses—Mention of race or religion prohibited: RCW 43.01.100, 43.01.110.

Blind persons with guide dog not to be refused service: RCW 70.84.030.

Denial of civil rights: RCW 9.91.010.

Handicapped persons, discrimination in public employment prohibited: RCW 70.84.080.

Gender equality in higher education: Chapter 28B.110 RCW.

Interschool athletic and other extracurricular activities for students, discrimination prohibited: RCW 28A.58.125.

Malicious harassment because of a person's race, color, religion, ancestry, or national origin—Criminal penalty—Civil cause of action: RCW 9A.36.080.

Militia, organized, discrimination prohibited: RCW 38.40.110.

Sexual equality: State Constitution Art. 31 §§ 1, 2 (Amendment 61).

Sexual equality mandated for public schools: Chapter 28A.85 RCW.

Unfit buildings, discrimination prohibited: RCW 35.80.040.

49.60.010 Purpose of chapter. This chapter shall be known as the "law against discrimination". It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap; and the commission established hereunder is hereby given general jurisdiction and power for such purposes. [1985 c 185 §

1; 1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614–20.]

Severability—1969 ex.s. c 167: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 167 § 10.]

Severability—1957 c 37: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1957 c 37 § 27.] This applies to RCW 49.60.010 through 49.60.050, 49.60.090, 49.60.120 and 49.60.180 through 49.60.310.

Severability—1949 c 183: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1949 c 183 § 13.] This applies to RCW 49.60.060 through 49.60.080, 49.60.100, 49.60.110, 49.60.130 through 49.60.170 and 49.60.320.

Urban renewal law—Discrimination prohibited: RCW 35.81.170.

49.60.020 Construction of chapter—Election of other remedies. The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his civil rights. [1973 1st ex.s. c 214 § 2; 1973 c 141 § 2; 1957 c 37 § 2; 1949 c 183 § 12; Rem. Supp. 1949 § 7614–30.]

49.60.030 Freedom from discrimination—Declaration of civil rights. (1) The right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: *Provided*, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph; and

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory

boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, national origin or lawful business relationship: *Provided however*, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices.

(2) Any person deeming himself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, to recover the actual damages sustained by him, or both, together with the cost of suit including a reasonable attorney's fees or any other remedy authorized by this chapter or the United States Civil Rights Act of 1964; and

(3) Notwithstanding any other provisions of this chapter, any act prohibited by this chapter related to sex discrimination or discriminatory boycotts or blacklists which is committed in the course of trade or commerce in the state of Washington as defined in the Consumer Protection Act, chapter 19.86 RCW, shall be deemed an unfair practice within the meaning of RCW 19.86.020 and 19.86.030 and subject to all the provisions of chapter 19.86 RCW as now or hereafter amended. [1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614–21.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.040 Definitions. As used in this chapter:

"Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

"Commission" means the Washington state human rights commission;

"Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit;

"Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person;

"Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

"Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

"National origin" includes "ancestry";

"Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, or with any sensory, mental, or physical handicap, or a blind or deaf person using a trained dog guide, to be treated as not welcome, accepted, desired, or solicited;

"Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: *Provided*, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

"Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

"Real estate transaction" includes the sale, exchange, purchase, rental, or lease of real property;

"Sex" means gender.

"Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred. [1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

Reviser's note: This section was amended by 1985 c 185 § 2 and by 1985 c 203 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Construction—1961 c 103: "Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act." [1961 c 103 § 4.] For codification of 1961 c 103, see Codification Tables, Volume 0.

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.050 Commission created. There is created the "Washington state human rights commission," which shall be composed of five members to be appointed by the governor with the advice and consent of the senate, one of whom shall be designated as chairperson by the governor. [1985 c 185 § 3; 1981 c 338 § 9; 1957 c 37 § 5; 1955 c 270 § 2. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

Reviser's note—Sunset Act application: The human rights commission is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.327. RCW 49.60.050 through 49.60.170, 49.60.226, and 49.60.230 through 49.60.320 are scheduled for future repeal under RCW 43.131.328.

49.60.051 Board name changed to Washington State Human Rights Commission. From and after August 9, 1971 the "Washington State Board Against Discrimination" shall be known and designated as the "Washington State Human Rights Commission". [1971 ex.s. c 52 § 2.]

Sunset Act application: See note following RCW 49.60.050.

49.60.060 Membership of commission. One of the original members of the commission shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom the individual succeeds.

A member shall be eligible for reappointment.

A vacancy in the commission shall be filled within thirty days, the remaining members to exercise all powers of the commission.

Any member of the commission may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon. [1985 c 185 § 4; 1955 c 270 § 3. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

Sunset Act application: See note following RCW 49.60.050.

49.60.070 Compensation and reimbursement for travel expenses of commission members. Each member of the commission shall be compensated in accordance with RCW 43.03.250 and, while in session or on official business, shall receive reimbursement for travel expenses incurred during such time in accordance with RCW 43.03.050 and 43.03.060. [1985 c 185 § 5; 1984 c 287 § 98; 1975-'76 2nd ex.s. c 34 § 145; 1955 c 270 § 4. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

Sunset Act application: See note following RCW 49.60.050.

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

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

49.60.080 Official seal. The commission shall adopt an official seal, which shall be judicially noticed. [1985 c 185 § 6; 1955 c 270 § 5. Prior: (i) 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part. (ii) 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Sunset Act application: See note following RCW 49.60.050.

49.60.090 Offices of commission. The principal office of the commission shall be in the city of Olympia, but it may meet and exercise any or all of its powers at any other place in the state, and may establish such district offices as it deems necessary. [1985 c 185 § 7; 1957 c 37 § 6; 1955 c 270 § 6. Prior: (i) 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part. (ii) 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Sunset Act application: See note following RCW 49.60.050.

49.60.100 Reports of commission. Subject to RCW 40.07.040, the commission, each biennium, shall report to the governor, describing the investigations, proceedings, and hearings it has conducted and their outcome, the decisions it has rendered, the recommendations it has issued, and the other work performed by it, and shall make such recommendations for further legislation as may appear desirable. The commission may present its reports to the legislature; the commission's reports shall be made available upon request. [1987 c 505 § 55; 1985 c 185 § 8; 1977 c 75 § 74; 1955 c 270 § 7. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

Sunset Act application: See note following RCW 49.60.050.

49.60.110 Commission to formulate policies. The commission shall formulate policies to effectuate the purposes of this chapter and may make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes. [1985 c 185 § 9; 1949 c 183 § 5; Rem. Supp. 1949 § 7614–24.]

Sunset Act application: See note following RCW 49.60.050.

49.60.120 Certain powers and duties of commission. The commission shall have the functions, powers and duties:

(1) To appoint an executive secretary and chief examiner, and such investigators, examiners, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this chapter, and the policies and practices of the commission in connection therewith.

(4) To receive, investigate, and pass upon complaints alleging unfair practices as defined in this chapter.

(5) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of sex, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical handicap.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies.

(7) To cooperate and act jointly or by division of labor with the United States or other states, and with political subdivisions of the state of Washington and their respective human rights agencies to carry out the purposes of this chapter. However, the powers which may be exercised by the commission under this subsection permit investigations and complaint dispositions only if the investigations are designed to reveal, or the complaint deals only with, allegations which, if proven, would constitute unfair practices under this chapter. The commission may perform such services for these agencies and be reimbursed therefor.

(8) To foster good relations between minority and majority population groups of the state through seminars, conferences, educational programs, and other intergroup relations activities. [1985 c 185 § 10; 1973 1st ex.s. c 214 § 4; 1973 c 141 § 7; 1971 ex.s. c 81 § 1; 1957 c 37 § 7; 1955 c 270 § 8. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614–25, part.]

Sunset Act application: See note following RCW 49.60.050.

Effective date—1971 ex.s. c 81: "The effective date of this act shall be July 1, 1971." [1971 ex.s. c 81 § 6.] For codification of 1971 ex.s. c 81, see Codification Tables, Volume 0.

Human rights commission to investigate unlawful use of refueling services for disabled: RCW 70.84.090.

49.60.130 May create advisory agencies and conciliation councils. The commission has power to create such advisory agencies and conciliation councils, local, regional, or state-wide, as in its judgment will aid in effectuating the purposes of this chapter. The commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of sex, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical handicap; to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations to the commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the commission may recommend to the appropriate state agency.

Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and the commission may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance. The commission may use organizations specifically experienced in dealing with questions of discrimination. [1985 c 185 § 11; 1975-'76 2nd ex.s. c 34 § 146; 1973 1st ex.s. c 214 § 5; 1973 c 141 § 8; 1971 ex.s. c 81 § 2; 1955 c 270 § 9. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614–25, part.]

Sunset Act application: See note following RCW 49.60.050.

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

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

49.60.140 Commission may hold hearings and subpoena witnesses. The commission has power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual members, as to service of complaints, decisions, orders, recommendations and other process or papers of the commission, its member, agent, or agency, either personally or by registered mail, return receipt requested, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The return post office receipt, when service is by registered mail, shall be proof of service of the same. [1985 c 185 § 12; 1955 c 270 § 10. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614–25, part.]

Sunset Act application: See note following RCW 49.60.050.

49.60.150 Witnesses compelled to testify. No person shall be excused from attending and testifying or from producing records, correspondence, documents or other

evidence in obedience to the subpoena of the commission or of any individual member, on the ground that the testimony or evidence required of the person may tend to incriminate or subject the person to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons so compelled to testify. [1985 c 185 § 13; 1955 c 270 § 11. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614–25, part.]

Sunset Act application: See note following RCW 49.60.050.

49.60.160 Refusals may be punished as contempt of court. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court of any county within the jurisdiction of which the investigation, proceeding, or hearing is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. [1985 c 185 § 14; 1955 c 270 § 12. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614–25, part.]

Sunset Act application: See note following RCW 49.60.050.

49.60.170 Witness fees—Deposition fees. Witnesses before the commission, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of this state. Witnesses whose depositions are taken and the person taking the same shall be entitled to same fees as are paid for like services in the courts of the state. [1985 c 185 § 15; 1955 c 270 § 13. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614–25, part.]

Sunset Act application: See note following RCW 49.60.050.

Courts of record—Witnesses: Chapter 2.40 RCW.

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

49.60.172 Unfair practices with respect to HIV infection. (1) No person may require an individual to take an HIV test, as defined in chapter 70.24 RCW, as a condition of hiring, promotion, or continued employment unless the absence of HIV infection is a bona fide occupational qualification for the job in question.

(2) No person may discharge or fail or refuse to hire any individual, or segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect

his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the results of an HIV test unless the absence of HIV infection is a bona fide occupational qualification of the job in question.

(3) The absence of HIV infection as a bona fide occupational qualification exists when performance of a particular job can be shown to present a significant risk, as defined by the board of health by rule, of transmitting HIV infection to other persons, and there exists no means of eliminating the risk by restructuring the job.

(4) For the purpose of this chapter, any person who is actually infected with HIV, but is not disabled as a result of the infection, shall not be eligible for any benefits under the affirmative action provisions of chapter 49.74 RCW solely on the basis of such infection.

(5) Employers are immune from civil action for damages arising out of transmission of HIV to employees or to members of the public unless such transmission occurs as a result of the employer's gross negligence. [1988 c 206 § 903.]

Severability—1988 c 206: See RCW 70.24.900.

49.60.174 Evaluation of claim of discrimination—Actual or perceived HIV infection. (1) For the purposes of determining whether an unfair practice under this chapter has occurred, claims of discrimination based on actual or perceived HIV infection shall be evaluated in the same manner as other claims of discrimination based on sensory, mental, or physical handicap.

(2) Subsection (1) of this section shall not apply to transactions with insurance entities, health service contractors, or health maintenance organizations subject to RCW 49.60.030(1)(e) or 49.60.178 to prohibit fair discrimination on the basis of actual HIV infection status when bona fide statistical differences in risk or exposure have been substantiated.

(3) For the purposes of this chapter, "HIV" means the human immunodeficiency virus, and includes all HIV and HIV-related viruses which damage the cellular branch of the human immune system and leave the infected person immunodeficient. [1988 c 206 § 902.]

Severability—1988 c 206: See RCW 70.24.900.

49.60.175 Unfair practices of financial institutions. It shall be an unfair practice to use the sex, race, creed, color, national origin, marital status, or the presence of any sensory, mental, or physical handicap of any person concerning an application for credit in any credit transaction to determine the credit worthiness of an applicant. [1979 c 127 § 4; 1977 ex.s. c 301 § 14; 1973 c 141 § 9; 1959 c 68 § 1.]

Fairness in lending act: RCW 30.04.500 through 30.04.515.

49.60.176 Unfair practices with respect to credit transactions. (1) It is an unfair practice for any person whether acting for himself or another in connection with

any credit transaction because of race, creed, color, national origin, sex, marital status, or the presence of any sensory, mental, or physical handicap:

- (a) To deny credit to any person;
 - (b) To increase the charges or fees for or collateral required to secure any credit extended to any person;
 - (c) To restrict the amount or use of credit extended or to impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;
 - (d) To attempt to do any of the unfair practices defined in this section.
- (2) Nothing in this section shall prohibit any party to a credit transaction from considering the credit history of any individual applicant.

(3) Further, nothing in this section shall prohibit any party to a credit transaction from considering the application of the community property law to the individual case or from taking reasonable action thereon. [1979 c 127 § 5; 1973 c 141 § 5.]

49.60.178 Unfair practices with respect to insurance transactions. It is an unfair practice for any person whether acting for himself or another in connection with an insurance transaction or transaction with a health maintenance organization to cancel or fail or refuse to issue or renew insurance or a health maintenance agreement to any person because of sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap: *Provided*, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this section. For the purposes of this section, "insurance transaction" is defined in RCW 48.01.060, health maintenance agreement is defined in RCW 48.46.020, and "health maintenance organization" is defined in RCW 48.46.020.

The fact that such unfair practice may also be a violation of chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to an action brought under this section.

The insurance commissioner, under RCW 48.30.300, and the human rights commission, under chapter 49.60 RCW, shall have concurrent jurisdiction under this section and shall enter into a working agreement as to procedure to be followed in complaints under this section. [1984 c 32 § 1; 1979 c 127 § 6; 1974 ex.s. c 32 § 2; 1973 c 141 § 6.]

49.60.180 Unfair practices of employer defined. It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification: *Provided*, That the prohibition against discrimination because of such handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved.

(2) To discharge or bar any person from employment because of age, sex, marital status, race, creed, color,

national origin, or the presence of any sensory, mental, or physical handicap.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap: *Provided*, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: *Provided*, Nothing contained herein shall prohibit advertising in a foreign language. [1985 c 185 § 16; 1973 1st ex.s. c 214 § 6; 1973 c 141 § 10; 1971 ex.s. c 81 § 3; 1961 c 100 § 1; 1957 c 37 § 9. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Labor—Prohibited practices: Chapter 49.44 RCW.

Unfair practices in employment because of age of employee or applicant: RCW 49.44.090.

49.60.190 Unfair practices of labor unions defined. It is an unfair practice for any labor union or labor organization:

(1) To deny membership and full membership rights and privileges to any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

(2) To expel from membership any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

(3) To discriminate against any member, employer, employee, or other person to whom a duty of representation is owed because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap. [1985 c 185 § 17; 1973 1st ex.s. c 214 § 8; 1973 c 141 § 11; 1971 ex.s. c 81 § 4; 1961 c 100 § 2; 1957 c 37 § 10. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

49.60.200 Unfair practices of employment agencies.

It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, an individual because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age, sex, race, creed, color, or national origin, or the presence of any sensory, mental, or physical handicap, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: *Provided*, Nothing contained herein shall prohibit advertising in a foreign language. [1973 1st ex.s. c 214 § 9; 1973 c 141 § 12; 1971 ex.s. c 81 § 5; 1961 c 100 § 3; 1957 c 37 § 11. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614–26, part.]

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Fraud by employment agent: RCW 49.44.050.

49.60.205 Age discrimination—Limitation. No person shall be considered to have committed an unfair practice on the basis of age discrimination unless the practice discriminates against a person between the age of forty and seventy years and violates RCW 49.44.090. It is a defense to any complaint of an unfair practice of age discrimination that the practice does not violate RCW 49.44.090. [1985 c 185 § 28.]

49.60.210 Unfair to discriminate against person opposing unfair practice. It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter. [1985 c 185 § 18; 1957 c 37 § 12. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614–26, part.]

49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement. It shall be an unfair practice for any person or his agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sex,

the presence of any sensory, mental, or physical handicap, or the use of a trained dog guide by a blind, deaf, or physically disabled person: *Provided*, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a handicapped person except as otherwise required by law: *Provided*, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice. [1985 c 203 § 1; 1985 c 90 § 6; 1979 c 127 § 7; 1957 c 37 § 14.]

Reviser's note: This section was amended by 1985 c 90 § 6 and by 1985 c 203 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Denial of civil rights: RCW 9.91.010.

49.60.220 Unfair practice to aid violation. It is an unfair practice for any person to aid, abet, encourage, or incite the commission of any unfair practice, or to attempt to obstruct or prevent any other person from complying with the provisions of this chapter or any order issued thereunder. [1957 c 37 § 13. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614–26, part.]

49.60.222 Unfair practices with respect to real estate transactions, facilities, or services. It is an unfair practice for any person, whether acting for himself or another, because of sex, marital status, race, creed, color, national origin, the presence of any sensory, mental, or physical handicap, or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person:

(1) To refuse to engage in a real estate transaction with a person;

(2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

(3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(4) To refuse to negotiate for a real estate transaction with a person;

(5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property;

(6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

(8) To expel a person from occupancy of real property;

(9) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions; or

(10) To attempt to do any of the unfair practices defined in this section.

Notwithstanding any other provision of law, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or family status.

This section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a handicapped person except as otherwise required by law. Nothing in this section affects the rights and responsibilities of landlords and tenants pursuant to chapter 59.18 RCW. [1989 c 61 § 1; 1979 c 127 § 8; 1975 1st ex.s. c 145 § 1; 1973 c 141 § 13; 1969 ex.s. c 167 § 4.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.223 Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, handicap, etc. It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, national origin, or with any sensory, mental, or physical handicap. [1979 c 127 § 9; 1969 ex.s. c 167 § 5.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.224 Provisions of real property contract restricting conveyance, encumbrance, occupancy, or use to persons of particular race, handicap, etc., void—Unfair practice. (1) Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, national origin, or with any sensory, mental, or physical handicap, and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap is void.

(2) It is an unfair practice to insert in a written instrument relating to real property a provision that is void

under this section or to honor or attempt to honor such a provision in the chain of title. [1979 c 127 § 10; 1969 ex.s. c 167 § 6.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.225 Award to complainant for loss of rights secured. When a determination has been made under RCW 49.60.250 that an unfair practice involving real property has been committed, the commission may, in addition to other relief authorized by RCW 49.60.250, award the complainant up to one thousand dollars for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.226, as now or hereafter amended, to be free from discrimination in real property transactions because of sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap. Enforcement of the order and appeal therefrom by the complainant or respondent shall be made as provided in RCW 49.60.260 and 49.60.270. [1985 c 185 § 19; 1979 c 127 § 11; 1973 c 141 § 14; 1969 ex.s. c 167 § 7.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.226 Cooperative agreements between units of government for processing complaints. The commission and units of local government administering ordinances with provisions similar to the real estate provisions of the law against discrimination are authorized and directed to enter into cooperative agreements or arrangements for receiving and processing complaints so that duplication of functions shall be minimized and multiple hearings avoided. No complainant may secure relief from more than one instrumentality of state, or local government, nor shall any relief be granted by any state or local instrumentality if relief has been granted or proceedings are continuing in any federal agency, court, or instrumentality, unless such proceedings have been deferred pending state action. [1985 c 185 § 20; 1969 ex.s. c 167 § 8.]

Sunset Act application: See note following RCW 49.60.050.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.227 Declaratory judgment action to strike discriminatory provisions of real property contracts. If a written instrument contains a provision that is void by reason of RCW 49.60.224, the owner of the property which is subject to the provision may cause the provision to be stricken from the public records by bringing an action in the superior court in the county in which the property is located. The action shall be an in rem, declaratory judgment action whose title shall be the description of the property. The necessary party to the action shall be the owner of the property or any portion thereof.

If the court finds that any provisions of the written instrument are void under RCW 49.60.224, it shall enter an order striking the void provisions from the public records and eliminating the void provisions from the title

of the property described in the complaint. [1987 c 56 § 2.]

Intent—1987 c 56 § 2: "The legislature finds that some real property deeds and other written instruments contain discriminatory covenants and restrictions that are contrary to public policy and are void. The continued existence of these covenants and restrictions is repugnant to many property owners and diminishes the free enjoyment of their property. It is the intent of RCW 49.60.227 to allow property owners to remove all remnants of discrimination from their deeds." [1987 c 56 § 1.]

49.60.230 Complaint may be filed with commission. Who may file a complaint:

(1) Any person claiming to be aggrieved by an alleged unfair practice may, personally or by his or her attorney, make, sign, and file with the commission a complaint in writing under oath. The complaint shall state the name and address of the person alleged to have committed the unfair practice and the particulars thereof, and contain such other information as may be required by the commission.

(2) Whenever it has reason to believe that any person has been engaged or is engaging in an unfair practice, the commission may issue a complaint.

(3) Any employer or principal whose employees, or agents, or any of them, refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a written complaint under oath asking for assistance by conciliation or other remedial action.

Any complaint filed pursuant to this section must be so filed within six months after the alleged act of discrimination. [1985 c 185 § 21; 1957 c 37 § 16; 1955 c 270 § 15. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614–27, part.]

Sunset Act application: See note following RCW 49.60.050.

49.60.240 Complaint investigated—Conference, conciliation—Agreement, findings. After the filing of any complaint, the chairperson of the commission shall refer it to the appropriate section of the commission's staff for prompt investigation and ascertainment of the facts alleged in the complaint. The investigation shall be limited to the alleged facts contained in the complaint. The results of the investigation shall be reduced to written findings of fact, and a finding shall be made that there is or that there is not reasonable cause for believing that an unfair practice has been or is being committed. A copy of said findings shall be furnished to the complainant and to the person named in such complaint, hereinafter referred to as the respondent.

If the finding is made that there is reasonable cause for believing that an unfair practice has been or is being committed, the commission's staff shall immediately endeavor to eliminate the unfair practice by conference, conciliation and persuasion.

If an agreement is reached for the elimination of such unfair practice as a result of such conference, conciliation and persuasion, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the commission setting forth the terms of

said agreement. No order shall be entered by the commission at this stage of the proceedings except upon such written agreement.

If no such agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof furnished to the complainant and the respondent. [1985 c 185 § 22; 1981 c 259 § 1; 1957 c 37 § 17; 1955 c 270 § 16. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614–27, part.]

Sunset Act application: See note following RCW 49.60.050.

RCW 49.60.240 through 49.60.280 applicable to complaints concerning unlawful use of refueling services for disabled: RCW 70.84.090.

49.60.250 Hearing of complaint by administrative law judge—Order. (1) In case of failure to reach an agreement for the elimination of such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairperson of the commission. The chairperson of the commission shall thereupon request the appointment of an administrative law judge under Title 34 RCW to hear the complaint and shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before the administrative law judge, at a time and place to be specified in such notice.

(2) The place of any such hearing may be the office of the commission or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the commission: *Provided*, That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the commission who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall the member or employee participate in the deliberations of the administrative law judge in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine the complainant.

(4) The administrative law judge conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

(5) If, upon all the evidence, the administrative law judge finds that the respondent has engaged in any unfair practice, the administrative law judge shall state findings of fact and shall issue and file with the commission and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization, or to take such other action as,

in the judgment of the administrative law judge, will effectuate the purposes of this chapter, including action that could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed one thousand dollars, and including a requirement for report of the matter on compliance.

(6) The final order of the administrative law judge shall include a notice to the parties of the right to obtain judicial review of the order by appeal in accordance with the provisions of RCW 34.05.510 through 34.05.598, and that such appeal must be served and filed within thirty days after the service of the order on the parties.

(7) If, upon all the evidence, the administrative law judge finds that the respondent has not engaged in any alleged unfair practice, the administrative law judge shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(8) An order dismissing a complaint may include an award of reasonable attorneys' fees in favor of the respondent if the administrative law judge concludes that the complaint was frivolous, unreasonable, or groundless.

(9) The commission shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure. [1989 c 175 § 115; 1985 c 185 § 23; 1983 c 293 § 1; 1981 c 259 § 2; 1957 c 37 § 18; 1955 c 270 § 17. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

Sunset Act application: See note following RCW 49.60.050.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1981 c 259: "Sections 2, 3, 4 and 5 of this 1981 act shall take effect upon the enactment of House Bill 101, 1981 Regular Session." [1981 c 259 § 7.] Sections 2, 3, 4, and 5 of 1981 c 259 consist of amendments to RCW 49.60.250, 49.60.260, and 49.60.270 and the enactment of RCW 49.60.330, respectively. House Bill 101 was enacted as chapter 67, Laws of 1981. It was signed by the governor on April 25, 1981. Since chapter 67, Laws of 1981 took effect on July 1, 1982, the apparent intent is for sections 2, 3, 4, and 5 of 1981 c 259 to take effect on that date. For effective date of 1981 c 67, see note following RCW 34.12.010.

Assignment of administrative law judge for human rights commission proceedings: RCW 34.12.037.

49.60.260 Enforcement of orders of administrative law judge—Appellate review of court order. (1) The commission shall petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business for the enforcement of any final order which is not complied with and is issued by the commission or an administrative law judge under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court the final order sought to be enforced. Within five days after filing such petition in court, the commission shall cause a notice of the petition to be sent by certified mail to all parties or their representatives.

(2) From the time the petition is filed, the court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to grant such temporary relief or restraining order as it deems just and suitable.

(3) If the petition shows that there is a final order issued by the commission or administrative law judge under RCW 49.60.240 or 49.60.250 and that the order has

not been complied with in whole or in part, the court shall issue an order directing the person who is alleged to have not complied with the administrative order to appear in court at a time designated in the order, not less than ten days from the date thereof, and show cause why the administrative order should not be enforced according to the terms. The commission shall immediately serve the person with a copy of the court order and the petition.

(4) The administrative order shall be enforced by the court if the person does not appear, or if the person appears and the court finds that:

(a) The order is regular on its face;

(b) The order has not been complied with; and

(c) The person's answer discloses no valid reason why the order should not be enforced, or that the reason given in the person's answer could have been raised by review under RCW 34.05.510 through 34.05.598, and the person has given no valid excuse for failing to use that remedy.

(5) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to appellate review by the supreme court or the court of appeals, on appeal, by either party, irrespective of the nature of the decree or judgment. The review shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases. [1989 c 175 § 116; 1988 c 202 § 47; 1985 c 185 § 24; 1981 c 259 § 3; 1971 c 81 § 118; 1957 c 37 § 21. Prior: 1949 c 183 § 9, part; Rem Supp. 1949 § 7614-27A, part.]

Rules of court: Cf. RAP 2.2, 18.22.

Sunset Act application: See note following RCW 49.60.050.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1988 c 202: See note following RCW 2.24.050.

Effective date—1981 c 259: See note following RCW 49.60.250.

49.60.270 Appeal from orders of administrative law judge. Any respondent or complainant, including the commission, aggrieved by a final order of an administrative law judge may obtain judicial review of such order as provided under the administrative procedure act, chapter 34.05 RCW. From the time a petition for review is filed, the court has jurisdiction to grant to any party such temporary relief or restraining order as it deems just and suitable. If the court affirms the order, it shall enter a judgment and decree enforcing the order as affirmed. [1985 c 185 § 25; 1981 c 259 § 4; 1957 c 37 § 22. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

Sunset Act application: See note following RCW 49.60.050.

Effective date—1981 c 259: See note following RCW 49.60.250.

49.60.280 Court shall expeditiously hear and determine. Petitions filed under RCW 49.60.260 and 49.60.270 shall be heard expeditiously and determined upon the transcript filed, without requirement of printing. Hearings in the court under this chapter shall take precedence over all other matters, except matters of the same character. [1957 c 37 § 23. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

Sunset Act application: See note following RCW 49.60.050.

49.60.310 Misdemeanor to interfere with or resist commission. Any person who wilfully resists, prevents, impedes, or interferes with the commission or any of its members or representatives in the performance of duty under this chapter, or who wilfully violates an order of the commission, is guilty of a misdemeanor; but procedure for the review of the order shall not be deemed to be such wilful conduct. [1985 c 185 § 26; 1961 c 100 § 4; 1957 c 37 § 26; 1949 c 183 § 10; Rem. Supp. 1949 § 7614-28.]

Sunset Act application: See note following RCW 49.60.050.

49.60.320 Governor may act on orders against state or political subdivisions. In any case in which the commission shall issue an order against any political or civil subdivision of the state, or any agency, or instrumentality of the state or of the foregoing, or any officer or employee thereof, the commission shall transmit a copy of such order to the governor of the state. The governor shall take such action to secure compliance with such order as the governor deems necessary. [1985 c 185 § 27; 1949 c 183 § 11; Rem. Supp. 1949 § 7614-29.]

Sunset Act application: See note following RCW 49.60.050.

49.60.330 First class cities of over one hundred twenty-five thousand population—Administrative remedies authorized. Any city classified as a first class city under RCW 35.01.010 with over one hundred twenty five thousand population may enact ordinances consistent with this chapter to provide administrative remedies for any form of discrimination proscribed by this chapter: *Provided*, That the imposition of such administrative remedies shall be subject to judicial review. [1983 c 5 § 2; 1981 c 259 § 5.]

Effective date—1981 c 259: See note following RCW 49.60.250.

Chapter 49.64

EMPLOYEE BENEFIT PLANS

Sections

49.64.010	Duration of trusts for employee benefits.
49.64.020	Trusts exempted from limitation as to duration.
49.64.030	Employee benefit plans—Payment, refund, as discharge—Adverse claims.
49.64.040	Dental care assistance plans—Options required.

49.64.010 Duration of trusts for employee benefits. Any trust heretofore or hereafter created for the purposes and of the type enumerated in RCW 49.64.020, whether in real or personal property or in real and personal property, may continue for such time as may be necessary to accomplish the purposes of the trust and shall not be invalid as violating any statute or rule of law against perpetuities, or against accumulations of earnings, or concerning the suspension of the power of alienation of the title to property, or otherwise limiting the duration of trusts. [1955 c 158 § 1.]

49.64.020 Trusts exempted from limitation as to duration. Trusts which are entitled to the exemption from limitation as to their duration provided for in RCW 49.64.010 must be:

(1) Created by an employer primarily for the benefit of some or all of the employees of such employer or the families or appointees of such employees, under any pension, profit-sharing, stock bonus, retirement, disability, death benefit or other similar types of employee-benefit plans; and

(2) Contributed to by the employer or employees or both; and

(3) Existing for the purpose of distributing to or for the benefit of some or all of such employees (either before or after their employment ceases), their families or appointees, the earnings or principal, or earnings and principal, of the trust. [1955 c 158 § 2.]

49.64.030 Employee benefit plans—Payment, refund, as discharge—Adverse claims. Notwithstanding the provisions of RCW 26.16.030, whenever payment or refund is made to an employee, former employee, or his beneficiary or estate pursuant to and in full compliance with a written retirement, death or other employee benefit plan or savings plan, such payment or refund shall fully discharge the employer and any trustee or insurance company making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the employer or former employer, where the payment is made by the employer or former employer, has received at its principal place of business within this state, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof, or where a trustee or insurance company is making the payment, such notice has been received by the trustee or insurance company at its home office or its principal place of business within this state, and if none, such notice may be made on the secretary of state: *Provided, however*, That nothing contained in this section shall affect any claim or right to any such payment or refund or part thereof as between all persons other than employer and the trustee or insurance company making such payment or refund. [1953 c 45 § 1. Formerly RCW 49.52.065.]

Employees' benefit deductions are trust funds: RCW 49.52.010.

49.64.040 Dental care assistance plans—Options required. (1) Unless the context clearly requires otherwise, in this section "dental care assistance plan" means any plan of dental insurance offered by an insurer as defined by chapter 48.01 RCW and any agreement for dental care benefits entered into or renewed after January 1, 1989, provided by a health care service contractor as defined by chapter 48.44 RCW.

(2) Each employer, public or private, that offers its employees a dental care assistance plan and each employee benefits fund that offers its members a dental care assistance plan limiting the provider of dental care to designated providers or group of providers, shall make available to and inform its employees or members of the

option of enrolling in an alternative dental care assistance plan that permits the employees or members to obtain dental care services from any licensed dental care provider of their choice. The portion of the premium paid by the employer for the limiting plan shall be comparable to, but in no case greater than, the portion of the premium paid by the employer for the other plan. If employees are members of a bona fide bargaining unit covered by a labor-management collective bargaining agreement, the selection of the options required by this section may be specified in the agreement. The provisions of this section are not mandatory if the employees are covered by Taft-Hartley health care trust, except that the labor-management trustees may contract with a dental care assistance plan if a feasibility study determines it is to the advantage of the members: *Provided*, That this section shall only apply to employers with greater than twenty-five employees under coverage. [1988 c 259 § 1.]

Chapter 49.66

HEALTH CARE ACTIVITIES

Sections

49.66.010	Purpose—Policy—Declaration.
49.66.020	Definitions.
49.66.030	Bargaining units.
49.66.040	Unfair labor practices by health care activities.
49.66.050	Unfair labor practices by employee organizations or agents.
49.66.060	Strikes and picketing.
49.66.070	Relief from unfair labor practices—Actions—Remedial orders.
49.66.080	Rules and regulations—Procedures.
49.66.090	Board of arbitration—Members—Selection—Chairman.
49.66.100	Board of arbitration—Hearings—Findings.
49.66.110	Board of arbitration—Standards or guidelines.
49.66.120	Arbitrators—Compensation—Expenses.
49.66.900	Severability—1972 ex.s. c 156.

49.66.010 Purpose—Policy—Declaration. It is the public policy of the state to expedite the settlement of labor disputes arising in connection with health care activities, in order that there may be no lessening, however temporary, in the quality of the care given to patients. It is the legislative purpose by this chapter to promote collective bargaining between health care activities and their employees, to protect the right of employees of health care activities to organize and select collective bargaining units of their own choosing.

It is further determined that any agreements involving union security including an all-union agreement or agency agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee must pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise pay dues. The employee shall furnish

written proof that this has been done. If the employee and representative of the labor organization do not reach agreement on the matter, the department shall designate such organization. [1973 2nd ex.s. c 3 § 1; 1972 ex.s. c 156 § 1.]

49.66.020 Definitions. As used in this chapter:

(1) "Health care activity" includes any hospital, nursing home, institution, agency or establishment, exclusive of those operated by the state, its municipalities, or political subdivisions, having for one of its principal purposes the preservation of health or the care of sick, aged or infirm persons.

(2) "Bargaining unit" includes any group of employees of a health care activity having substantially common interests with respect to working conditions. The composition of a bargaining unit may be determined by common consent between an employer and its employees, or, in the event either party shall apply to the director of labor and industries for a determination of the composition of a bargaining unit, it shall be determined by the director of labor and industries or his delegated representative. No bargaining unit shall be found appropriate if it includes guards together with other employees.

(3) "Employee" includes any registered nurse or licensed practical nurse or service personnel performing services for wages for a health care activity. The term shall not apply to a member of a religious order assigned to a health care activity by the order as a part of his obligations to it; nor shall it apply to persons performing services in connection with healing by prayer or spiritual means alone in accordance with the tenets and practices of recognized church or religious denominations by adherents thereof; nor shall it apply to supervisors.

(4) "Employer" includes any person, agency, corporation, company or other organization engaged in the operation of a health care activity, whether for profitable or charitable purposes.

(5) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Supervisor includes registered nurses only if administrative supervision is his or her primary duty and activity.

(6) "Guard" means any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises.

(7) "Director" means the director of the department of labor and industries.

(8) "Department" means the department of labor and industries. [1973 2nd ex.s. c 3 § 2; 1972 ex.s. c 156 § 2.]

49.66.030 Bargaining units. An employee association shall be deemed the properly designated representative

of a bargaining unit when it can show evidence that bargaining rights have been assigned to it by a majority of the employees in the bargaining unit. Should questions arise concerning the representative status of any employee organization claiming to represent a bargaining unit of employees, upon petition by such an organization, it shall be the duty of the director, acting by himself or through a designee to investigate and determine the composition of the organization. Any organization found authorized by not less than thirty percent of the employees of a bargaining unit shall be eligible to apply for an election to determine its rights to represent the unit. If more than one organization shall claim to represent any unit, the director, or his designee, may conduct an election by secret ballot to determine which organization shall be authorized to represent the unit. In order to be certified as a bargaining representative, an employee organization must receive, in a secret ballot election, votes from a majority of the employees who vote in the election, except that nothing in this section shall prohibit the voluntary recognition of a labor organization as a bargaining representative by an employer upon a showing of reasonable proof of majority. In any election held pursuant to this section, there shall be a choice on the ballot for employees to designate that they do not wish to be represented by any bargaining representative. No representation election shall be directed in any bargaining unit or any subdivision thereof within which, in the preceding twelve-month period, a valid election has been held. Thirty percent of the employees of an employer may file a petition for a secret ballot election to ascertain whether the employee organization which has been certified or is currently recognized by their employer as their bargaining representative is no longer their bargaining representative.

No employee organization shall be certified as the representative of employees in a bargaining unit of guards, if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. The determination shall be based upon a plurality of votes cast in such election, and shall remain in effect for a period of not less than one year. In determining appropriate bargaining units, the director shall limit such units to groups consisting of registered nurses, licensed practical nurses or service personnel: *Provided, however,* That if a majority of each such classification desires inclusion within a single bargaining unit, they may combine into a single unit. [1973 2nd ex.s. c 3 § 3; 1972 ex.s. c 156 § 3.]

49.66.040 Unfair labor practices by health care activities. It shall be deemed an unfair labor practice, and unlawful, for any health care activity to:

(1) Interfere with, restrain or coerce employees in any manner in the exercise of their right of self-organization: *Provided,* That the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not

constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization having bargaining as one of its functions;

(3) Discriminate in regard to hire, terms, or conditions of employment in order to discourage membership in any employee organization having collective bargaining as one of its functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of employees; and it shall be a requirement of good faith bargaining that the parties be willing to reduce to writing, and have their representatives sign, any agreement arrived at through negotiation and discussion. [1972 ex.s. c 156 § 4.]

49.66.050 Unfair labor practices by employee organizations or agents. It shall be an unfair labor practice and unlawful, for any employee organization or its agent to:

(1) Restrain or coerce (a) employees in the exercise of their right to refrain from self-organization, or (b) an employer in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances;

(2) Cause or attempt to cause an employer to discriminate against an employee in violation of subsection (3) of RCW 49.66.040 or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) Refuse to meet and bargain in good faith with an employer, provided it is the duly designated representative of the employer's employees for purposes of collective bargaining;

(4) Require of employees covered by a union security agreement the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the director finds excessive or discriminatory under all the circumstances. In making such a finding, the director shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(5) Cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

(6) Enter into any contract or agreement, express or implied, whereby an employer or other person ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting or otherwise dealing in any of the products or services of any other employer or person, or to cease doing business with any other employer or

person, and any such contract or agreement shall be unenforceable and void; or

(7) Engage in, or induce or encourage any individual employed by any employer or to engage in, an activity prohibited by RCW 49.66.060. [1973 2nd ex.s. c 3 § 4; 1972 ex.s. c 156 § 5.]

49.66.060 Strikes and picketing. No employee organization, bargaining representative, person or employee shall authorize, sanction, engage in, or participate in a strike (including but not limited to a concerted work stoppage of any kind, concerted slowdown or concerted refusal or failure to report for work or perform work) or picketing against an employer under any circumstances, whether arising out of a recognition dispute, bargaining impasse or otherwise: *Provided*, That nothing in this section shall prohibit picketing or other publicity for the sole purpose of truthfully advising the public of the existence of a dispute with the employer, unless an effect of such picketing or other publicity is (a) to induce any employee of the employer or any other individual, in the course of his employment, not to pick up, deliver or transfer goods, not to enter the employer's premises, or not to perform services; or (b) to induce such an employee or individual to engage in a strike. [1972 ex.s. c 156 § 6.]

49.66.070 Relief from unfair labor practices—Actions—Remedial orders. The director or any employee organization qualified to apply for an election under RCW 49.66.030 as now or hereafter amended or any employer may maintain in its name or in the name of its members legal action in any county in which jurisdiction of the employer or employee organization may be obtained, to seek relief from the commission of an unfair labor practice: *Provided*, That such employer or employee organization exhausts the administrative remedies under rules and regulations promulgated by the department prior to seeking such court action.

The department is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders. Any party aggrieved by any remedial order is entitled to the judicial review thereof in accordance with the provisions of chapter 34.05 RCW. [1973 2nd ex.s. c 3 § 5; 1972 ex.s. c 156 § 7.]

49.66.080 Rules and regulations—Procedures. The director shall have the power to make such rules and regulations not inconsistent with this chapter, including the establishment of procedures for the hearing and determination of charges alleging unfair labor practices, and for a determination on application by either party when an impasse has arisen, and as he shall determine are necessary to effectuate its purpose and to enable him to carry out its provisions. [1973 2nd ex.s. c 3 § 6; 1972 ex.s. c 156 § 8.]

49.66.090 Board of arbitration—Members—Selection—Chairman. In the event that a health care activity and an employees' bargaining unit shall reach an impasse, the matters in dispute shall be submitted to a

board of arbitration composed of three arbitrators for final and binding resolution. The board shall be selected in the following manner: Within ten days, the employer shall appoint one arbitrator and the employees shall appoint one arbitrator. The two arbitrators so selected and named shall within ten days agree upon and select the name of a third arbitrator who shall act as chairman. If, upon the expiration of the period allowed therefor the arbitrators are unable to agree on the selection of a third arbitrator, such arbitrator shall be appointed at the request of either party in accordance with the provisions of RCW 7.04.050 and he shall act as chairman of the arbitration board. [1973 2nd ex.s. c 3 § 7; 1972 ex.s. c 156 § 9.]

49.66.100 Board of arbitration—Hearings—Findings. The arbitration board, acting through its chairman, shall call a hearing to be held within ten days after the date of the appointment of the chairman. The board shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings shall be taken. Any oral or documentary evidence and other data deemed relevant by the board may be received in evidence. The board shall have the power to administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as may be deemed by the board material to a just determination of the issues in dispute and to issue subpoenas. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the board may invoke the jurisdiction of any superior court and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. The hearing conducted by the arbitrators shall be concluded within twenty days of the time of commencement and, within ten days after conclusion of the hearings, the arbitrator shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the employees' negotiating agent or its attorney or other designated representative and to the employer or the employer's attorney or designated representative. The determination of the dispute made by the board shall be final and binding upon both parties. [1972 ex.s. c 156 § 10.]

49.66.110 Board of arbitration—Standards or guidelines. In making its determination, the board of arbitrators shall be mindful of the legislative purpose enumerated in RCW 49.66.010 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

(1) Wage rates or other conditions of employment of the health care activity in question as compared with

prevailing wage rates or other conditions of employment in the local operating area involved.

(2) Wage rates or other working conditions as compared with wage rates or other working conditions maintained for the same or similar work of workers in the local area.

(3) The overall compensation of employees having regard not only to wages for time actually worked but also for time not actually worked, including vacations, holidays and other excused time and for all fringe benefits received.

(4) Interest and welfare of the public.

(5) Comparison of peculiarities of employment in regard to other comparable trades or professions, specifically:

- (a) Physical qualifications.
- (b) Educational qualifications.
- (c) Job training and skills.

(6) Efficiency of operation of the health care activity. [1972 ex.s. c 156 § 11.]

49.66.120 Arbitrators—Compensation—Expenses. The arbitrator so selected by the parties shall be paid at the daily rate or rates not to exceed the usual or customary rates paid to arbitrators in addition to travel expenses at the rates provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Such sums together with all expenses of the hearing shall be borne equally by the parties to the arbitration proceedings. [1975-'76 2nd ex.s. c 34 § 147; 1973 2nd ex.s. c 3 § 8; 1972 ex.s. c 156 § 12.]

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

49.66.900 Severability—1972 ex.s. c 156. If any portion of this chapter, or its application to any particular health care activity or class of health care activity, should be held invalid, the remainder of the chapter, or its application to other health care activities, or other classes thereof, shall not be affected. [1972 ex.s. c 156 § 13.]

Chapter 49.70

WORKER AND COMMUNITY RIGHT TO KNOW ACT

Sections

49.70.010	Legislative findings.
49.70.020	Definitions.
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49.70.010 Legislative findings. The legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety, and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to monitor adequately and detect any adverse health effects attributable thereto; that individuals themselves are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed action concerning their employment and their living conditions.

The legislature further declares that local health, fire, police, safety, and other government officials require detailed information about the identity, characteristics, and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to plan adequately for, and respond to, emergencies, enforce compliance with applicable laws and regulations concerning these substances, and to compile records of exposures to hazardous substances over a period of time that will facilitate the diagnosis, treatment, and prevention of disease.

The legislature further declares that the extent of the toxic contamination of the air, water, and land in this state has caused a high degree of concern among its residents and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The legislature therefore determines that while these substances have contributed to the high quality of life we enjoy in our state, it is in the public interest to establish a comprehensive program for the disclosure of information about hazardous substances in the workplace and the community, and to provide a procedure whereby residents of this state may gain access to this information. [1984 c 289 § 2.]

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

(1) "Department" means the department of labor and industries.

(2) "Employee" means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is personal labor for an employer under this chapter whether by way of manual labor or otherwise. However, for the purposes of this chapter, employee shall not mean immediate family members of the officers of any corporation, partnership, sole proprietorship or other business entity or officers of any closely held corporation engaged in agricultural production of crops or livestock.

(3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that engages in any business, industry, profession, or activity in this state and employs one or more employees or who contract with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations. [1985 c 409 § 1.]

49.70.100 Employee may request workplace survey or material safety data sheet. An employee or employee representative may request, in writing, from the employer, a copy of a workplace survey or a material safety data sheet, filed pursuant to this chapter for the employee's work area. The employer shall supply this material within three working days of the request. This section shall not apply to employees of vessels while the employees are on the water. [1989 c 11 § 22; 1984 c 289 § 15.]

Severability—1989 c 11: See note following RCW 9A.56.220.

49.70.105 Foreign language translations of written materials. (1) The department shall prepare and make available to employers or the public, upon request, a translation in any of the five most common foreign languages used in the workplace, of a written hazard communication program, a material safety data sheet, or written materials prepared by the department to inform employees of their rights relating to hazard communication standards under this chapter and chapter 49.17 RCW.

(2) An employer employing employees who have trouble communicating in English shall make reasonable efforts to post any notices in the employees' native languages as provided by the department. [1985 c 409 § 2.]

49.70.110 Discharge or discipline of employee prohibited—Application of discrimination statutes. No employer may discharge, cause to be discharged, or otherwise discipline, penalize, or discriminate against any employee because the employee or the employee's

representative has exercised any right established in this chapter. The discrimination provisions of chapter 49.17 RCW apply to this chapter. [1984 c 289 § 16.]

49.70.115 Agricultural employees—Information and training on hazardous chemicals. (1) An employer shall provide employees engaged in agricultural production of crops or livestock or agricultural services with information and training on hazardous chemicals in their workplace at the time of their initial assignment, and whenever a new hazard is introduced into their work area, such instruction shall be tailored to the types of hazards to which the employees will be exposed. Seasonal and temporary employees who are not exposed to hazardous chemicals in their work area need not be trained.

(2) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are accessible to agricultural employees upon request.

(3) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced. [1985 c 409 § 3.]

49.70.117 Agricultural employees—Pesticides—Warning signs. (Effective July 1, 1990.) (1) If a pesticide having a reentry interval of greater than twenty-four hours is applied to a labor-intensive agricultural crop, the pesticide-treated area shall be posted with warning signs in accordance with the requirements of this section.

(2) When pesticide warning signs are required under this section, the employer shall post signs visible from all usual points of entry to the pesticide-treated area. If there are no usual points of entry or the area is adjacent to an unfenced public right of way, signs shall be posted (a) at each corner of the pesticide-treated area, and (b) at intervals not exceeding six hundred feet, or (c) at other locations approved by the department that provide maximum visibility.

(3) The signs shall be posted no sooner than twenty-four hours before the scheduled application of the pesticide, remain posted during application and throughout the applicable reentry interval, and be removed within two days after the expiration of the applicable reentry interval and before employee reentry is permitted.

(4) Signs shall be legible for the duration of use. Signs shall contain a prominent symbol approved by the department of agriculture and the department of labor and industries by rule, and wording shall be in English and Spanish or other languages as required by the department. Signs shall meet the minimum specifications of rules adopted by the department, which rules shall include, at a minimum, size and lettering requirements. [1989 c 380 § 76.]

Effective date—1989 c 380 § 76: "Section 76 of this act shall take effect on July 1, 1990." [1989 c 380 § 92.]

Severability—1989 c 380: See RCW 15.59.942.

49.70.119 Agricultural employees—Pesticides—Workplace pesticide list. (1) An employer who applies or

stores pesticides in connection with the production of an agricultural crop shall compile and maintain a workplace pesticide list by crop for each pesticide that is applied to a crop or stored in a work area. The workplace pesticide list shall be kept on a form prescribed by the department and shall contain at least the following information:

(a) The location of the land where the pesticide was applied or site where the pesticide was stored;

(b) The year, month, day, and time the pesticide was applied;

(c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide that was applied or stored;

(d) The crop or site to which the pesticide was applied;

(e) The amount of pesticide applied per acre, or other appropriate measure;

(f) The concentration of pesticide that was applied;

(g) The number of acres, or other appropriate measure, to which pesticide was applied;

(h) If applicable, the licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application; and

(i) The direction and estimated velocity of the wind at the time the pesticide was applied: *Provided*, That this subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures.

(2) The employer shall update the workplace pesticide list on the same day that a pesticide is applied or is first stored in a work area.

(3) The workplace pesticide list may be prepared for the workplace as a whole or for each work area and must be readily available to employees and their designated representatives. New or newly assigned employees shall be made aware of the pesticide chemical list before working with pesticides or in a work area containing pesticides.

(4) An employer subject to this section shall maintain one form for each crop, work area, or workplace as a whole, as appropriate, and shall add information to the form as different pesticides are applied or stored. The forms shall be accessible and available for copying and shall be stored in a location suitable to preserve their physical integrity. The employer shall maintain and preserve the forms required under this section for no less than seven years. The records shall include an estimation of the total amount of each pesticide listed on the forms.

(5) After July 23, 1989, if an employer has failed to maintain and preserve the forms as required, the employer shall be subject to any applicable penalties authorized under this chapter or chapter 49.17 RCW.

(6) If activities for which forms are maintained cease at a workplace, the forms shall be filed with the department. If an employer subject to this section is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the forms as required by this section but is not liable for violations committed by the former employer under this chapter or rules adopted under this chapter, including

violations relating to the retention and preservation of forms.

(7) The employer shall provide copies of the forms, on request, to an employee or the employee's designated representative in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, treating medical personnel, the pesticide incident reporting and tracking review panel, or department representative. The designated representative or treating medical personnel are not required to identify the employee represented or treated. The department shall keep the name of any affected employee confidential in accordance with RCW 49.17.080(1). If an employee, a designated representative, treating medical personnel, or the pesticide incident reporting and tracking review panel requests a copy of a form and the employer refuses to provide a copy, the requester shall notify the department of the request and the employer's refusal. Within seven working days, the department shall request that the employer provide the department with all pertinent copies, except that in a medical emergency the request shall be made within two working days. The employer shall provide copies of the form to the department within twenty-four hours after the department's request.

(8) The department of labor and industries and the department of agriculture shall jointly adopt, by rule, one form that satisfies the information requirements of this section and RCW 17.21.100. Records kept by the employer on the prescribed form under RCW 17.21.100 may be used to comply with the workplace pesticide list information requirements under this section. [1989 c 380 § 77.]

Severability—1989 c 380: See RCW 15.58.942.

49.70.120 Right-to-know advisory council—Members—Procedures—Officers and staff—Reimbursement of expenses. (1) The director shall establish in the department a right-to-know advisory council, which shall consist of sixteen members appointed by the director. Each of these members shall be appointed for a term of three years, provided that of the members of the council first appointed by the director, five shall serve for terms of one year, five shall serve for terms of two years, and five shall serve for terms of three years. Of these members, one shall be appointed from persons having knowledge and experience in industrial hygiene recommended by recognized labor unions; one from persons recommended by recognized agricultural organizations; one from persons recommended by recognized migrant labor organizations; one from persons recommended by recognized environmental organizations; one from persons recommended by recognized public interest organizations; one from persons recommended by recognized organizations of chemical industries; one from persons recommended by recognized community organizations; one from persons recommended by recognized organizations of petroleum industries; one from persons recommended by recognized organizations of fire fighters; one from persons recommended by recognized business or trade organizations; one from persons

recommended by recognized organizations of small business; one from persons holding an M.D. degree recommended by recognized public health organizations; two persons from professional accident and safety organizations; one person from the technology-based industries; and one from persons with training and experience in environmental epidemiology and toxicology recommended by recognized research or academic organizations. In the event that no recommendations for a particular category of membership are made to the director three months after June 7, 1984, in the case of the initial appointments, or within sixty days of the date of the expiration of the term of office of any member or the occurrence of any vacancy in the case of subsequent appointments, the director shall appoint as a member for that category of membership a person whom the director believes will be representative thereof.

(2) A majority of the membership of the council constitutes a quorum for the transaction of council business. Action may be taken and motions and resolutions adopted by the council at any meeting thereof by the affirmative vote of a majority of the members of the council present and voting.

(3) The director or the director's designee shall be the nonvoting ex officio chair of the council. The council shall meet at least semiannually at the call of the chair.

(4) The council shall appoint other officers as may be necessary from among its members. The council may, within the limits of any funds appropriated or otherwise made available to it for this purpose, appoint such staff or hire such experts as it may require.

(5) Members of the council shall serve without compensation, but the council may, within the limits of funds appropriated or otherwise made available to it for such purposes, reimburse its members for necessary expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060. [1987 c 24 § 1; 1985 c 409 § 5; 1984 c 289 § 17.]

49.70.130 Right-to-know advisory council—Powers and duties. (1) The council shall:

(a) Advise the department on the revision of the workplace hazardous substance lists;

(b) Study the impact of this chapter on employers and make recommendations to the legislature. Special emphasis shall be given to the study of the impacts on agricultural and small business employers;

(c) Prepare an updated fiscal note of the costs of this chapter to the department and to local governments, school districts, institutions of higher education and hospitals;

(d) Report to the legislature its findings under (b) and (c) of this section by January 1, 1985;

(e) Advise the department on the implementation of this chapter; and

(f) Review any matters submitted to it by the department.

(2) The council may:

(a) Review any aspect of the implementation of this chapter, and transmit its recommendations to the department; and

(b) Hold public meetings or hearings within the state on any matter or matters related to this chapter. [1984 c 289 § 18.]

49.70.140 Educational brochures and public service announcements. The department shall produce educational brochures and public service announcements detailing information available to citizens under this chapter. These educational materials shall be sent to each county health department. As necessary, the department shall provide information needed to update these educational materials. [1984 c 289 § 20.]

49.70.150 Civil actions authorized. A person may bring a civil action on his or her own behalf against a manufacturer, supplier, employer, or user to compel compliance with the provisions of this chapter or any rule promulgated under this chapter subject to the provisions of Title 51 RCW. The superior court shall have jurisdiction over these actions. The court may award costs of litigation to the prevailing party, including reasonable attorney and expert witness fees. [1984 c 289 § 21.]

49.70.160 Requests for additional information—Confidentiality. The department may request from an employer submitting surveys to it further information concerning the surveys, and the employer shall provide the additional information upon the request. The employer may require the department to provide reasons why further information is needed and to sign an agreement protecting the confidentiality of any additional information provided under this section. [1984 c 289 § 23.]

49.70.165 Trade secret exemptions. (1) The department shall adopt rules in accordance with chapter 34.05 RCW establishing criteria for evaluating the validity of trade secret claims and procedures for issuing a trade secret exemption. Manufacturers or importers that make a trade secret claim to the department must notify direct purchasers if a trade secret claim has been made on a product being offered for sale.

(2) If a trade secret claim exists, a manufacturer, importer, or employer may require a written statement of need or confidentiality agreement before the specific chemical identity of a hazardous substance is released. However, if a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous substance is necessary for emergency or first aid treatment, the manufacturer, importer, or employer shall immediately disclose the specific chemical identity to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, as defined by rule, as soon as circumstances permit.

(3) Any challenge to the denial of a trade secret claim shall be heard by an administrative law judge in accordance with chapter 34.05 RCW. [1985 c 409 § 4.]

49.70.170 Worker and community right to know fund—Employer assessments—Audits—Appeal of assessment. (1) The worker and community right to know fund is hereby established in the custody of the state treasurer. The department shall deposit all moneys received under this chapter in the fund. Moneys in the fund may be spent only for the purposes of this chapter following legislative appropriation. Disbursements from the fund shall be on authorization of the director or the director's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW.

(2) The department shall assess each employer who reported ten thousand four hundred or more worker hours in the prior calendar year an annual fee to provide for the implementation of this chapter. The department shall promulgate rules establishing a fee schedule for all employers who reported ten thousand four hundred or more worker hours in the prior calendar year and are engaged in business operations having a standard industrial classification, as designated in the standard industrial classification manual prepared by the federal office of management and budget, within major group numbers 01 through 08 (agriculture and forestry industries), numbers 10 through 14 (mining industries), numbers 15 through 17 (construction industries), numbers 20 through 39 (manufacturing industries), numbers 41, 42, and 44 through 49 (transportation, communications, electric, gas, and sanitary services), number 75 (automotive repair, services, and garages), number 76 (miscellaneous repair services), number 80 (health services), and number 82 (educational services). The department shall establish the annual fee for each employer who reported ten thousand four hundred or more worker hours in the prior calendar year in industries identified by this section, provided that fees assessed shall not be more than two dollars and fifty cents per full time equivalent employee. The annual fee shall not exceed fifty thousand dollars. The fees shall be collected solely from employers whose industries have been identified by rule under this chapter. The department shall promulgate rules allowing employers who do not have hazardous substances at their workplace to request an exemption from the assessment and shall establish penalties for fraudulent exemption requests. All fees collected by the department pursuant to this section shall be collected in a cost-efficient manner and shall be deposited in the fund.

(3) Records required by this chapter shall at all times be open to the inspection of the director, or his designee including, the traveling auditors, agents or assistants of the department provided for in RCW 51.16.070 and 51.48.040. The information obtained from employer records under the provisions of this section shall be subject to the same confidentiality requirements as set forth in RCW 51.16.070.

(4) An employer may appeal the assessment of the fee or penalties pursuant to the procedures set forth in Title 51 RCW and accompanying rules except that the employer shall not have the right of appeal to superior court as provided in Title 51 RCW. The employer from whom the fee or penalty is demanded or enforced, may

however, within thirty days of the board of industrial insurance appeal's final order, pay the fee or penalty under written protest setting forth all the grounds upon which such fee or penalty is claimed to be unlawful, excessive or otherwise improper and thereafter bring an action in superior court against the department to recover such fee or penalty or any portion of the fee or penalty which was paid under protest.

(5) Repayment shall be made to the general fund of any moneys appropriated by law in order to implement this chapter. [1986 c 310 § 1; 1984 c 289 § 24.]

49.70.175 Worker and community right to know fund—Expenditure—Disbursements. Funds in the worker and community right to know fund established under RCW 49.70.170 may be spent by the department of ecology to implement RCW 70.102.020 (1) through (3) following legislative appropriation. Disbursements from the fund shall be on authorization of the director of the department of ecology. [1985 c 410 § 5.]

49.70.177 Penalties for late payment of fees—Collection of fees and penalties. If payment of any fee assessed under RCW 49.70.170 is not received by the department by the due date, there shall be assessed a penalty of five percent of the amount of the fee. If the fee is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the fee. If the fee is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the fee. No penalty added may be less than ten dollars. If a warrant is issued by the department for the collection of fees, penalties, and interest, there shall be an additional penalty of five percent of the amount of the fee, but not less than five dollars nor more than one hundred dollars. Warrants shall earn interest at the rate of one percent per month, or fraction thereof, from and after the date of entry of the warrant. The department may utilize the procedures for collection of fees, penalties, and interest set forth in Title 51 RCW. [1986 c 310 § 2.]

49.70.180 Application of enforcement and administrative procedures of Washington industrial safety and health act. Unless reference is specifically made to another chapter, this chapter shall be implemented and enforced including penalties, violations, citations, and other administrative procedures pursuant to chapter 49.17 RCW. [1984 c 289 § 25.]

49.70.190 Compliance with chapter—Notice—Fines—Injunctive relief. If a manufacturer, supplier, employer, or user refuses or fails to provide the department with any data sheets, workplace surveys, or other papers, documents, or information required by this chapter, the department may give written notice to the manufacturer, supplier, employer, or user demanding immediate compliance. If the manufacturer, supplier, employer, or user fails to begin to comply with the terms of the notice within fourteen days of receipt, the department may levy a fine of up to fifty dollars per affected

employee per day, not to exceed five thousand dollars per day from the final date for compliance allowed by this section or by the department. In any case where the noncompliance continues for more than fifteen days or where the department determines the failure to comply creates a potential health or safety hazard to employees or hinders the department's performance of its duties under this chapter, the department may, in lieu of levying a fine or further fines, petition the superior court of Thurston county or the county where the manufacturer, supplier, employer, or user is located for an order enjoining the manufacturer, employer, supplier, or user from further noncompliance and granting any other remedies that may be appropriate. The court may award the department costs of litigation, including attorney's fees, if the department is the prevailing party. [1984 c 289 § 26.]

49.70.200 Adoption of rules. Except as otherwise provided in this chapter, the department, after consultation with the department of agriculture, shall adopt any rules necessary to carry out its responsibilities under this chapter. [1984 c 289 § 27.]

49.70.210 Application of chapter to consumer products. (1) It is the intent of the legislature that this chapter shall not apply to products that are generally made available to the noncommercial consumer: *Provided*, That such "consumer" products used by employees in the workplace are used in substantially the same manner, form, and concentration as they are used by noncommercial consumers, and that the product exposure is not substantially greater to the employee than to the noncommercial consumer during normal and accepted use of that product.

(2) The department shall adopt rules in accordance with chapter 34.05 RCW to implement this section. This section shall not affect the department's authority to implement and enforce the Washington industrial safety and health act, chapter 49.17 RCW, at least as effectively as the federal occupational safety and health act. [1987 c 365 § 1.]

49.70.900 Short title. This chapter shall be known and may be cited as the "worker and community right to know act." [1984 c 289 § 1.]

49.70.905 Severability—1984 c 289. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 289 § 30.]

Chapter 49.74

AFFIRMATIVE ACTION

Sections

49.74.005	Legislative findings—Purpose.
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49.74.030	Noncompliance—Conciliation—Order.
49.74.040	Failure to reach conciliation agreement—Administrative hearing—Appeal.
49.74.050	Superior court—Remedies.

49.74.005 Legislative findings—Purpose. Discrimination because of race, creed, color, national origin, age, sex, marital status, or the presence of any sensory, mental, or physical handicap is contrary to the findings of the legislature and public policy. The legislature finds and declares that racial minorities, women, persons in protected age groups, persons with disabilities, Vietnam-era veterans, and disabled veterans are underrepresented in Washington state government employment.

The purpose of this chapter is to provide for enforcement measures for affirmative action within Washington state government employment and institutions of higher education in order to eliminate such underrepresentation. [1985 c 365 § 7.]

49.74.010 Commission. As used in this chapter, "commission" means the Washington state human rights commission. [1985 c 365 § 8.]

49.74.020 Affirmative action rules—Noncompliance—Notification—Hearing. If the commission reasonably believes that a state agency, an institution of higher education, or the state patrol has failed to comply with an affirmative action rule adopted under RCW 28B.16.100, 41.06.150, or 43.43.340, the commission shall notify the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol of the noncompliance, as well as the director of personnel or the director of the higher education personnel board, whichever is appropriate. The commission shall give the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol an opportunity to be heard on the failure to comply. [1985 c 365 § 9.]

49.74.030 Noncompliance—Conciliation—Order. The commission in conjunction with the department of personnel, the higher education personnel board, or the state patrol, whichever is appropriate, shall attempt to resolve the noncompliance through conciliation. If an agreement is reached for the elimination of noncompliance, the agreement shall be reduced to writing and an order shall be issued by the commission setting forth the terms of the agreement. The noncomplying state agency, institution of higher education, or state patrol shall make a good faith effort to conciliate and make a full commitment to correct the noncompliance with any action that may be necessary to achieve compliance, provided such action is not inconsistent with the rules adopted under RCW 28B.16.100(20), 41.06.150(21), and 43.43.340(5), whichever is appropriate. [1985 c 365 § 10.]

49.74.040 Failure to reach conciliation agreement—Administrative hearing—Appeal. If no agreement can be reached under RCW 49.74.030, the commission may refer the matter to the administrative

law judge for hearing pursuant to RCW 49.60.250. If the administrative law judge finds that the state agency, institution of higher education, or state patrol has not made a good faith effort to correct the noncompliance, the administrative law judge shall order the state agency, institution of higher education, or state patrol to comply with this chapter. The administrative law judge may order any action that may be necessary to achieve compliance, provided such action is not inconsistent with the rules adopted under RCW 28B.16.100(20), 41.06.150(21), and 43.43.340(5), whichever is appropriate.

An order by the administrative law judge may be appealed to superior court. [1985 c 365 § 11.]

49.74.050 Superior court—Remedies. If the superior court finds that the state agency, institution of higher education, or state patrol has not made a good faith effort to correct the noncompliance, the court, in addition to any other penalties and sanctions prescribed by law, shall order the state agency, institution of higher education, or state patrol to comply with this chapter. The court may require any action deemed appropriate by the court which is consistent with the intent of this chapter. [1985 c 365 § 12.]

Chapter 49.78 FAMILY LEAVE

Sections

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49.78.900	Severability—1989 1st ex.s. c 11.
49.78.901	Effective date—1989 1st ex.s. c 11.

49.78.010 Legislative findings. The legislature finds that the demands of the workplace and of families need to be balanced to promote family stability and economic security. Changes in workplace leave policies are desirable to accommodate changes in the work force such as rising numbers of dual-career couples and working single parents. In addition, given the mobility of American

society, many people no longer have available community or family support networks and therefore need additional flexibility in the workplace. The legislature declares it to be in the public interest to provide reasonable family leave upon the birth or adoption of a child and to care for a child under eighteen years old with a terminal health condition. [1989 1st ex.s. c 11 § 1.]

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

(1) "Child" means a biological or adopted child, or a stepchild, living with the employee.

(2) "Department" means the department of labor and industries.

(3) "Employee" means a person other than an independent contractor employed by an employer on a continuous basis for the previous fifty-two weeks for at least thirty-five hours per week.

(4) "Employer" means: (a) Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and includes any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision, which (i) employed a daily average of one hundred or more employees during the last calendar quarter at the place where the employee requesting leave reports for work, or (ii) employed a daily average of one hundred or more employees during the last calendar quarter within a twenty mile radius of the place where the employee requesting leave reports for work, where the employer maintains a central hiring location and customarily transfers employees among workplaces; and (b) the state, state institutions, and state agencies.

(5) "Family leave" means leave from employment to care for a newborn or newly adopted child under the age of six or a child under eighteen years old with a terminal health condition, as provided in RCW 49.78.030.

(6) "Health care provider" means a person licensed as a physician under chapter 18.71 RCW or an osteopath under chapter 18.57 RCW.

(7) "Parent" means a biological or adoptive parent, or a stepparent.

(8) "Reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours or days per workweek.

(9) "Terminal health condition" means a condition caused by injury, disease, or illness, that, within reasonable medical judgment, is incurable and will produce death within the period of leave to which the employee is entitled. [1989 1st ex.s. c 11 § 2.]

49.78.030 Requirements—Limitation. (1) An employee is entitled to twelve workweeks of family leave during any twenty-four month period to: (a) Care for a newborn child or adopted child of the employee who is under the age of six at the time of placement for adoption, or, (b) care for a child under eighteen years old of the employee who has a terminal health condition. Leave

under subsection (1)(a) of this section shall be completed within twelve months after the birth or placement for adoption, as applicable. An employee is entitled to leave under subsection (1)(b) of this section only once for any given child.

(2) Family leave may be taken on a reduced leave schedule subject to the approval of the employer.

(3) The leave required by this section may be unpaid. If an employer provides paid family leave for fewer than twelve workweeks, the additional workweeks of leave added to attain the twelve-workweek total may be unpaid. An employer may require an employee to first use up the employee's total accumulation of leave to which the employee is otherwise entitled before going on family leave; however, except as provided in subsection (4) of this section, nothing in this section requires more than twelve total workweeks of leave during any twenty-four month period. An employer is not required to allow an employee to use the employee's other leave in place of the leave provided under this chapter.

(4) The leave required by this section is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(5) An employer may limit or deny family leave to either: (a) Up to ten percent of the employer's workforce in the state designated as key personnel by the employer. Any designation made under this section shall take effect thirty days after it is issued and may be changed no more than once in any twelve-month period. An employer shall not designate key personnel on the basis of age or gender or for the purpose of evading the requirements of this chapter. No employee may be designated as key personnel after giving notice of intent to take leave pursuant to RCW 49.78.040. The designation shall be in writing and shall be displayed in a conspicuous place; or (b) if the employer does not designate key personnel, the highest paid ten percent of the employer's employees in the state. [1989 1st ex.s. c 11 § 3.]

49.78.040 Notice to employer. (1) An employee planning to take family leave under RCW 49.78.030(1)(a) shall provide the employer with written notice at least thirty days in advance of the anticipated date of delivery or placement for adoption, stating the dates during which the employee intends to take family leave. The employee shall adhere to the dates stated in the notice unless:

- (a) The birth is premature;
- (b) The mother is incapacitated due to birth such that she is unable to care for the child;
- (c) The employee takes physical custody of the newly adopted child at an unanticipated time and is unable to give notice thirty days in advance; or
- (d) The employer and employee agree to alter the dates of family leave stated in the notice.

(2) In cases of premature birth, incapacity, or unanticipated placement for adoption referred to in subsection (1) of this section, the employee must give notice of revised dates of family leave as soon as possible but at least within one working day of the birth or placement for adoption or incapacitation of the mother.

(3) If family leave under RCW 49.78.030(1)(b) is foreseeable, the employee shall provide the employer with written notice at least fourteen days in advance of the expected leave and shall make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer. If family leave under RCW 49.78.030(1)(b) is not foreseeable fourteen or more days before the leave is to take place, the employee shall notify the employer of the expected leave as soon as possible, but at least within one working day of the beginning of the leave.

(4) If the employee fails to give the notice required by this section, the employer may reduce or increase the family leave required by this chapter by three weeks. [1989 1st ex.s. c 11 § 4.]

49.78.050 Requirements for confirmation—Second opinion. (1) In the event of any dispute under this chapter regarding premature birth, incapacitation of the mother, maternity disability, or terminal condition of a child, an employer may require confirmation by a health care provider of: (a) The date of the birth; (b) the date on which incapacity because of childbirth or disability because of pregnancy or childbirth commenced or will probably commence, and its probable duration; or (c) for family leave under RCW 49.78.030(1)(b), the fact that the child has a terminal health condition.

(2) An employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider selected by the employer concerning any information required under subsection (1) of this section. If the health care providers disagree on any factor which is determinative of the employee's eligibility for family leave, the two health care providers shall select a third health care provider, whose opinion, obtained at the employer's expense, shall be conclusive. [1989 1st ex.s. c 11 § 5.]

49.78.060 Both parents with same employer. If both parents of a child are employed by the same employer, they shall together be entitled to a total of twelve workweeks of family leave during any twenty-four month period, and leave need be granted to only one parent at a time. [1989 1st ex.s. c 11 § 6.]

49.78.070 Employee employment rights—Limitations. (1) Subject to subsection (2) of this section, an employee who exercises any right provided under RCW 49.78.030 shall be entitled, upon return from leave or during any reduced leave schedule:

- (a) To the same position held by the employee when the leave commenced; or
- (b) To a position with equivalent benefits and pay at a workplace within twenty miles of the employee's workplace when leave commenced; or
- (c) If the employer's circumstances have so changed that the employee cannot be reinstated to the same position, or a position of equivalent pay and benefits, the employee shall be reinstated in any other position which is vacant and for which the employee is qualified.

(2) The entitlement under subsection (1) of this section is subject to bona fide changes in compensation or work duties, and does not apply if:

(a) The employee's position is eliminated by a bona fide restructuring, or reduction-in-force;

(b) The employee's workplace is permanently or temporarily shut down for at least thirty days;

(c) The employee's workplace is moved to a location at least sixty miles from the location of the workplace when leave commenced;

(d) An employee on family leave takes another job; or

(e) The employee fails to provide timely notice of family leave as required under RCW 49.78.040, or fails to return on the established ending date of leave. [1989 1st ex.s. c 11 § 7.]

49.78.080 Employee benefits. (1) The taking of leave under this chapter shall not result in the loss of any benefit, including seniority or pension rights, accrued before the date on which the leave commenced.

(2) Nothing in this chapter shall be construed to require the employer to grant benefits, including seniority or pension rights, during any period of leave.

(3) All policies applied during the period of leave to the classification of employees to which the employee on leave belongs shall apply to the employee on leave.

(4) During any period of leave taken under RCW 49.78.030, if the employee is not eligible for any employer contribution to medical or dental benefits under an applicable collective bargaining agreement or employer policy during any period of leave, an employer shall allow the employee to continue, at his or her own expense, medical or dental insurance coverage, including any spouse and dependent coverage, in accordance with state or federal law. The premium to be paid by the employee shall not exceed one hundred two percent of the applicable premium for the leave period. [1989 1st ex.s. c 11 § 8.]

49.78.090 Administration. The department of labor and industries shall administer the provisions of this chapter. [1989 1st ex.s. c 11 § 9.]

49.78.100 Additional rights—Remedies. (1) Except as provided in this chapter, the rights under this chapter are in addition to any other rights provided by law. The remedies under this chapter shall be exclusive.

(2) Nothing in this chapter shall be construed to discourage employers from adopting policies which provide greater leave rights to employees than those required by this chapter. [1989 1st ex.s. c 11 § 10.]

49.78.110 Collective bargaining agreements—Obligations and rights not diminished. (1) Nothing in this chapter shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or any employment benefit program or plan which provides greater leave rights to employees than the rights provided under this chapter.

(2) The rights provided to employees under this chapter may not be diminished by any collective bargaining

agreement or any employment benefit program or plan entered into or renewed after September 1, 1989. [1989 1st ex.s. c 11 § 11.]

49.78.120 Collective bargaining agreements—Application of chapter—Grievance procedures. (1) In the case of employees covered by an unexpired collective bargaining agreement that expires on or after September 1, 1989, or by an employee benefit program or plan with a stated year ending on or after September 1, 1989, the effective date of this chapter shall be the later of: (a) The first day following expiration of the collective bargaining agreement; or (b) the first day of the next plan year.

(2) Notwithstanding the provisions of RCW 49.78.140 through 49.78.210, where this chapter has been incorporated into a collective bargaining agreement, the grievance procedures contained in the respective collective bargaining agreement shall be used to resolve complaints related to this chapter. [1989 1st ex.s. c 11 § 12.]

49.78.130 Discrimination prohibited. No employer, employment agency, labor union, or other person shall discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a complaint, testified, or assisted in any proceeding under this chapter. [1989 1st ex.s. c 11 § 13.]

49.78.140 Complaints—Contents—Notice—Investigation. (1) An employee who believes that his or her employer has violated any provision of this chapter may file a complaint with the department within ninety days of the alleged violation. The complaint shall contain the following:

(a) The name and address of the employee making the complaint;

(b) The name, address, and telephone number of the employer against whom the complaint is made;

(c) A statement of the specific facts which constitute the alleged violation, including the date(s) on which the alleged violation occurred.

(2) Upon receipt of a complaint, the department shall forward written notice of the complaint to the employer.

(3) The department may investigate any complaint filed within the required time frame. If the department determines that a violation of this chapter has occurred, it may issue a notice of infraction. [1989 1st ex.s. c 11 § 14.]

49.78.150 Notices of infraction—Contents. The department may issue a notice of infraction to an employer who violates this chapter. The employment standards supervisor shall direct that notices of infraction contain the following when issued:

(1) A statement that the notice represents a determination that the infraction has been committed by the employer named in the notice and that the determination shall be final unless contested;

(2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(3) A statement of the specific violation which necessitated issuance of the infraction;

(4) A statement of the penalty involved if the infraction is established;

(5) A statement informing the employer of the right to a hearing conducted pursuant to chapter 34.05 RCW if requested within twenty days of issuance of the infraction;

(6) A statement that at any hearing to contest the notice of infraction the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed, and that the employer may subpoena witnesses including the agent that issued the notice of infraction;

(7) If a notice of infraction is personally served upon a supervisory or managerial employee of a firm or corporation, the department shall within seventy-two hours of service send a copy of the notice by certified mail to the employer;

(8) Constructive service may be made by certified mail directed to the employer named in the notice of infraction. [1989 1st ex.s. c 11 § 15.]

49.78.160 Notice of infraction—Service. (1) If an employer is a corporation or a partnership, the department need not serve the employer personally. In such a case, if no officer or partner of a violating employer is present, the department may issue a notice of infraction to any managerial employee.

(2) If the department serves a notice of infraction on a managerial employee, and not on an officer, or partner of the employer, the department shall mail by certified mail a copy of the notice of infraction to the employer. The department shall mail a second copy by ordinary mail. [1989 1st ex.s. c 11 § 16.]

49.78.170 Notices of infraction—State agencies. In any case in which the department shall issue an order against any political or civil subdivision of the state, or any agency, or instrumentality of the state or of the foregoing, or any officer or employee thereof, the department shall transmit a copy of such order to the governor of the state. The governor shall take such action to secure compliance with such order as the governor deems necessary. [1989 1st ex.s. c 11 § 17.]

49.78.180 Appeals—Hearings—Decisions—Review—Appeal of final decision. (1) If an employer desires to contest the notice of infraction issued, the employer shall file two copies of a notice of appeal with the department at the office designated on the notice of infraction, within twenty days of issuance of the infraction.

(2) The department shall conduct a hearing in accordance with chapter 34.05 RCW.

(3) Employers may appear before the administrative law judge through counsel, or may represent themselves.

The department shall be represented by the attorney general.

(4) Admission of evidence is subject to RCW 34.05-.452 and 34.05.446.

(5) The administrative law judge shall issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate, any legal penalty. The proposed decision shall be served by certified mail or personally on the employer and the department. The employer or department may appeal to the director within thirty days after the date of issuance of the proposed decision. If none of the parties appeals within thirty days, the proposed decision may not be appealed either to the director or the courts.

(6) An appellant must file with the director an original and four copies of its notice of appeal. The notice of appeal must specify which findings and conclusions are erroneous. The appellant must attach to the notice the written arguments supporting its appeal.

The appellant must serve a copy of the notice of appeal and the arguments on the other parties. The respondent parties must file with the director their written arguments within thirty days after the date the notice of appeal and the arguments were served upon them.

(7) The director shall review the proposed decision in accordance with the administrative procedure act, chapter 34.05 RCW. The director may: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision.

(8) The director shall serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to RCW 34.05.570 unless the final decision affirms an unappealed proposed decision. If no party appeals within the period set by RCW 34.05.570, the director's decision is conclusive and binding on all parties. [1989 1st ex.s. c 11 § 18.]

49.78.190 Penalties. An employer found to have committed an infraction under this chapter may be subject to a fine of up to two hundred dollars for the first infraction. An employer that continues to violate the statute may be subject to a fine of up to one thousand dollars for each infraction. An employer found to have failed to reinstate an employee as required under RCW 49.78.070 may also be ordered to reinstate the employee, with or without back pay. [1989 1st ex.s. c 11 § 19.]

49.78.200 Poster required. The department shall develop and furnish to each employer a poster which describes an employer's obligations and an employee's rights under this chapter. The poster must include notice about any state law, rule, or regulation governing maternity disability leave and indicate that federal or local ordinances, laws, rules or regulations may also apply.

The poster must also include a telephone number and an address of the department to enable employees to obtain more information regarding this chapter. Each employer must display this poster in a conspicuous place. Nothing in this section shall be construed to create a right to continued employment. [1989 1st ex.s. c 11 § 20.]

49.78.210 Supersession by federal legislation—No private right of action. (1) The department will cease to administer and enforce *this act upon the effective date of any federal act it determines, with the consent of the legislative budget committee, to be substantially similar, in substance and enforcement, to *this act. A federal act shall be considered substantially similar even where the duration of leave required or size of employer covered is different than that under this chapter.

(2) No employee shall have a private right of action for any alleged violation of this chapter. [1989 1st ex.s. c 11 § 21.]

***Reviser's note:** "This act" includes the enactment of this chapter, and RCW 49.12.350 through 49.12.370.

49.78.900 Severability—1989 1st ex.s. c 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 1st ex.s. c 11 § 25.]

49.78.901 Effective date—1989 1st ex.s. c 11. This act shall take effect September 1, 1989. [1989 1st ex.s. c 11 § 27.]

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

- 50.01** General provisions.
- 50.04** Definitions.
- 50.06** Temporary total disability.
- 50.08** Establishment of department.
- 50.12** Administration.
- 50.13** Records and information—Privacy and confidentiality.
- 50.16** Funds.
- 50.20** Benefits and claims.
- 50.22** Extended benefits.
- 50.24** Contributions by employers.
- 50.29** Employer experience rating.
- 50.32** Review, hearings and appeals.
- 50.36** Penalties.
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- 50.40** Miscellaneous provisions.
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- 50.64** Special employment assistance—First source contracts—Financial incentives.
- 50.65** Washington service corps.
- 50.98** Construction.

Bringing in out-of-state persons to replace employees involved in labor dispute: RCW 49.44.100, 49.44.110.

Displaced homemaker act: Chapter 28B.04 RCW.

Industrial insurance: Title 51 RCW.

Job skills training program: RCW 28C.04.400 through 28C.04.480.

Unfair practices of employment agencies: RCW 49.60.200.

Chapter 50.01

GENERAL PROVISIONS

Sections

- 50.01.005 Short title.
- 50.01.010 Preamble.

50.01.005 Short title. This title shall be known and may be cited as the "Employment Security Act." [1953 ex.s. c 8 § 24; 1945 c 35 § 1; Rem. Supp. 1945 § 9998-140.]

50.01.010 Preamble. Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of

our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and that this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum. [1945 c 35 § 2; Rem. Supp. 1945 § 9998-141. Prior: 1937 c 162 § 2.]

Chapter 50.04

DEFINITIONS

Sections

- 50.04.020 Base year—Alternative base year.
- 50.04.030 Benefit year.
- 50.04.040 Benefits.
- 50.04.050 Calendar quarter.
- 50.04.060 Commissioner.
- 50.04.070 Contributions.
- 50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state.
- 50.04.073 Contributions—As including "payments in lieu of contributions"—Scope.
- 50.04.075 Dislocated worker.
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- 50.04.090 Employing unit.
- 50.04.100 Employment.
- 50.04.110 Employment—Situs of services.
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- 50.04.116 Employment—Out-of-state service, when included—"American employer" defined.
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- 50.04.160 Employment—Domestic service.
- 50.04.165 Employment—Corporate officers—Election of coverage.
- 50.04.170 Employment—Maritime service.
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50.04.205	Services performed by aliens.
50.04.210	Employment—Foreign governmental services.
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50.04.230	Employment—Services of insurance agents and solicitors, real estate brokers and real estate salesmen, and investment company agents and solicitors.
50.04.235	Employment—Outside salesmen paid by commission.
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50.04.290	Employment office.
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50.04.300	State.
50.04.310	Unemployed individual—Individual deemed not "unemployed."
50.04.320	Wages, remuneration.
50.04.323	Wages, remuneration—Government or private retirement pension plan payments—Effect upon eligibility—Reduction in benefits.
50.04.330	Wages, remuneration—Retirement and disability payments excepted.
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50.04.350	Wages, remuneration—Excepted payments.
50.04.355	Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes.
50.04.360	Week.

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

50.04.020 Base year—Alternative base year. "Base year" with respect to each individual, shall mean either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual's benefit year.

For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar quarters as the base year, the department shall use the last four completed calendar quarters as the base year.

Computations using the last four completed calendar quarters shall be based on available wage items processed as of the close of business on the day preceding the date of application. Wage items not processed at the time of application shall become available to the claim as they are added to department systems. The department shall not be required to make employer contacts or take other actions that would not be applicable to claims based on the first four of the last five completed calendar quarters. [1987 c 278 § 1; 1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998–142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective date—1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: *Provided*, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 ex.s. c 2 § 25.] For codification of 1970 ex.s. c 2, see Codification Tables, Volume 0.

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial

determination and thereafter the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: *Provided, however*, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty–three weeks when at the expiration of fifty–two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however*, That a benefit year cannot be established if the base year wages include wages earned prior to the establishment of a prior benefit year unless the individual earned wages in "employment" since the beginning of the previous benefit year's waiting period under RCW 50.20.010(4) of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If an individual's prior benefit year was based on the last four completed calendar quarters, a new benefit year shall not be established until the new base year does not include any hours used in the establishment of the prior benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1987 c 278 § 2; 1987 c 256 § 1; 1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998–143. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Reviser's note: This section was amended by 1987 c 256 § 1 and by 1987 c 278 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—Construction—1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty–fifth legislature) of the Washington State Legislature: *Provided*, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section

1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.] For codification of 1977 ex.s. c 33, see Codification Tables, Volume 0.

Effective dates—1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.] The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998–144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998–145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998–146. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.070 Contributions. "Contributions" means the money payments due to the state unemployment compensation fund as provided in RCW 50.24.010, to the federal interest payment fund under RCW 50.16.070, or to the special account in the administrative contingency fund under RCW 50.24.014. [1985 ex.s. c 5 § 4; 1983 1st ex.s. c 13 § 9; 1971 c 3 § 1; 1951 c 215 § 1; 1945 c 35 § 8; Rem. Supp. 1945 § 9998–147. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state. The terms "contributions" and "payments in lieu of contributions" used in this title, whether singular or plural, designate the money payments to be made to the state unemployment compensation fund, to the federal interest payment fund under RCW 50.16.070, or to the special account in the administrative contingency fund under RCW 50.24.014 and are deemed to be taxes due to the state of Washington.

[1985 ex.s. c 5 § 5; 1983 1st ex.s. c 13 § 10; 1971 c 3 § 3; 1959 c 266 § 8.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Construction—1959 c 266: "The provisions of section 8 of this amendatory act shall be construed as a restatement and continuation of existing law, and not as a new enactment. It shall not be construed as affecting any existing right acquired under its provisions nor as affecting any proceeding instituted thereunder." [1959 c 266 § 9.] This applies to RCW 50.04.072.

50.04.073 Contributions—As including "payments in lieu of contributions"—Scope. The term "contributions" as used in this title shall be deemed to include "payments in lieu of contributions" to the extent that such usage is consistent with the purposes of this title. Such construction shall include but not be limited to those portions of this title dealing with assessments, interest, penalties, liens, collection procedures and remedies, administrative and judicial review, and the imposition of administrative, civil and criminal sanctions. [1983 1st ex.s. c 23 § 1; 1971 c 3 § 4.]

Conflict with federal requirements—1983 1st ex.s. c 23: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1983 1st ex.s. c 23 § 26.]

Effective dates—Construction—1983 1st ex.s. c 23: "(1) Sections 6, 8, 17, 18, 19, and 25 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect as follows:

(a) Sections 17, 18, 19, and 25 of this act shall take effect on June 30, 1983;

(b) Sections 6 and 8 of this act shall take effect on July 3, 1983, and shall be effective for benefit years commencing on or after that date.

(2) Sections 4 and 13 of this act shall take effect on October 1, 1983. Sections 7, 11, and 12 of this act shall also take effect on October 1, 1983, and shall be effective for all weeks of benefits paid on or after that date." [1983 1st ex.s. c 23 § 27.] Sections 6, 8, 17, 18, 19, and 25 of this act consist of the 1983 1st ex.s. c 23 amendments to RCW 50.04.320, 50.12.070, 50.29.010, 50.29.060, 50.29.070, and 50.04.145. Sections 4 and 13 of this act consist of the amendments to RCW 50.04.165 and 50.22.040. Sections 7, 11, and 12 of this act consist of the amendments to RCW 50.04.323, 50.20.120, and 50.20.130.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.075 Dislocated worker. "Dislocated worker" means any individual who:

(1) Has been terminated or received a notice of termination from employment;

(2) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and

(3) Is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for their skills in that occupation or industry. [1984 c 181 § 1.]

Dislocated worker's eligibility for benefits: RCW 50.20.043.

50.04.080 Employer. "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title. [1985 c 41 § 1; 1971 c 3 § 5; 1949 c 214 § 2; 1945 c 35 § 9; Rem. Supp. 1949 § 9998–148. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—1985 c 41: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 41 § 2.]

Severability—1985 c 41: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 41 § 3.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.090 Employing unit. "Employing unit" means any individual or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ or in its "employment" one or more individuals performing services within this state. The state and its political subdivisions shall be deemed employing units as to any transactions occurring on or after September 21, 1977 which would render an employing unit liable for contributions, interest, or penalties under RCW 50.24.130. [1983 1st ex.s. c 23 § 2; 1977 ex.s. c 73 § 1; 1947 c 215 § 2; 1945 c 35 § 10; Rem. Supp. 1947 § 9998–149. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.04.100 Employment. "Employment", subject only to the other provisions of this title, means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

Except as provided by RCW 50.04.145, personal services performed for an employing unit by one or more contractors or subcontractors acting individually or as a partnership, which do not meet the provisions of RCW

50.04.140, shall be considered employment of the employing unit: *Provided, however,* That such contractor or subcontractor shall be an employer under the provisions of this title in respect to personal services performed by individuals for such contractor or subcontractor. [1982 1st ex.s. c 18 § 14; 1945 c 35 § 11; Rem. Supp. 1945 § 9998–150. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.110 Employment—Situs of services. The term "employment" shall include an individual's entire service performed within or without or both within and without this state, if

(1) The service is localized in this state; or
(2) The service is not localized in any state, but some of the service is performed in this state, and

(a) the base of operations, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or

(b) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state; or

(3) The service is performed within the United States, the Virgin Islands or Canada, if

(a) such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada, and

(b) the place from which the service is directed or controlled is in this state. [1971 c 3 § 6; 1945 c 35 § 12; Rem. Supp. 1945 § 9998–151. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.115 Employment—Out-of-state service, election. Services not covered under RCW 50.04.110 or 50.04.116 which are performed entirely without this state, with respect to no part of which contributions, interest, or penalties are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this title if the individual performing such services is a resident of this state and the commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this title. [1983 1st ex.s. c 23 § 3; 1971 c 3 § 8; 1945 c 35 § 13; Rem. Supp. 1945 § 9998–152. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1937 c 162 § 19. Formerly RCW 50.04.130.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.116 Employment—Out-of-state service, when included—"American employer" defined. The

term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada, and in the case of the Virgin Islands after December 31, 1971 and prior to January 1 of the year following the year in which the United States secretary of labor approves the unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1954) in the employ of an American employer (other than service which is deemed "employment" under the provisions of RCW 50.04.110 or 50.04.120 or the parallel provisions of another state's law), if:

(1) The employer's principal place of business in the United States is located in this state; or

(2) The employer has no place of business in the United States but:

(a) The employer is an individual who is a resident of this state; or

(b) The employer is a corporation which is organized under the laws of this state; or

(c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(3) None of the criteria in subsections (1) and (2) of this section is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the laws of this state.

(4) An "American employer", for the purposes of this section, means a person who is:

(a) An individual who is a resident of the United States; or

(b) A partnership if two-thirds or more of the partners are residents of the United States; or

(c) A trust, if all of the trustees are residents of the United States; or

(d) A corporation organized under the laws of the United States or of any state. [1977 ex.s. c 292 § 1; 1971 c 3 § 7.]

Effective dates—1977 ex.s. c 292: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: *Provided*, That sections 6, 12, 14, 15, 16, and 18 of this 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 292 § 28.] For codification of all sections of 1977 ex.s. c 292, see Codification Tables, Volume 0.

Construction—**Compliance with federal act**—1971 c 3: See RCW 50.44.080.

50.04.120 Employment—**Localized service.** Service shall be deemed to be localized within a state, if

(1) the service is performed entirely within the state; or

(2) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions. [1945 c 35 § 14; Rem. Supp. 1945 § 9998-153. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.140 Employment—**Exception tests.** Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless and until it is shown to the satisfaction of the commissioner that

(1) such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and

(2) such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(3) such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service. [1945 c 35 § 15; Rem. Supp. 1945 § 9998-154. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.145 Employment—**Services performed for contractors, when excluded.** The term "employment" shall not include services rendered by any person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW when:

(1) Contracting to perform work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(3) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business;

(4) The work which the person, firm, or corporation has contracted to perform is:

(a) The work of a contractor as defined in RCW 18-.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW; and

(5) A contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW does not supervise or control the means by which the result is accomplished or the manner in which the work is performed. [1983 1st ex.s. c 23 § 25; 1982 1st ex.s. c 18 § 13.]

Conflict with federal requirements—**Effective dates**—**Construction**—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—**Conflict with federal requirements**—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.148 Employment—**Services performed by musicians or entertainers.** (1) The term "employment" shall not include services performed by a musician or entertainer under a written contract with a purchaser of the services for a specific engagement or engagements

when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. The contract shall designate the leader of the music or entertainment group. A music or entertainment business or a leader of a music or entertainment group shall be considered an employer and not a purchaser of music or entertainment services.

(2) Any musician or entertainer who performs for a music or entertainment business or as a member of a music or entertainment group is deemed an employee of the business or group and the business or the leader of the group shall be required to register as an employer with the department.

(3) Purchasers of services under subsection (1) of this section shall not be subject to RCW 50.24.130 relating to a principal's liability for unpaid contributions if the services are purchased from a business or group registered as an employer with the department.

(4) The term "music or entertainment business" or "group" as used in this section means an employer whose principal business activity is music or entertainment. The term does not include those entities who provide music or entertainment for members or patrons incidental to their principal business activity, and does not include an individual employing musicians or entertainers on a casual basis. [1985 c 47 § 1.]

Effective date—1985 c 47: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect July 1, 1985." [1985 c 47 § 2.]

50.04.150 Employment—Agricultural labor. Except as otherwise provided in RCW 50.04.155, the term "employment" shall not include service performed in agricultural labor by individuals who are enrolled as students and regularly attending classes, or are between two successive academic years or terms, at an elementary school, a secondary school, or an institution of higher education as defined in RCW 50.44.037 and in the case of corporate farms not covered under RCW 50.04.155, the provisions regarding family employment in RCW 50.04.180 shall apply.

Agricultural labor is defined as services performed:

(1) On a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wild life, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or

(2) In packing, packaging, grading, storing, or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations. The exclusions from the term "employment" provided in this paragraph shall not be deemed to be applicable with respect to

commercial packing houses, commercial storage establishments, commercial canning, commercial freezing, or any other commercial processing or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or raising and harvesting of mushrooms or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption. [1989 c 380 § 78; 1977 ex.s. c 292 § 2; 1957 c 264 § 1; 1947 c 215 § 3; 1945 c 35 § 16; Rem. Supp. 1945 § 9998-155. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective date—1989 c 380 §§ 78 through 81: "Sections 78 through 81 of this act shall take effect on January 1, 1990." [1989 c 380 § 91.]

Conflict with federal requirements—1989 c 380: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1989 c 380 § 89.]

Severability—1989 c 380: See RCW 15.58.942.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.155 Services performed in agricultural labor for farm operator or crew leader. (1) Service performed in agricultural labor on and after January 1, 1978, for a farm operator or crew leader will be deemed services in employment if the farm operator or crew leader:

(a) Paid twenty thousand dollars or more as remuneration to individuals employed in agricultural labor during any calendar quarter in the current or preceding calendar year; or

(b) Employed ten or more individuals in agricultural labor for some portion of the day in each of twenty different calendar weeks in either the current or preceding calendar year regardless of whether they were employed at the same moment of time or whether or not the weeks were consecutive.

(2) A farm operator is the owner or tenant of the farmlands who stands to gain or lose economically from the operations of the farm. Employment will be considered employment by the farm operator unless it is established to the satisfaction of the commissioner that the services were performed in the employ of a crew leader. The risk of nonpersuasion is upon the farm operator. The operator will nonetheless be liable for contributions under RCW 50.24.130 even though services performed on the operator's farmlands would not be sufficient to bring the services under the term employment if services performed on the operator's land in the employ of a crew leader would be covered and the crew leader has failed to pay contributions on the services. For the purposes of the preceding sentence and RCW 50.24.130, all moneys paid or payable to the crew leader by the farm operator shall be deemed paid for services unless there is a written contract clearly specifying the amounts of money to

be attributed to items other than services of the crew leader or the crew leader's employees.

(3) For the purposes of this section, a crew leader is a person who furnishes individuals to perform services in agricultural labor for the benefit of any other person, who pays for the services performed in agricultural labor (either on his or her own behalf or on behalf of the other person), and who has not made a written agreement making himself or herself an employee of the other person: *Provided*, That no person shall be deemed a crew leader unless he or she is established independently of the person for whom the services are performed and either has a valid certificate of registration under the farm labor contractor registration act of 1963 or substantially all the members of his or her crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment which is provided by the crew leader. [1977 ex.s. c 292 § 3.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.160 Employment—Domestic service. Services performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority shall not be considered services in employment unless the services are performed after December 31, 1977, for a person who paid remuneration of one thousand dollars or more to individuals employed in this domestic service in any calendar quarter in the current or the preceding calendar year. The terms local college club and local chapter of a college fraternity or sorority shall not be deemed to include alumni clubs or chapters. [1977 ex.s. c 292 § 4; 1947 c 215 § 4; 1945 c 35 § 17; Rem. Supp. 1947 § 9998–156. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.165 Employment—Corporate officers—Election of coverage. Services performed by corporate officers as defined in *RCW 23A.08.470, other than those covered by chapter 50.44 RCW, shall not be considered services in employment. However, a corporation may elect to cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. If the employer fails to notify any corporate officer, then that person shall not be considered to be a corporate officer for the purposes of this section. [1986 c 110 § 1; 1983 1st ex.s. c 23 § 4; 1981 c 35 § 13.]

***Reviser's note:** RCW 23A.08.470 was repealed by 1989 c 165, effective July 1, 1990. For provisions regarding officers, see RCW 23B.08.400, effective July 1, 1990.

Conflict with federal requirements—1986 c 110: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The

rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 110 § 2.]

Severability—1986 c 110: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 110 § 3.]

Effective date—1986 c 110: "This act shall take effect July 1, 1986." [1986 c 110 § 4.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—1981 c 35: See note following RCW 50.22.030.

50.04.170 Employment—Maritime service. The term "employment" shall include an individual's entire service as an officer or member of a crew of an American vessel wherever performed and whether in intrastate or interstate or foreign commerce, if the employer maintains within this state at the beginning of the pay period an operating office from which the operations of the vessel are ordinarily and regularly supervised, managed, directed and controlled. The term "employment" shall not include services performed as an officer or member of the crew of a vessel not an American vessel and services on or in connection with an American vessel under a contract of service which is not entered into within the United States and during the performance of which the vessel does not touch at a port of the United States.

"American vessel", means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state. [1949 c 214 § 3; 1947 c 215 § 5; 1945 c 35 § 18; Rem. Supp. 1949 § 9998–157. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.180 Family employment. The term "employment" shall not include service performed by an individual in the employ of his or her spouse, nor shall it include service performed by an unmarried individual under the age of eighteen years in the employ of his or her parent or step-parent. [1973 c 73 § 2; 1951 c 265 § 6; 1945 c 35 § 19; Rem. Supp. 1945 § 9998–158. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.205 Services performed by aliens. Services performed by aliens legally or illegally admitted to the United States shall be considered services in employment subject to the payment of contributions to the extent that services by citizens are covered. [1977 ex.s. c 292 § 5.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.210 Employment—Foreign governmental services. The term "employment" shall not include service performed in the employ of any other state or its political subdivisions, or of the United States government, or of any instrumentality of any other state or states or their political subdivisions, or the United States; except that if the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation act, then, to the extent permitted by congress, and from and after the date when such permission becomes effective all the provisions of this title shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: *Provided*, That if this state should not be certified by the social security board under section 903 of the social security act, as amended, for any year, then the payment required of such instrumentalities with respect to such year shall be deemed to be erroneously collected and shall be refunded by the commissioner from the fund in accordance with the provisions of this title relating to adjustments and refunds of contributions, interest, or penalties which have been paid. [1983 1st ex.s. c 23 § 5; 1945 c 35 § 22; Rem. Supp. 1945 § 9998–161. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.04.220 Employment—Services covered by federal act. The term "employment" shall not include service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress: *Provided*, That the commissioner is hereby authorized to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in this title for publication of general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this title, acquired right to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this title. [1945 c 35 § 23; Rem. Supp. 1945 § 9998–162. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.225 Employment—Barber and cosmetology services. The term "employment" does not include services performed in a barber shop or cosmetology shop by persons licensed under chapter 18.16 RCW if:

(1) The use of the shop facilities by the individual performing the services is contingent upon compensation to the shop owner; and

(2) The individual performing the services receives no compensation or other consideration from the owner for the services performed. [1985 c 7 § 117; 1982 1st ex.s. c 18 § 20.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.230 Employment—Services of insurance agents and solicitors, real estate brokers and real estate salesmen, and investment company agents and solicitors. The term "employment" shall not include service performed by an insurance agent or insurance solicitor or a real estate broker or a real estate salesman to the extent he is compensated by commission and service performed by an investment company agent or solicitor to the extent he is compensated by commission, the [The] term "investment company", as used in this subsection [section], to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940." [1947 c 5 § 24; 1945 c 35 § 24; Rem. Supp. 1947 § 9998–162a.]

50.04.235 Employment—Outside salesmen paid by commission. The term "employment" shall not include services as an outside salesman of merchandise paid solely by way of commission; and such services must have been performed outside of all the places of business of the enterprises for which such services are performed only. [1957 c 181 § 1.]

50.04.240 Employment—Newsboys' services. The term "employment" shall not include service as a newsboy selling or distributing newspapers on the street or from house to house. [1945 c 35 § 25; Rem. Supp. 1945 § 9998–163. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.270 Employment—Casual labor. The term "employment" shall not include casual labor not in the course of the employer's trade or business (labor which does not promote or advance the trade or business of the employer). Temporary labor in the usual course of an employer's trade or business or domestic services as defined in RCW 50.04.160 shall not be deemed to be casual labor. [1977 ex.s. c 292 § 7; 1945 c 35 § 28; Rem. Supp. 1945 § 9998–166. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.280 Employment—"Pay period" determination. If the services performed during one-half or more of any pay period by an individual for an employing unit constitute employment, all of the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for an employing unit do not constitute employment, then none of the services of such individual on behalf of such employing unit for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to an individual by the employing unit. [1945 c 35 § 29; Rem. Supp. 1945 § 9998–167. Prior:

1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.290 Employment office. "Employment office" means a free public employment office, or branch thereof, operated by this or any other state as a part of a state controlled system of public employment offices, or by a federal agency or any agency of a foreign government charged with the administration of an unemployment compensation program or free public employment offices. All claims for unemployment compensation benefits, registrations for employment, and all job or placement referrals received or made by any of the employment offices as above defined and pursuant to regulation of the commissioner subsequent to December 31, 1941, are hereby declared in all respects to be valid. The commissioner is authorized to make such investigation, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this title as he deems necessary or appropriate to facilitate the administration of any state or federal unemployment compensation or public employment service law and in like manner to accept and utilize information, services and facilities made available to the state by the agency charged with the administration of any such unemployment compensation or public employment service law. Any such action taken by the commissioner subsequent to December 31, 1941, is hereby declared to be in all respects valid. [1945 c 35 § 30; Rem. Supp. 1945 § 9998-168. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

50.04.295 Payments in lieu of contributions. "Payments in lieu of contributions" means money payments due to the state unemployment compensation fund as provided in RCW 50.44.060. [1971 c 3 § 2.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.300 State. "State" includes, in addition to the states of the United States of America, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico. [1977 ex.s. c 292 § 8; 1971 c 3 § 10; 1945 c 35 § 31; Rem. Supp. 1945 § 9998-169. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.310 Unemployed individual—Individual deemed not "unemployed." (1) An individual shall be deemed to be "unemployed" in any week during which the individual performs no services and with respect to which no remuneration is payable to the individual, or in any week of less than full time work, if the remuneration payable to the individual with respect to such week is less than one and one-third times the individual's weekly benefit amount plus five dollars. The commissioner shall

prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to such types of unemployment as the commissioner deems necessary.

(2) An individual shall be deemed not to be "unemployed" during any week which falls totally within a period during which the individual, pursuant to a collective bargaining agreement or individual employment contract, is employed full time in accordance with a definition of full time contained in the agreement or contract, and for which compensation for full time work is payable. This subsection may not be applied retroactively to an individual who had no guarantee of work at the start of such period and subsequently is provided additional work by the employer. [1984 c 134 § 1; 1973 2nd ex.s. c 7 § 1; 1945 c 35 § 32; Rem. Supp. 1945 § 9998-170. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1939 c 162 § 19.]

Application—1973 2nd ex.s. c 7: "This act shall apply to weeks of unemployment commencing on or after January 6, 1974." [1973 2nd ex.s. c 7 § 4.]

50.04.320 Wages, remuneration. For the purpose of payment of contributions, "wages" means the remuneration paid by one employer during any calendar year to an individual in its employment under this title or the unemployment compensation law of any other state in the amount specified in RCW 50.24.010. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the operating assets of another employer (hereinafter referred to as a predecessor employer) or assets used in a separate unit of a trade or business of a predecessor employer, and immediately after the acquisition employs in the individual's trade or business an individual who immediately before the acquisition was employed in the trade or business of the predecessor employer, then, for the purposes of determining the amount of remuneration paid by the successor employer to the individual during the calendar year which is subject to contributions, any remuneration paid to the individual by the predecessor employer during that calendar year and before the acquisition shall be considered as having been paid by the successor employer.

For the purpose of payment of benefits, "wages" means the remuneration paid by one or more employers to an individual for employment under this title during his base year: *Provided*, That at the request of a claimant, wages may be calculated on the basis of remuneration payable. The department shall notify each claimant that wages are calculated on the basis of remuneration paid, but at the claimant's request a redetermination may be performed and based on remuneration payable.

For the purpose of payment of benefits and payment of contributions, the term "wages" includes tips which are received after January 1, 1987, while performing services which constitute employment, and which are reported to the employer for federal income tax purposes.

"Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium

other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner. Remuneration does not include payments to members of a reserve component of the armed forces of the United States, including the organized militia of the state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, shall be considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

The provisions of this section pertaining to the assignment of previously accrued compensation shall not apply to individuals subject to RCW 50.44.050. [1986 c 21 § 1; 1984 c 134 § 2; 1983 1st ex.s. c 23 § 6; 1983 c 67 § 1; 1970 ex.s. c 2 § 3; 1953 ex.s. c 8 § 2; 1951 c 265 § 3; 1949 c 214 § 4; 1947 c 215 § 6; 1945 c 35 § 33; Rem. Supp. 1949 § 9998-171. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Conflict with federal requirements—1986 c 21: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 21 § 2.]

Severability—1986 c 21: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 21 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.323 Wages, remuneration—Government or private retirement pension plan payments—Effect upon eligibility—Reduction in benefits. (1) The amount of benefits payable to an individual for any week which begins after October 3, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week: *Provided, That*

(a) The requirements of this subsection shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(i) Such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer; and

(ii) In the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment; and

(b) The amount of any such a reduction shall take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment, in accordance with regulations prescribed by the commissioner.

(2) In the event that a retroactive pension or retirement payment covers a period in which an individual received benefits under the provisions of this title, the amount in excess of the amount to which such individual would have been entitled had such retirement or pension payment been considered as provided in this section shall be recoverable under RCW 50.20.190.

(3) A lump sum payment accumulated in a plan described in this section paid to an individual eligible for such payment shall be prorated over the life expectancy of the individual computed in accordance with the commissioner's regulation.

(4) The resulting weekly benefit amount payable after reduction under this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

(5) Any ambiguity in subsection (1) of this section should be construed in a manner consistent with 26 U.S.C. Sec. 3304 (a)(15) as last amended by P.L. 96-364. [1983 1st ex.s. c 23 § 7; 1981 c 35 § 1; 1980 c 74 § 1; 1973 2nd ex.s. c 7 § 2; 1973 1st ex.s. c 167 § 1; 1970 ex.s. c 2 § 19.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—1980 c 74: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 74 § 6.]

Effective dates—1980 c 74 §§ 1, 2 and 3: "Sections 1 and 2 of this amendatory act are necessary for the immediate preservation of the public peace, health, and safety, and the support of the state government and its existing public institutions, and shall take effect with weeks of unemployment beginning after March 31, 1980. Section 3 of this amendatory act shall take effect with benefit years beginning after June 30, 1980." [1980 c 74 § 7.] This applies to the amendments to RCW 50.04.323, 50.44.050 and 50.20.120, respectively.

Application—1973 2nd ex.s. c 7: See note following RCW 50.04.310.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.330 Wages, remuneration—Retirement and disability payments excepted. Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established

by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of retirement, sickness or accident disability, or medical and hospitalization expenses in connection with sickness or accident disability. After December 31, 1950, the term "wages" shall not include:

(1) The amount of any payment made (including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment), to, or on behalf of, an individual or any of his dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (a) retirement, or (b) sickness or accident disability, or (c) medical or hospitalization expenses in connection with sickness or accident disability or (d) death;

(2) the amount of any payment by an employing unit to an individual performing service for it (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(3) the amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit;

(4) the amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or his beneficiary (a) from or to a trust exempt from tax under section 165(a) of the federal internal revenue code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (b) under or to an annuity plan which, at the time of such payments, meets the requirements of section 165(a)(3), (4), (5), and (6) of the federal internal revenue code; or

(5) the amount of any payment (other than vacation or sick pay) made to an individual after the month in which he attains the age of sixty-five, if he did not perform services for the employing unit in the period for which such payment is made. [1951 c 265 § 4; 1949 c 214 § 5; 1945 c 35 § 34; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.340 Wages, remuneration—Death benefits excepted. Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such

employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.350 Wages, remuneration—Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: *Provided, however,* That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998-174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total

remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 c 73 § 3; 1970 ex.s. c 2 § 6.]

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: "All sections of this 1975 amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions; and shall take effect on the first Sunday following signature by the governor." [1975 1st ex.s. c 228 § 19.] The date in question was June 29, 1975.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.360 Week. "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998-175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Chapter 50.06

TEMPORARY TOTAL DISABILITY

Sections

50.06.010	Purpose.
50.06.020	Allowable beneficiaries.
50.06.030	Application for initial determination of disability— Special base year—Alternative special base year—Special individual benefit year.
50.06.040	Laws and regulations governing amounts payable and right to benefits.
50.06.050	Use of wages and time worked for prior claims— Effect.
50.06.900	Application of chapter—Recipients of industrial in- surance or crime victims compensation.
50.06.910	Partial invalidity of chapter.

50.06.010 Purpose. This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to persons who have suffered a temporary total disability compensable under industrial insurance or crime victims compensation laws and is a recognition by this legislature of the economic hardship confronting those persons who have not been promptly reemployed after a prolonged period of temporary total disability. [1984 c 65 § 1; 1975 1st ex.s. c 228 § 7.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.020 Allowable beneficiaries. Only individuals who have suffered a temporary total disability and have received compensation under the industrial insurance or crime victims compensation laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability shall be allowed the benefits of this chapter. [1984 c 65 § 2; 1975 1st ex.s. c 228 § 8.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.030 Application for initial determination of disability—Special base year—Alternative special base year—Special individual benefit year. An application for initial determination made pursuant to this chapter, to be considered timely, must be filed in writing with the employment security department within twenty-six weeks following the week in which the period of temporary total disability commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability. The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

For the purpose of this chapter, a special base year is established for an individual consisting of either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance or crime victims compensation laws except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: *Provided however,* That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 has been met, except that an individual meeting the disability and filing requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04-.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: *Provided further,* that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year.

For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar quarters as the base year, the department shall use the last four completed calendar quarters as the base year. [1987 c 278 § 3; 1984 c 65 § 3; 1975 1st ex.s. c 228 § 9.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.040 Laws and regulations governing amounts payable and right to benefits. The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the

general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.050 Use of wages and time worked for prior claims—**Effect.** The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement or amount of benefits in any succeeding benefit year. [1975 1st ex.s. c 228 § 11.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.900 Application of chapter—Recipients of industrial insurance or crime victims compensation. (1) This chapter shall be available to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after *the effective date of this chapter.

(2) This chapter shall also be available to individuals who suffer a temporary total disability compensable under crime victims compensation laws, after June 7, 1984. [1984 c 65 § 4; 1975 1st ex.s. c 228 § 12.]

***Effective date**—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.910 Partial invalidity of chapter. Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Chapter 50.08

ESTABLISHMENT OF DEPARTMENT

Sections

50.08.010 Employment security department established.
50.08.020 Divisions established.

Assistance to community revitalization team: RCW 43.165.090.

Displaced homemaker act, departmental participation: RCW 28B.04.080.

Occupational information service, forecast, departmental function: Chapter 50.38 RCW.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

(1989 Ed.)

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency. [1973 1st ex.s. c 158 § 1; 1947 c 215 § 9; 1945 c 35 § 39; Rem. Supp. 1947 § 9998-177. Prior: 1943 c 127 § 9; 1939 c 214 § 7; 1937 c 162 § 9.]

Effective date—1973 1st ex.s. c 158: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973." [1973 1st ex.s. c 158 § 21.] For codification of 1973 1st ex.s. c 158, see Codification Tables, Volume 0.

Chapter 50.12

ADMINISTRATION

Sections

50.12.010 Commissioner's duties and powers.
50.12.020 Personnel appointed by commissioner.
50.12.031 Personnel board—Travel expenses of board.
50.12.040 Rules and regulations.
50.12.050 Reciprocal benefit arrangements.
50.12.060 Reciprocal coverage arrangements.
50.12.070 Employing unit records and reports.
50.12.080 Arbitrary reports.
50.12.090 Interstate use of employing unit records.
50.12.100 Compulsory production of records and information.
50.12.120 Protection against self-incrimination.
50.12.130 Oaths and witnesses.
50.12.140 Destruction of office records.
50.12.150 Representation by attorney general.
50.12.160 Publication of title, rules and regulations, etc.
50.12.170 Services and fees of sheriffs.
50.12.180 State-federal cooperation.
50.12.190 Employment stabilization.
50.12.200 State advisory council—Committees and councils.
50.12.210 Employment services for handicapped—Report to legislative committees.
50.12.220 Penalties for late reports or contributions—Assessment—Appeal.
50.12.230 Job skills training program—Department's duties.

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- 50.12.235 Washington conservation corps—Department's duties.
 50.12.240 On-the-job training—Employer qualifications established by rule.
 50.12.250 Information clearinghouse to assist in employment of persons of disability.
 50.12.252 Information clearinghouse—Consultation on establishment.
 50.12.260 Annual report to legislature and governor—Contents.

Administration of OASI plans for members of teachers' retirement and state employees' retirement systems: Chapters 41.33, 41.41 RCW.

Business registration and licensing system board of review, commissioner as member: RCW 19.02.040.

Merit system: Chapter 41.06 RCW.

50.12.010 Commissioner's duties and powers. The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication and in the manner, not inconsistent with the provisions of this title, which the commissioner shall prescribe. The commissioner, in accordance with the provisions of this title, shall determine the organization and methods of procedure of the divisions referred to in this title, and shall have an official seal which shall be judicially noticed. The commissioner shall submit to the governor a report covering the administration and operation of this title during the preceding fiscal year, July 1 through June 30, and shall make such recommendations for amendments to this title as he deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and legislature and make recommendations with respect thereto. [1977 c 75 § 75; 1955 c 286 § 1; 1949 c 214 § 7; 1945 c 35 § 40; Rem. Supp. 1949 § 9998–178. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 12 § 2.]

50.12.020 Personnel appointed by commissioner. The commissioner is authorized to appoint and fix the compensation of such officers, accountants, experts, and other personnel as may be necessary to carry out the provisions of this title: *Provided*, That such appointment shall be made on a nonpartisan merit basis in accordance with the provisions of this title relating to the selection of personnel. The commissioner may delegate to any person appointed such power and authority as the commissioner deems reasonable and proper for the effective administration of this title, including the right to decide matters placed in the commissioner's discretion under this title, and may in his or her discretion bond

any person handling moneys or signing checks hereunder. [1985 c 96 § 1; 1973 1st ex.s. c 158 § 2; 1945 c 35 § 41; Rem. Supp. 1945 § 9998–179. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.031 Personnel board—Travel expenses of board. Members of the board shall be allowed travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while traveling to and from and attending regularly called meetings. [1975-'76 2nd ex.s. c 34 § 148; 1959 c 127 § 2.]

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

50.12.040 Rules and regulations. Regular and emergency rules and regulations shall be adopted, amended, or repealed by the commissioner in accordance with the provisions of Title 34 RCW and the rules or regulations adopted pursuant thereto. [1973 1st ex.s. c 158 § 3; 1945 c 35 § 43; Rem. Supp. 1945 § 9998–181. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.050 Reciprocal benefit arrangements. As used in this section the terms "other state" and "another state" shall be deemed to include any state or territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any foreign government and, where applicable, shall also be deemed to include the federal government or provisions of a law of the federal government, as the case may be.

As used in this section the term "claim" shall be deemed to include whichever of the following terms is applicable, to wit: "Application for initial determination", "claim for waiting period credit", or "claim for benefits".

The commissioner shall enter into an agreement with any other state whereby in the event an individual files a claim in another state against wages earned in employment in this state, or against wage credits earned in this state and in any other state or who files a claim in this state against wage credits earned in employment in any other state, or against wages earned in this state and in any other state, the claim will be paid by this state or another state as designated by the agreement in accordance with a determination on the claim as provided by the agreement and pursuant to the qualification and disqualification provisions of this title or under the provisions of the law of the designated paying state (including another state) or under such a combination of the provisions of both laws as shall be determined by the commissioner as being fair and reasonable to all affected interests, and whereby the wages of such individual, if earned in two or more states (including another state) may be combined, and further, whereby this state or another state shall reimburse the paying state in an

amount which shall bear the same ratio to the amount of benefits already paid as the amount of wage credits transferred by this state or another state, and used in the determination, bear to the total wage credits used in computing the claimant's maximum amount of benefits potentially payable.

Whenever any claim is filed by an individual involving the combination of wages or a reciprocal arrangement for the payment of benefits, which is governed by the provisions of this section, the employment security department of this state, when not designated as the paying state, shall promptly make a report to the other state making the determination, showing wages earned in employment in this state.

The commissioner is hereby authorized to make to another state and to receive from another state reimbursements from or to the unemployment compensation fund in accordance with arrangements made pursuant to the provisions of this section. [1977 ex.s. c 292 § 9; 1971 c 3 § 11; 1959 c 266 § 1; 1949 c 214 § 8; 1945 c 35 § 44; Rem. Supp. 1949 § 9998-182. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.12.060 Reciprocal coverage arrangements. The commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states, foreign governments or the federal government whereby services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (1) in which any part of such individual's service is performed, or (2) in which such individual has his residence, or (3) in which the employing unit maintains a place of business: *Provided*, That there is in effect, as to such services, an election by the employing unit with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state. [1945 c 35 § 45; Rem. Supp. 1945 § 9998-183. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.070 Employing unit records and reports. Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title. Each employer shall make periodic reports at such intervals as the commissioner may

by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the names of all such workers, and until April 1, 1978, the number of weeks for which the worker earned the "qualifying weekly wage", and beginning July 1, 1977, the hours worked by each worker and such other information as the commissioner may by regulation prescribe.

In the event the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: *Provided*, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. [1983 1st ex.s. c 23 § 8; 1977 ex.s. c 33 § 3; 1975 1st ex.s. c 228 § 2; 1945 c 35 § 46; Rem. Supp. 1945 § 9998-184. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Conflict with federal requirements—**Effective dates**—**Construction**—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—**Construction**—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.12.080 Arbitrary reports. If any employing unit fails to make or file any report or return required by this title, or any regulation made pursuant hereto, the commissioner may, upon the basis of such knowledge as may be available to him, arbitrarily make a report on behalf of such employing unit and the report so made shall be deemed to be prima facie correct. In any action or proceedings brought for the recovery of contributions, interest, or penalties due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department, or a certificate that a return has been filed by or for an employer or estimated by reason of lack of a return, shall be prima facie evidence of the amount of such payroll for the period stated in the certificate. [1983 1st ex.s. c 23 § 9; 1951 c 215 § 2; 1945 c 35 § 47; Rem. Supp. 1945 § 9998-185. Prior: 1943 c 127 § 8.]

Conflict with federal requirements—**Effective dates**—**Construction**—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.12.090 Interstate use of employing unit records. The records of an employer maintained in this state pertaining to employment of persons in another state shall be open to representatives of the commissioner to permit cooperation with other state unemployment compensation agencies in ascertaining information necessary to administer the unemployment compensation acts of such

other states. [1945 c 35 § 48; Rem. Supp. 1945 § 9998–186.]

50.12.100 Compulsory production of records and information. In case of contumacy or refusal to obey subpoenas issued to any person, any court of the state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by any duly authorized representative of the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear before such authorized representative, there to produce evidence, if so ordered, or there to give testimony touching the matter under investigation, or in question. Failure to obey such order of the court may be punished by said court as a contempt thereof. [1945 c 35 § 49; Rem. Supp. 1945 § 9998–187. Prior: 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.120 Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before any duly authorized representative of the commissioner or any appeal tribunal in obedience to the subpoena of such representative of the commissioner or such appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [1945 c 35 § 51; Rem. Supp. 1945 § 9998–189. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.130 Oaths and witnesses. In the discharge of the duties imposed by this title, the appeal tribunal and any duly authorized representative of the commissioner shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed to be necessary as evidence in connection with any dispute or the administration of this title. It shall be unlawful for any person, without just cause, to fail to comply with subpoenas issued pursuant to the provisions of this section. [1945 c 35 § 52; Rem. Supp. 1945 § 9998–190. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.140 Destruction of office records. The commissioner may destroy any form, claim, ledger, check, letter, or other record of the employment security department at the expiration of three years after such

record was originated by or filed with the employment security department, except that warrants and claims, claim determination, employer liability forms and contribution reports may be destroyed at the expiration of six years after such form is originated by or filed with the employment security department, and except that this section shall not apply to records pertaining to grants, accounts or expenditures for administration, records of the unemployment compensation fund and the unemployment compensation administration fund. [1947 c 215 § 11; 1945 c 35 § 53; Rem. Supp. 1947 § 99998–191.]

Preservation and destruction of public records: Chapter 40.14 RCW.

50.12.150 Representation by attorney general. The attorney general shall be the general counsel of each and all divisions and departments under this title and it shall be his duty to institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of each, every, and all of the provisions of this title, and it shall be the duty of the attorney general to assign such assistants and attorneys as may be necessary to the exclusive duty of assisting each, every, and all divisions and departments created under this title in the enforcement of this title. The salaries of such assistants shall be paid out of the unemployment compensation administration fund, together with their expenses fixed by the attorney general and allowed by the treasurer of the unemployment compensation administration fund when approved upon vouchers by the attorney general. [1945 c 35 § 54; Rem. Supp. 1945 § 9998–192. Prior: 1937 c 162 § 17.]

Attorney general: Chapter 43.10 RCW.

50.12.160 Publication of title, rules and regulations, etc. The commissioner may cause to be printed for distribution to the public the text of this title, the regulations and general rules, and other material which he deems relevant and suitable. [1977 c 75 § 76; 1945 c 35 § 55; Rem. Supp. 1945 § 9998–193.]

50.12.170 Services and fees of sheriffs. The sheriff of any county, upon request of the commissioner or his duly authorized representative, or upon request of the attorney general, shall, for and on behalf of the commissioner, perform the functions of service, distraint, seizure, and sale, authority for which is granted to the commissioner or his duly authorized representative. No bond shall be required by the sheriff of any county for services rendered for the commissioner, his duly authorized representative, or the attorney general. The sheriff shall be allowed such fees as may be prescribed for like or similar official services. [1945 c 35 § 56; Rem. Supp. 1945 § 9998–194.]

County sheriff: Chapter 36.28 RCW.

50.12.180 State-federal cooperation. The commissioner, through the Washington state employment service division, shall establish and maintain free public employment offices in such places as may be necessary

for the proper administration of this title and for the purpose of performing such duties as are within the purview of the act of congress entitled "An Act to provide for the establishment of a national employment system and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49(c), as amended).

In the administration of this title the commissioner shall cooperate to the fullest extent consistent with the provisions of this title, with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act and there shall be observance of and compliance with the requirements thereof. The commissioner may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities, and make available to said board the state's records relating to the administration of this title, and furnish such copies thereof, at the expense of the board, as it may deem necessary for its purposes.

The commissioner shall comply with such provisions as the social security board, created by the social security act, approved August 14, 1935, as amended, may from time to time require, regarding reports and the correctness and verification thereof, and shall comply with the regulations of the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the social security act for the purpose of assisting the administration of this title. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

The governor is authorized to apply for an advance to the state unemployment fund and to accept the responsibility for the repayment of such advance in accordance with the conditions specified in Title XII of the social security act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of such title.

The commissioner is also authorized and empowered to take such steps, not inconsistent with law, as may be necessary for the purpose of procuring for the people of this state all of the benefits and assistance, financial and otherwise, provided, or to be provided for, by or pursuant to any act of congress.

Upon request therefor the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this title. [1973 1st ex.s. c 158 § 4; 1959 c 266 § 2; 1945 c 35 § 57; Rem. Supp. 1945 § 9998-195. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.190 Employment stabilization. The commissioner shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry and publish the results of investigations and research studies. [1945 c 35 § 58; Rem. Supp. 1945 § 9998-197. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.200 State advisory council—Committees and councils. The commissioner shall appoint a state advisory council composed of not more than nine men and women, of which three shall be representatives of employers, three shall be representatives of employees, and three shall be representatives of the general public. Such council shall aid the commissioner in formulating policies and discussing problems related to the administration of this title and of assuring impartiality and freedom from political influence in the solution of such problems. The council shall serve without compensation. The commissioner may also appoint committees, and industrial or other special councils, to perform appropriate services. Advisory council members shall be reimbursed for travel expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1982 1st ex.s. c 18 § 1; 1975-'76 2nd ex.s. c 34 § 149; 1953 ex.s. c 8 § 4; 1947 c 215 § 12; 1945 c 35 § 59; Rem. Supp. 1947 § 9998-197. Prior: 1941 c 253 § 17.]

Severability—1982 1st ex.s. c 18: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 18 § 22.]

Conflict with federal requirements—1982 1st ex.s. c 18: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1982 1st ex.s. c 18 § 21.]

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

50.12.210 Employment services for handicapped—Report to legislative committees. It is the policy of the state of Washington that persons with physical, mental, or sensory handicaps shall be given equal opportunities in employment. The legislature recognizes that handicapped persons have faced unfair discrimination in employment.

For these reasons, the state employment service division of the employment security department shall give particular and special attention service to those persons with physical, mental, or sensory handicaps which substantially limit one or more of their major life functions as defined under P.L. 93-112 and rules promulgated thereunder. Particular and special attention service shall include but not be limited to particular and special attention in counseling, referral, notification of job listings in advance of other persons, and other services of the employment service division.

Nothing in this section shall be construed so as to affect the veteran's preference or any other requirement of the United States department of labor.

The employment security department shall report to the house and senate commerce and labor committees by December 1, 1987, on its accomplishments under this section and on its future plans for implementation of this section. The department shall report to the above mentioned committees every odd-numbered year thereafter on its actions under this section.

The employment security department shall establish rules to implement this section. [1987 c 76 § 1; 1977 ex.s. c 273 § 1.]

50.12.220 Penalties for late reports or contributions—Assessment—Appeal. (1) If an employer fails to file in a timely and complete manner a report required by RCW 50.12.070 as now or hereafter amended or the rules adopted pursuant thereto, the employer shall be subject to a minimum penalty of ten dollars per violation.

(2) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(3) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

(4) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to

decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for good cause if the commissioner determines that the failure to timely file reports or pay contributions was not due to the employer's fault.

(5) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW 50.32.030. [1987 c 111 § 2; 1979 ex.s. c 190 § 1.]

Conflict with federal requirements—1987 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1987 c 111 § 10.]

Severability—1987 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 111 § 11.]

Effective date—1987 c 111: "This act shall take effect July 1, 1987. Sections 2 and 8 of this act shall be effective for quarters beginning on and after July 1, 1987." [1987 c 111 § 12.] "Sections 2 and 8 of this act" consist of the 1987 amendments to RCW 50.12.220 and 51.48.210, respectively. For codification of the remainder of 1987 c 111, see Codification Tables, Volume 0.

50.12.230 Job skills training program—Department's duties. See RCW 28C.04.400 through 28C.04.480.

50.12.235 Washington conservation corps—Department's duties. See chapter 43.220 RCW.

50.12.240 On-the-job training—Employer qualifications established by rule. The commissioner may establish by rule qualifications for employers who agree to provide on-the-job training for new employees. [1985 c 299 § 2.]

50.12.250 Information clearinghouse to assist in employment of persons of disability. The employment security department shall establish an information clearinghouse for use by persons of disability and governmental and private employers. The services of the clearinghouse shall include:

(1) Provision of information on private and state services available to assist persons of disability in their training and employment needs;

(2) Provision of information on private, state, and federal incentive programs and services available to employers of persons of disability; and

(3) Publication of a comprehensive list of programs and services in subsections (1) and (2) of this section. [1987 c 369 § 2.]

Legislative finding—1987 c 369: "The legislature finds that improving the economic status of persons of disability, the state's largest

social minority with over four hundred thousand people, will require active state involvement. Persons of disability suffer unemployment at almost twice the rate and experience poverty at more than twice the rate of the general population. Employers have experienced confusion about the variety of employment services available to them. Optimum service from, and access to, the state's training and placement programs for persons of disability requires coordination and a clear focus on the stated needs of persons of disability and their prospective employers. It is the purpose of this chapter to guarantee that representatives of the disability community, labor, and the private sector have an institutionalized means of meeting their respective needs in the training, employment, and economic participation of persons of disability." [1987 c 369 § 1.]

50.12.252 Information clearinghouse—Consultation on establishment. In establishing the information clearinghouse, the employment security department shall consult with organizations of private sector employers and persons of disability. [1987 c 369 § 3.]

Legislative finding—1987 c 369: See note following RCW 50.12.250.

50.12.260 Annual report to legislature and governor—Contents. The employment security department shall submit an annual report to the legislature and the governor that includes but is not limited to:

- (1) Identification and analysis of industries in the United States, Washington state, and local labor markets with high levels of seasonal, cyclical, and structural unemployment;
- (2) The industries and local labor markets with plant closures and mass lay-offs and the number of affected workers;
- (3) An analysis of the major causes of plant closures and mass lay-offs;
- (4) The number of dislocated workers and persons who have exhausted their unemployment benefits, classified by industry, occupation, and local labor markets;
- (5) The experience of the unemployed in their efforts to become reemployed. This should include research conducted on the continuous wage and benefit history;
- (6) Five-year industry and occupational employment projections;
- (7) Annual and hourly average wage rates by industry and occupation. [1987 c 284 § 5.]

Contingent effective date—1987 c 284 § 5: "Section 5 of this act shall take effect if and only if the legislature provides funds sufficient for its implementation in an appropriations act adopted prior to July 1, 1987." [1987 c 284 § 6.] For reference to this program in 1987 appropriations act, see 1987 1st ex.s. c 7 § 226(3).

Chapter 50.13

RECORDS AND INFORMATION—PRIVACY AND CONFIDENTIALITY

Sections

- 50.13.010 Legislative intent and recognition.
- 50.13.015 Information held private and confidential—Requests for disclosure.
- 50.13.020 Information or records deemed private and confidential—Release when required by federal program.
- 50.13.030 Rules.
- 50.13.040 Access of individual or employing unit to records and information.

- 50.13.050 Access to records or information by interested party in proceeding before appeal tribunal or commissioner—Decisions not private and confidential, exception.
- 50.13.060 Access to records or information by governmental agencies.
- 50.13.070 Availability of records or information to parties to judicial or administrative proceedings—Discovery proceedings—Subpoenas.
- 50.13.080 Disclosure of records or information to private persons or organizations contracting to assist in operation and management of department.
- 50.13.090 Disclosure of records or information to contracting governmental or private organizations.
- 50.13.100 Disclosure of records or information where identifying details deleted or individual or employing unit consents.
- 50.13.900 Construction.
- 50.13.905 Severability—1977 ex.s. c 153.
- 50.13.910 Legislative designation and placement.

50.13.010 Legislative intent and recognition. This chapter is intended to reconcile the free access to public records granted by the open government act and the discovery rights of judicial and administrative systems with the historical confidentiality of certain records of the department of employment security and the individual's right of privacy as acknowledged by the open government act.

The legislature recognizes that records and information held by the department of employment security could be misused. Therefore, this chapter defines a right of privacy and confidentiality as regards individual and employing unit records maintained by the department of employment security. The legislature further recognizes that there are situations where this right of privacy and confidentiality is outweighed by other considerations. Therefore, this chapter also defines certain exceptions to the right of privacy and confidentiality. [1977 ex.s. c 153 § 1.]

50.13.015 Information held private and confidential—Requests for disclosure. (1) If information provided to the department by another governmental agency is held private and confidential by state or federal laws, the department may not release such information.

(2) Information provided to the department by another governmental entity conditioned upon privacy and confidentiality is to be held private and confidential according to the agreement between the department and other governmental agency.

(3) The department may hold private and confidential information obtained for statistical analysis, research, or study purposes if the information was supplied voluntarily, conditioned upon maintaining confidentiality of the information.

(4) Persons requesting disclosure of information held by the department under subsection (1) or (2) of this section shall request such disclosure from the agency providing the information to the department rather than from the department.

(5) This section supersedes any provisions of chapter 42.17 RCW to the contrary. [1989 c 92 § 3.]

50.13.020 Information or records deemed private and confidential—Release when required by federal program. Any information or records concerning an individual or employing unit obtained by the department of employment security pursuant to the administration of this title or other programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this chapter. This chapter does not create a rule of evidence. Information or records may be released by the department of employment security when the release is required by the federal government in connection with, or as a condition of funding for, a program being administered by the department. The provisions of RCW 50.13.060 (1)(a), (b) and (c) will not apply to such release. [1981 c 35 § 2; 1977 ex.s. c 153 § 2.]

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

50.13.030 Rules. The commissioner of the department of employment security shall have the authority to adopt, amend, or rescind rules interpreting and implementing the provisions of this chapter. In particular, these rules shall specify the procedure to be followed to obtain information or records to which the public has access under this chapter or chapter 42.17 RCW. [1977 ex.s. c 153 § 3.]

50.13.040 Access of individual or employing unit to records and information. An individual shall have access to all records and information concerning that individual held by the department of employment security, unless the information is exempt from disclosure under RCW 42.17.310. An employing unit shall have access to its own records and to any records and information relating to a benefit claim by an individual if the employing unit is either the individual's last employer or is the individual's base year employer. An employing unit shall have access to general summaries of benefit claims by individuals whose benefits are chargeable to the employing unit's experience rating or reimbursement account. [1977 ex.s. c 153 § 4.]

50.13.050 Access to records or information by interested party in proceeding before appeal tribunal or commissioner—Decisions not private and confidential, exception. (1) Any interested party, as defined by rule, in a proceeding before the appeal tribunal or commissioner shall have access to any information or records deemed private and confidential under this chapter if the information or records are material to the issues in that proceeding.

(2) No decisions by the commissioner or the appeals tribunal shall be deemed private and confidential under this chapter unless the decisions are based on information obtained in a closed hearing. [1977 ex.s. c 153 § 5.]

50.13.060 Access to records or information by governmental agencies. (1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal

shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (7) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general

information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) must be satisfied.

(6) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(7) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

(8) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel and the higher education personnel board shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply. [1981 c 177 § 1; 1979 ex.s. c 177 § 1; 1977 ex.s. c 153 § 6.]

50.13.070 Availability of records or information to parties to judicial or administrative proceedings—Discovery proceedings—Subpoenas. Information or records deemed private and confidential under this chapter shall be available to parties to judicial or formal administrative proceedings only upon a finding by the presiding officer that the need for the information or records in the proceeding outweighs any reasons for the privacy and confidentiality of the information or records. Information or records deemed private and confidential under this chapter shall not be available in discovery proceedings unless the court in which the action has been filed has made the finding specified above. A judicial or administrative subpoena directed to the employment security department must contain this finding. A subpoena for records or information held by the department may be directed to and served upon any employee of the department, but the department may specify by rule which employee shall produce the records or information in compliance with the subpoena. [1977 ex.s. c 153 § 7.]

50.13.080 Disclosure of records or information to private persons or organizations contracting to assist in operation and management of department. The employment security department shall have the right to disclose information or records deemed private and confidential under this chapter to any private person or organization

when such disclosure is necessary to permit private contracting parties to assist in the operation and management of the department in instances where certain departmental functions may be delegated to private parties to increase the department's efficiency or quality of service to the public. The private persons or organizations shall use the information or records solely for the purpose for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as employment security department employees. Nothing in this section shall be construed as limiting or restricting the effect of *RCW 42.17.260(5). The misuse or unauthorized release of records or information deemed private and confidential under this chapter by any private person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five hundred dollars. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [1977 ex.s. c 153 § 8.]

*Reviser's note: RCW 42.17.260 was amended by 1989 c 175 § 36, and the previous subsection (5) was renumbered as subsection (6).

50.13.090 Disclosure of records or information to contracting governmental or private organizations. Where the employment security department contracts to provide services to other governmental or private organizations, the department may disclose to those organizations information or records deemed private and confidential which have been acquired in the performance of the department's obligations under the contracts. [1977 ex.s. c 153 § 9.]

50.13.100 Disclosure of records or information where identifying details deleted or individual or employing unit consents. Nothing in this chapter shall prevent the disclosure of information or records deemed private and confidential under this chapter if all details identifying an individual or employing unit are deleted or the individual or employing unit consents to the disclosure. [1977 ex.s. c 153 § 10.]

50.13.900 Construction. Any ambiguities in this chapter shall be construed in a manner consistent with federal laws applying to the employment security department. If any provision of this chapter or the application thereof is held invalid by a final decision of any court or declared by the secretary of the department of labor of the United States to be inconsistent with federal laws upon which funding of the employment security department is contingent, the invalid or inconsistent provision shall be ineffective only to the extent necessary to insure compliance with the court decision or federal determination and the remainder of the chapter shall be given full effect. [1977 ex.s. c 153 § 11.]

50.13.905 Severability—1977 ex.s. c 153. If any provision of this act, or its application to any person or

circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 153 § 13.]

50.13.910 Legislative designation and placement. Sections 1 through 11 of this act shall constitute a new chapter in Title 50 RCW and shall be designated as chapter 50.13 RCW. [1977 ex.s. c 153 § 14.]

Chapter 50.16 FUNDS

Sections

50.16.010	Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund.
50.16.015	Federal interest payment fund—Establishment.
50.16.020	Administration of funds—Accounts.
50.16.030	Withdrawals from federal unemployment trust fund.
50.16.040	Management of funds upon discontinuance of federal unemployment trust fund.
50.16.050	Unemployment compensation administration fund.
50.16.060	Replacement of federal funds.
50.16.070	Federal interest payment fund—Employer contributions—When payable—Maximum rate—Deduction from remuneration unlawful.
50.16.080	Federal targeted jobs tax credit program—Administration—Processing fee—Deposit of fees.

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund. There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable. The unemployment compensation fund shall consist of

- (1) all contributions and payments in lieu of contributions collected pursuant to the provisions of this title,
- (2) interest earned upon any moneys in the fund,
- (3) any property or securities acquired through the use of moneys belonging to the fund,
- (4) all earnings of such property or securities,
- (5) any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended,
- (6) all money recovered on official bonds for losses sustained by the fund,
- (7) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended,
- (8) all money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304), and
- (9) all moneys received for the fund from any other source.

All moneys in the unemployment compensation fund shall be commingled and undivided.

The administrative contingency fund shall consist of all interest on delinquent contributions collected pursuant to this title after June 20, 1953, all fines and penalties collected pursuant to the provisions of this title, all sums recovered on official bonds for losses sustained by the fund, and revenue received under RCW 50.24.014: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. Moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014, shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary for:

(a) The proper administration of this title and no federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(b) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

Money in the special account created under RCW 50.24.014 may only be expended, after appropriation, for the purposes specified in *this 1985 act. [1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198. Prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

***Reviser's note:** For codification of "this 1985 act" [1985 ex.s. c 5], see Codification Tables, Volume 0.

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

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1983 1st ex.s. c 13 § 13.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.16.015 Federal interest payment fund—Establishment. A separate and identifiable fund to provide for the payment of interest on advances received from this state's account in the federal unemployment trust fund shall be established and administered under the direction of the commissioner. This fund shall be known as the federal interest payment fund and shall consist of contributions paid under RCW 50.16.070. [1983 1st ex.s. c 13 § 6.]

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.22.100.

50.16.020 Administration of funds—Accounts. The commissioner shall designate a treasurer and custodian of the unemployment compensation fund and of the administrative contingency fund, who shall administer such funds in accordance with the directions of the commissioner and shall issue his warrants upon them in accordance with such regulations as the commissioner shall prescribe. He shall maintain within the unemployment compensation fund three separate accounts as follows:

- (1) a clearing account,
- (2) an unemployment trust fund account, and
- (3) a benefit account.

All moneys payable to the unemployment compensation fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer, who shall immediately deposit them in the clearing account. Refunds payable pursuant to the provisions of this title from the unemployment compensation fund may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commissioner: *Provided, however,* That refunds of interest or penalties on delinquent contributions shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner.

After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys in the clearing and benefit accounts and in the administrative contingency fund shall not be commingled with other state funds, but shall be deposited by the treasurer, under the direction of the commissioner, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

Such moneys shall be secured by said bank or public depository to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account.

The treasurer shall give a bond conditioned upon the faithful performance of his duties as a custodian of the funds in an amount fixed by the director of the department of general administration and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund. All sums recovered on official bonds for losses sustained by the unemployment compensation fund shall be deposited in such fund. All sums recovered on official

bonds for losses sustained by the administrative contingency fund shall be deposited in such fund. [1983 1st ex.s. c 23 § 10; 1975 c 40 § 12; 1953 ex.s. c 8 § 6; 1945 c 35 § 61; Rem. Supp. 1945 § 9998–199. Prior: 1943 c 126 §§ 6, 9; 1939 c 214 § 11; 1937 c 162 § 13.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Powers and duties of director of general administration as to official bonds: RCW 43.19.540.

50.16.030 Withdrawals from federal unemployment trust fund. (1) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in RCW 50.16.030(5). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefits account.

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

- (a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor,
- (b) limits the period within which such money may be obligated to a period ending not more than two years

after the date of the enactment of the appropriation law, and

(c) limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to RCW 50.16.030(4), (5) and (6) and charged against the amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of RCW 50.16.030(4), (5) and (6), amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: *Provided*, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to RCW 50.16.030(4), (5) and (6).

(6) Money requisitioned as provided in RCW 50.16.030(4), (5) and (6) for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund. [1983 1st ex.s. c 7 § 1; 1973 c 6 § 1; 1969 ex.s. c 201 § 1; 1959 c 170 § 2; 1945 c 35 § 62; Rem. Supp. 1945 § 9998-200. Prior: 1943 c 127 § 6; 1941 c 253 § 7.]

50.16.040 Management of funds upon discontinuance of federal unemployment trust fund. The provisions of this title, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein for this state

for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commissioner, in accordance with the provisions of this title: *Provided*, That such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest bearing obligations of the United States of America: *And provided further*, That such investment shall at all times be made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commissioner. [1945 c 35 § 63; Rem. Supp. 1945 § 9998-201. Prior: 1941 c 253 § 7.]

50.16.050 Unemployment compensation administration fund. There is hereby established a fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby made available to the commissioner. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this title, and for no other purpose whatsoever. All moneys received from the United States of America, or any agency thereof, for said purpose pursuant to section 302 of the social security act, as amended, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this title. All moneys received from the United States employment service, United States department of labor, for said purpose pursuant to the act of congress approved June 6, 1933, as amended or supplemented by any other act of congress, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the public employment office system of this state. The unemployment compensation administration fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed by the treasurer of the unemployment compensation fund under rules and regulations of the commissioner and none of the provisions of *section 5501 of Remington's Revised Statutes, as amended, shall be applicable to this fund. The treasurer last named shall be the treasurer of the unemployment compensation administration fund and shall give a bond conditioned upon the faithful performance of his duties in connection with that fund. All sums recovered on the official bond for losses sustained by the

unemployment compensation administration fund shall be deposited in said fund. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to RCW 50.16.030(6) shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in RCW 50.16.030(4), (5) and (6). [1959 c 170 § 3; 1947 c 215 § 13; 1945 c 35 § 64; Rem. Supp. 1947 § 9998-202. Prior: 1941 c 253 § 7; 1939 c 214 § 11; 1937 c 162 § 13.]

*Reviser's note: Section 5501 of Remington's Revised Statutes [1909 c 133 § 1] is codified in RCW 43.01.050 and 43.85.130.

50.16.060 Replacement of federal funds. The state of Washington hereby pledges that it will replace within a reasonable time any moneys paid to this state under Title III of the social security act, and the Wagner-Peyser act, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of the Washington employment security act. [1959 c 170 § 4; 1945 c 35 § 67; Rem. Supp. 1945 § 9998-205.]

50.16.070 Federal interest payment fund—Employer contributions—When payable—Maximum rate—Deduction from remuneration unlawful. The federal interest payment fund shall consist of contributions payable by each employer (except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, employers who are required to make payments in lieu of contributions, and employers paying contributions under RCW 50.44.035) for any calendar quarter which begins on or after January 1, 1984, and for which the commissioner determines that the department will have an outstanding balance of accruing federal interest at the end of the calendar quarter. The amount of wages subject to tax shall be determined according to RCW 50.24.010. The tax rate applicable to wages paid during the calendar quarter shall be determined by the commissioner and shall not exceed fifteen one-hundredths of one percent. In determining whether to require contributions as authorized by this section, the commissioner shall consider the current balance in the federal interest payment fund and the projected amount of interest which will be due and payable as of the following September 30. Except as appropriated for the fiscal biennium ending June 30, 1991, any excess moneys in the federal interest payment fund shall be retained in the fund for future interest payments.

Contributions under this section shall become due and be paid by each employer in accordance with such rules as the commissioner may prescribe and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it

shall be increased to one cent. [1989 1st ex.s. c 19 § 811; 1988 c 289 § 710; 1983 1st ex.s. c 13 § 7.]

Severability—1989 1st ex.s. c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 19 § 817.]

Effective date—1989 1st ex.s. c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 1st ex.s. c 19 § 818.]

Severability—1988 c 289: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 289 § 803.]

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

50.16.080 Federal targeted jobs tax credit program—Administration—Processing fee—Deposit of fees. The cost of administering the federal targeted jobs tax credit program shall be fully borne by the employers requesting the credits. The commissioner shall establish the amount of the processing fee and procedures for collecting the fee. The commissioner shall establish the processing fee at a sufficient level to defray the costs of administering the federal targeted jobs tax credit program. The fee shall be established by the commissioner by rule. However, if federal funding is provided to finance such services, the commissioner shall revise or eliminate this fee based on the amount of federal funding received. Fees received for processing shall be deposited in a special account in the unemployment compensation administration fund. [1988 c 84 § 2.]

Legislative finding—1988 c 84: "The legislature finds that:

(1) The employment security department through the targeted jobs tax credit program has the responsibility to issue federal tax credit certifications to Washington state employers. The tax credit certification allows the employer to claim a credit against federal income tax for wages paid during the first year to employees who qualify for the program.

(2) To the extent that funding is available, the department, through the federal targeted jobs tax credit program, provides service to employers in the form of technical assistance and training, program marketing, monitoring, and maintenance of records and processing of documents that may result in a certification which allows employers to claim a federal tax credit.

(3) The United States Congress through the Tax Reform Act of 1986 reauthorized the targeted jobs tax credit but did not include funds to cover the costs of processing employer requests for federal tax credit certifications.

(4) The state has a vital interest in the economic benefits employers realize from the targeted jobs tax credit because the economic competitiveness of Washington state is enhanced as tax credit savings are reinvested in the state's economy.

(5) The departments of corrections, social and health services, and veterans affairs, and the superintendent of public instruction, along with employment security and other state service providers, utilize the targeted jobs tax credit program as an incentive for employers to hire hard-to-place clients.

(6) Economically disadvantaged youth, Vietnam-era veterans, ex-felons, and vocational rehabilitation, supplemental security income, general assistance and AFDC recipients have an especially difficult time in obtaining employment." [1988 c 84 § 1.]

Conflict with federal requirements—1988 c 84: "If any part of this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules

under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 84 § 3.]

Severability—1988 c 84: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 84 § 4.]

Effective date—1988 c 84: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1988." [1988 c 84 § 6.] This act was signed by the governor March 16, 1988.

Chapter 50.20

BENEFITS AND CLAIMS

Sections

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50.20.010 Benefit eligibility conditions. An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that

(1) He or she has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by

regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he or she finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

(2) He or she has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(3) He or she is able to work, and is available for work in any trade, occupation, profession, or business for which he or she is reasonably fitted. To be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or his agents;

(4) He or she has been unemployed for a waiting period of one week; and

(5) As to weeks beginning after March 31, 1981, which fall within an extended benefit period as defined in RCW 50.22.010(1), as now or hereafter amended, the individual meets the terms and conditions of RCW 50.22.020, as now or hereafter amended, with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

An individual's eligibility period for regular benefits shall be coincident to his or her established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits. [1981 c 35 § 3; 1973 c 73 § 6; 1970 ex.s. c 2 § 4; 1959 c 266 § 3; 1953 ex.s. c 8 § 7; 1951 c 265 § 9; 1951 c 215 § 11; 1949 c 214 § 9; 1945 c 35 § 68; Rem. Supp. 1949 § 9998–206. Prior: 1943 c 127 § 2; 1941 c 253 §§ 1, 2; 1939 c 214 § 2; 1937 c 162 § 4.]

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.015 Persons with marginal labor force attachment. If the product of an otherwise eligible individual's weekly benefit amount multiplied by thirteen is greater than the total amount of wages earned in covered employment in the higher of two corresponding calendar quarters included within the individual's determination period, that individual shall be considered to have marginal labor force attachment. For the purposes of this subsection and RCW 50.29.020, "determination period" means the first eight of the last nine completed calendar quarters immediately preceding the individual's current benefit year. [1986 c 106 § 1; 1985 c 285 § 3; 1984 c 205 § 9.]

Conflict with federal requirements—1986 c 106: "If any part of this act is found to be in conflict with federal requirements which are a

prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 106 § 7.]

Severability—1986 c 106: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 106 § 8.]

Severability—1985 c 285: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 285 § 5.]

Effective date—1985 c 285: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 285 § 6.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Persons with marginal labor force attachment—Effect on employer experience rating accounts: RCW 50.29.020.

50.20.020 Waiting period credit limitation. No week shall be counted as a waiting period week,

(1) if benefits have been paid with respect thereto, and

(2) unless the individual was otherwise eligible for benefits with respect thereto, and

(3) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits. [1949 c 214 § 10; 1945 c 35 § 69; Rem. Supp. 1949 § 9998-207.]

50.20.043 Training provision. No otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the commissioner, nor shall such individual be denied benefits with respect to any week in which the individual is satisfactorily progressing in a training program with the approval of the commissioner by reason of the application of RCW 50.20.010(3), 50.20.015, 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

An individual who the commissioner determines to be a dislocated worker as defined by RCW 50.04.075 and who is satisfactorily progressing in a training program approved by the commissioner shall be considered to be in training with the approval of the commissioner. [1985 c 40 § 1; 1984 c 181 § 2; 1971 c 3 § 12.]

Conflict with federal requirements—1985 c 40: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 40 § 2.]

Severability—1985 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1985 c 40 § 3.]

Effective date—1985 c 40: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 40 § 4.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Job skills program participation deemed to be training: RCW 28C.04.480.

50.20.044 Ineligibility for benefits for failure to attend job search workshop or training course. If an otherwise eligible individual fails without good cause, as determined by the commissioner under rules prescribed by the commissioner, to attend a job search workshop or a training or retraining course when directed by the department and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred. [1984 c 205 § 8.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.20.045 Employee separated from employment due to wage garnishment not disqualified. Subject to the provisions of RCW 6.27.170, an individual who is separated from his employment due to garnishment of his wages shall not be disqualified from receiving unemployment benefits because of such separation. [1969 ex.s. c 264 § 35.]

50.20.050 Disqualification for leaving work voluntarily without good cause. (1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter until he or she has obtained bona fide work and earned wages of not less than his or her suspended weekly benefit amount in each of five calendar weeks.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(a) The duration of the work;

(b) The extent of direction and control by the employer over the work; and

(c) The level of skill required for the work in light of the individual's training and experience.

(2) An individual shall not be considered to have left work voluntarily without good cause when:

(a) He or she has left work to accept a bona fide offer of bona fide work as described in subsection (1) of this section; or

(b) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment

when again able to assume employment: *Provided*, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system.

(3) In determining under this section whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(4) Subsections (1) and (3) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits until he or she has requalified, either by obtaining bona fide work and earning wages of not less than the suspended weekly benefit amount in each of five calendar weeks or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. [1982 1st ex.s. c 18 § 6; 1981 c 35 § 4; 1980 c 74 § 5; 1977 ex.s. c 33 § 4; 1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998-211. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.060 Disqualification from benefits due to misconduct, felony, or gross misdemeanor. (1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has

been discharged or suspended for misconduct connected with his or her work and thereafter until he or she has obtained work and earned wages of not less than the suspended weekly benefit amount in each of five calendar weeks. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct.

(2) An individual who has been discharged because of a felony or a gross misdemeanor of which he or she has been convicted, or has admitted committing to a competent authority, and which is connected with his or her work shall be disqualified from receiving any benefits for which base year credits are earned in any employment prior to the discharge. Such disqualification begins with the first day of the calendar week in which he or she has been discharged, and all benefits paid during the period the individual was disqualified shall be recoverable, notwithstanding RCW 50.20.190, 50.24.020, or any other provision of this title. [1982 1st ex.s. c 18 § 16; 1977 ex.s. c 33 § 5; 1970 ex.s. c 2 § 22; 1953 ex.s. c 8 § 9; 1951 c 215 § 13; 1949 c 214 § 13; 1947 c 215 § 16; 1945 c 35 § 74; Rem. Supp. 1949 § 9998-212. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.070 Disqualification for misrepresentation. Irrespective of any other provisions of this title an individual shall be disqualified for benefits for any week with respect to which he has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and has thereby obtained or attempted to obtain any benefits under the provisions of this title, and for an additional twenty-six weeks commencing with the first week for which he completes an otherwise compensable claim for waiting period credit or benefits following the date of the delivery or mailing of the determination of disqualification under this section: *Provided*, That such disqualification shall not be applied after two years have elapsed from the date of the delivery or mailing of the determination of disqualification under this section, but all overpayments established by such determination of disqualification shall be collected as otherwise provided by this title. [1973 1st ex.s. c 158 § 5; 1953 ex.s. c 8 § 10; 1951 c 265 § 10; 1949 c 214 § 14; 1947 c 215 § 17; 1945 c 35 § 75; Rem. Supp. 1949 § 9998-213. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.080 Disqualification for refusal to work. An individual is disqualified for benefits, if the commissioner finds that he has failed without good cause, either to apply for available, suitable work when so directed by

the employment office or the commissioner, or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner. Such disqualification shall continue until he has obtained work and earned wages therefor of not less than his suspended weekly benefit amount in each of five weeks. [1959 c 321 § 1; 1953 ex.s. c 8 § 11; 1951 c 215 § 14; 1949 c 214 § 15; 1945 c 35 § 76; Rem. Supp. 1949 § 9998-214. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Effective date—1959 c 321: "This act shall take effect on July 5, 1959." [1959 c 321 § 4.]

50.20.085 Disqualification for receipt of industrial insurance disability benefits. An individual is disqualified from benefits with respect to any day or days in which he or she is receiving compensation under RCW 51.32-.060 or 51.32.090. [1986 c 75 § 1.]

50.20.090 Strike or lockout disqualification—When inapplicable. (1) An individual shall be disqualified for benefits for any week with respect to which the commissioner finds that the individual's unemployment is:

(a) Due to a strike at the factory, establishment, or other premises at which the individual is or was last employed; or

(b) Due to a lockout by his or her employer who is a member of a multi-employer bargaining unit and who has locked out the employees at the factory, establishment, or other premises at which the individual is or was last employed after one member of the multi-employer bargaining unit has been struck by its employees as a result of the multi-employer bargaining process.

(2) Subsection (1) of this section shall not apply if it is shown to the satisfaction of the commissioner that:

(a) The individual is not participating in or financing or directly interested in the strike or lockout that caused the individual's unemployment; and

(b) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the strike or lockout, there were members employed at the premises at which the strike or lockout occurs, any of whom are participating in or financing or directly interested in the strike or lockout: *Provided*, That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subdivision, be deemed to be a separate factory, establishment, or other premises.

(3) Any disqualification imposed under this section shall end when the strike or lockout is terminated. [1988 c 83 § 1; 1987 c 2 § 1; 1953 ex.s. c 8 § 12; 1945 c 35 § 77; Rem. Supp. 1945 § 9998-215. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Labor dispute study—1988 c 83: "(1) The department of employment security shall study and analyze the impact of section 1 of this act on the number of claimants receiving unemployment insurance benefits and the total amount of benefits paid, and on the type, frequency, duration, and outcome of labor disputes. In performing the

study the department shall specifically address the impact of section 1(1)(b) of this act on the above subjects.

(2) In performing its duties under this section the department shall periodically convene meetings with representatives of labor and management, including but not limited to representatives of the following: A general business association; an organization broadly representing organized labor; the construction industry; construction industry organized labor; the trade industry; trade industry organized labor; the manufacturing industry; manufacturing industry organized labor; the service industry; service industry organized labor; the transportation industry; transportation industry organized labor; the communication industry; and communication industry organized labor.

(3) For the purpose of studying and analyzing the impact of section 1(1)(b) of this act the department shall periodically convene, in addition to those meetings specified in subsection (2) of this section, meetings with representatives of labor and management from industries with multi-employer bargaining units, including but not limited to representatives from a general business association; an organization broadly representing organized labor; the retail trade industry; and retail trade industry organized labor.

(4) The department shall report its findings to the governor, the senate economic development and labor committee, and the house of representatives commerce and labor committee, or the appropriate successor committees, by the commencement of the 1990 regular session of the legislature." [1988 c 83 § 2.] "Section 1 of this act" is the amendment to RCW 50.20.090 by 1988 c 83.

Effective date—1988 c 83: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on the Sunday following the day on which the governor signs this act." [1988 c 83 § 3.] The effective date of 1988 c 83 was March 20, 1988.

Applicability—Effective date—1987 c 2: "(1) This act shall apply retrospectively to all applicable employers and employees as of November 16, 1986.

(2) This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1987 c 2 § 4.] "This act" [1987 c 2] took effect on February 20, 1987.

Severability—1987 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 2 § 5.]

50.20.095 Disqualification for attending school or institution of higher education. Any individual registered at an established school in a course of study providing scholastic instruction of twelve or more hours per week, or the equivalent thereof, shall be disqualified from receiving benefits or waiting period credit for any week during the school term commencing with the first week of such scholastic instruction or the week of leaving employment to return to school, whichever is the earlier, and ending with the week immediately before the first full week in which the individual is no longer registered for twelve or more hours of scholastic instruction per week: *Provided*, That registration for less than twelve hours will be for a period of sixty days or longer. The term "school" includes primary schools, secondary schools, and "institutions of higher education" as that phrase is defined in RCW 50.44.037.

This disqualification shall not apply to any individual who:

(1) Is in approved training within the meaning of RCW 50.20.043; or

(2) Demonstrates to the commissioner by a preponderance of the evidence his or her actual availability for

work, and in arriving at this determination the commissioner shall consider the following factors:

- (a) Prior work history;
- (b) Scholastic history;
- (c) Past and current labor market attachment; and
- (d) Past and present efforts to seek work. [1980 c 74 § 4; 1977 ex.s. c 33 § 8.]

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—**Construction**—1977 ex.s. c 33: See notes following RCW 50.04.030.

50.20.098 Services performed by aliens. (1) Benefits shall not be paid on the basis of services performed by an alien unless the alien is an individual who has been lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise is permanently residing in the United States under color of law (including an alien who is lawfully present in the United States as a result of the application of 8 U.S.C. Sec. 1153(a)(7) or 8 U.S.C. Sec. 1182(d)(5): *Provided*, That any modifications to 26 U.S.C. Sec. 3304(a)(14) as provided by PL 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by 26 U.S.C. Sec. 3301 shall be deemed applicable under this section.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence. [1989 c 92 § 1; 1977 ex.s. c 292 § 10.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.20.100 Suitable work factors. Suitable work for an individual is employment in an occupation in keeping with the individual's prior work experience, education, or training and if the individual has no prior work experience, special education, or training for employment available in the general area, then employment which the individual would have the physical and mental ability to perform, and for individuals with base year work experience in agricultural labor, any agricultural labor available from any employer shall be deemed suitable unless it meets the conditions in RCW 50.20.110 or the commissioner finds elements of specific work opportunity unsuitable for a particular individual. In determining whether work is suitable for an individual, the commissioner shall also consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of

the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies. [1989 c 380 § 80; 1977 ex.s. c 33 § 6; 1973 1st ex.s. c 158 § 6; 1945 c 35 § 78; Rem. Supp. 1945 § 9998-216.]

Effective date—1989 c 380 §§ 78 through 81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942 and 15.58.943.

Effective dates—**Construction**—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.20.110 Suitable work exceptions. Notwithstanding any other provisions of this title, no work shall be deemed to be suitable and benefits shall not be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; or

(2) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if as a condition of being employed the individual would be required by the employing unit to join a company union or to resign from or refrain from joining any bona fide labor organization. [1945 c 35 § 79; Rem. Supp. 1945 § 9998-217.]

50.20.113 Unemployment of sport or athletic event participants during period between sport seasons. Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if the individual performed the services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform the services in the latter of the seasons (or similar periods). [1977 ex.s. c 292 § 6.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.20.115 Unemployment due to vacation. When an unemployed individual is qualified for receipt of unemployment compensation benefits by the specific provisions of RCW 50.20.010, 50.20.120 and 50.20.130, and such individual is not specifically disqualified from receiving such benefits by reason of the provisions of RCW 50.20.090, 50.20.050, 50.20.060, 50.20.070 or 50.20.080, he shall, for all purposes of the unemployment compensation act, be deemed to be involuntarily unemployed and entitled to unemployment compensation benefits: *Provided*, That the cessation of operations by an employer for the purpose of granting vacations, whether by union contract or other reasons, shall in no manner

be construed to be a voluntary quit nor a voluntary unemployment on the part of the employees. [1983 c 3 § 158; 1951 c 265 § 12.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.117 Jury service. No otherwise eligible individual shall be denied benefits for any week because he or she is serving as a prospective or impaneled juror in any court of this state. Compensation received for service as a juror shall not be considered wages subject to contributions under this title nor shall such compensation be considered in determining base-year wages, but it shall be considered remuneration for purposes of a deduction from benefits under RCW 50.20.130. [1979 ex.s. c 135 § 6.]

Severability—1979 ex.s. c 135: See note following RCW 2.36.080.

50.20.118 Unemployment while in approved training. (1) Notwithstanding any other provision of this chapter, an otherwise eligible individual shall not be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the Trade Act of 1974, P.L. 93-618, nor may that individual be denied benefits for any such week by reason of leaving work which is not suitable employment to enter such training, or for failure to meet any requirement of federal or state law for any such week which relates to the individual's availability for work, active search for work, or refusal to accept work.

(2) For the purposes of this section, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as described for the purposes of the Trade Act of 1974, P.L. 93-618), if the wages for such work are not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974, P.L. 93-618. [1982 1st ex.s. c 18 § 7.]

Severability—**Conflict with federal requirements**—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.20.120 Amount of benefits. (1) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount (determined hereinafter) or one-third of the individual's base year wages under this title: *Provided*, That as to any week beginning on and after March 31, 1981, which falls in an extended benefit period as defined in RCW 50.22.010(1), as now or hereafter amended, an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020, as now or hereafter amended.

(2) An individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest. The maximum and minimum

amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th. The maximum amount payable weekly shall be fifty-five percent of the "average weekly wage" for the calendar year preceding such June 30th: *Provided*, That if as of the first December 31st on which the ratio of the balance in the unemployment compensation fund to total remuneration paid by all employers subject to contributions during the calendar year ending on such December 31st and reported to the department by the following March 31st is 0.024 or more, the maximum amount payable weekly for benefit years beginning with the first full calendar week in July next following, and thereafter, shall be sixty percent of the "average weekly wage". The computation for this ratio shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded: *Provided further*, That for benefit years beginning before July 7, 1985, the maximum amount payable weekly shall not exceed one hundred eighty-five dollars. The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th. If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar. [1984 c 205 § 1; 1983 1st ex.s. c 23 § 11; 1981 c 35 § 5; 1980 c 74 § 3; 1977 ex.s. c 33 § 7; 1970 ex.s. c 2 § 5; 1959 c 321 § 2; 1955 c 209 § 1; 1951 c 265 § 11; 1949 c 214 § 16; 1945 c 35 § 80; Rem. Supp. 1949 § 9998-218. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Conflict with federal requirements—1984 c 205: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1984 c 205 § 11.]

Severability—1984 c 205: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 205 § 12.]

Effective dates—1984 c 205: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1984], except as follows:

(1) Sections 6 and 13 of this act shall take effect on January 1, 1985;

(2) Section 7 of this act shall be effective for compensable weeks of unemployment beginning on or after January 6, 1985; and

(3) Section 9 of this act shall take effect on July 1, 1985." [1984 c 205 § 14.] For codification of sections in this act, see Codification Tables, Volume 0.

Conflict with federal requirements—**Effective dates**—**Construction**—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Construction—**Effective dates**—**Severability**—1981 c 35: See notes following RCW 50.22.030.

Severability—**Effective dates**—1980 c 74: See notes following RCW 50.04.323.

Effective dates—**Construction**—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Effective date—1959 c 321: See note following RCW 50.20.080.

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.130 Deduction from weekly benefit amount. If an eligible individual is available for work for less than a full week, he shall be paid his weekly benefit amount reduced by one-seventh of such amount for each day that he is unavailable for work: *Provided*, That if he is unavailable for work for three days or more of a week, he shall be considered unavailable for the entire week.

Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less seventy-five percent of that part of the remuneration (if any) payable to him with respect to such week which is in excess of five dollars. Such benefit, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar. [1983 1st ex.s. c 23 § 12; 1973 2nd ex.s. c 7 § 3; 1959 c 321 § 3; 1951 c 215 § 15; 1949 c 214 § 17; 1945 c 35 § 81; Rem. Supp. 1949 § 9998-219. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Conflict with federal requirements—**Effective dates**—**Construction**—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Application—1973 2nd ex.s. c 7: See note following RCW 50.04.310.

Effective date—1959 c 321: See note following RCW 50.20.080.

50.20.140 Filing applications and claims—**Scope of initial determination**—"Application for initial determination", "claim for benefits", "claim for waiting period" defined. An application for initial determination, a claim for waiting period, or a claim for benefits shall be filed in accordance with such regulations as the commissioner may prescribe. An application for an initial determination may be made by any individual whether unemployed or not. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his employment and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations and such notices, instructions and other material as the commissioner may by regulation prescribe. Such printed material shall be supplied by the commissioner to each employer without cost to him.

The term "application for initial determination" shall mean a request in writing for an initial determination. The term "claim for waiting period" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for waiting period have been met. The term "claim for benefits" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for receipt of benefits have been met.

A representative designated by the commissioner shall take the application for initial determination and for the claim for waiting period credits or for benefits. When an application for initial determination has been made, the employment security department shall promptly make an initial determination which shall be a statement of

the applicant's base year wages, his weekly benefit amount, his maximum amount of benefits potentially payable and his benefit year. Such determination shall fix the general conditions under which waiting period credit shall be granted and under which benefits shall be paid during any period of unemployment occurring within the benefit year fixed by such determination. [1951 c 215 § 4; 1945 c 35 § 82; Rem. Supp. 1945 § 9998-220. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.20.150 Notice of application or claim. The applicant for initial determination, his most recent employing unit as stated by the applicant, and any other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his last separation from work. If, during his benefit year, the applicant becomes unemployed after having accepted subsequent work, and reports for the purpose of reestablishing his eligibility for benefits, a similar notice shall be given promptly to his then most recent employing unit as stated by him, or to any other interested party which the commissioner by regulation prescribes.

Each base year employer shall be promptly notified of the filing of any application for initial determination which may result in a charge to his account. [1970 ex.s. c 2 § 7; 1951 c 215 § 5; 1945 c 35 § 83; Rem. Supp. 1945 § 9998-221. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.160 Redetermination. (1) A determination of amount of benefits potentially payable issued pursuant to the provisions of RCW 50.20.120 and 50.20.140 shall not serve as a basis for appeal but shall be subject to request by the claimant for reconsideration and/or for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof: *Provided*, That in the absence of fraud or misrepresentation on the part of the claimant, any benefits paid prior to the date of any redetermination which reduces the amount of benefits payable shall not be subject to recovery under the provisions of RCW 50.20.190. A denial of a request to reconsider or a redetermination shall be furnished the claimant in writing and provide the basis for appeal under the provisions of RCW 50.32.020.

(2) A determination of denial of benefits issued under the provisions of RCW 50.20.180 shall become final, in absence of timely appeal therefrom: *Provided*, That the commissioner may reconsider and redetermine such determinations at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

(3) A determination of allowance of benefits shall become final, in absence of a timely appeal therefrom:

Provided, That the commissioner may redetermine such allowance at any time within two years following the benefit year in which such allowance was made in order to recover any benefits improperly paid and for which recovery is provided under the provisions of RCW 50.20.190: *And provided further*, That in the absence of fraud, misrepresentation, or nondisclosure, this provision or the provisions of RCW 50.20.190 shall not be construed so as to permit redetermination or recovery of an allowance of benefits which having been made after consideration of the provisions of RCW 50.20.010(3), or the provisions of RCW 50.20.050, 50.20.060, 50.20.080, or 50.20.090 has become final.

(4) A redetermination may be made at any time to conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits. Written notice of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such regulation as the commissioner may prescribe, would be an interested party. [1959 c 266 § 4; 1953 ex.s. c 8 § 13; 1951 c 215 § 6; 1945 c 35 § 84; Rem. Supp. 1945 § 9998–222. Prior: 1941 c 253 § 4.]

50.20.170 Payment of benefits. An individual who has received an initial determination finding that he is potentially entitled to receive waiting period credit or benefits shall, during the benefit year, be given waiting period credit or be paid benefits in accordance with such initial determination for any week with respect to which the conditions of eligibility for such credit or benefits, as prescribed by this title, are met, unless the individual is denied waiting period credit or benefits under the disqualification provisions of this title.

All benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe. [1945 c 35 § 85; Rem. Supp. 1945 § 9998–223. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

50.20.180 Denial of benefits. If waiting period credit or the payment of benefits shall be denied to any claimant for any week or weeks, the claimant and such other interested party as the commissioner by regulation prescribes shall be promptly issued written notice of the denial and the reasons therefor. In any case where the department is notified in accordance with such regulation as the commissioner prescribes or has reason to believe that the claimant's right to waiting period credit or benefits is in issue because of his separation from work for any reason other than lack of work, the department shall promptly issue a determination of allowance or denial of waiting period credit or benefits and the reasons therefor to the claimant, his most recent employing unit as stated by the claimant, and such other interested party as the commissioner by regulation prescribes. Notice that waiting period credit or benefits are allowed or denied shall suffice for the particular weeks stated in the notice or until the condition upon which the allowance or

denial was based has been changed. [1951 c 215 § 7; 1945 c 38 § 86; Rem. Supp. 1945 § 9998–224. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.20.190 Recovery of benefit payments. An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: *Provided*, That in the absence of fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of the individual's benefit year in which the purported overpayment was made unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

The commissioner may waive an overpayment if the commissioner finds that said overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: *Provided, however*, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: *Provided*, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, said determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee of five dollars. The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court

cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection. [1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3; 1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225. Prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Severability—1981 c 35: See note following RCW 50.22.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.191 Authority to compromise benefit overpayments. See RCW 50.24.020.

50.20.192 Collection of benefit overpayments, limitation of actions. See RCW 50.24.190.

50.20.193 Chargeoff of uncollectible benefit overpayments. See RCW 50.24.200.

50.20.200 Nonliability of state. Benefits shall be deemed to be due and payable under this title only to the extent provided in this title and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commissioner shall be liable for any amount in excess of

such sums. [1945 c 35 § 88; Rem. Supp. 1945 § 9998-226.]

50.20.210 Notification of availability of basic health plan. The commissioner shall notify any person filing a claim under this chapter who resides in a local area served by the Washington basic health plan of the availability of basic health care coverage to qualified enrollees in the Washington basic health plan under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the commissioner of a closure of enrollment in the area. The commissioner shall maintain a supply of Washington basic health plan enrollment application forms, which shall be provided in reasonably necessary quantities by the administrator, in each appropriate employment service office for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 16.]

Sunset Act application: See note following chapter 70.47 RCW digest.

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

Chapter 50.22 EXTENDED BENEFITS

Sections	
50.22.010	Definitions.
50.22.020	Application of title provisions and commissioner's regulations—Eligibility for extended benefits.
50.22.030	Extended benefit eligibility conditions—Interstate claims.
50.22.040	Weekly extended benefit amount.
50.22.050	Total extended benefit amount—Reduction.
50.22.060	Public announcements when extended benefit periods become effective or are terminated—Computations of rate of insured unemployment.

50.22.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Extended benefit period" means a period which:
 - (a) Begins with the third week after a week for which there is an "on" indicator; and
 - (b) Ends with the third week after the first week for which there is an "off" indicator: *Provided*, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of an "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state.

(2) There is an "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) either:

- (a) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent; or

(b) Equaled or exceeded six percent: *Provided*, That the six percent trigger shall apply only until December 31, 1985.

(3) There is an "off" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) was either:

(a) Less than five percent; or

(b) Five percent or more but less than six percent and the rate of insured unemployment was less than one hundred twenty percent of the average of the rates for the corresponding thirteen week period ending in each of the two preceding calendar years: *Provided*, That the six percent trigger shall apply only until December 31, 1985.

(4) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(5) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(6) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(7) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(8) "Additional benefit eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an additional benefit period that is in effect and, if his or her benefit year ends within such additional benefit period, any weeks thereafter which begin in such period.

(9) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to

regular benefits: *Provided*, That, for the purposes of (a) and (b), an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(d) (i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(10) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954. [1985 ex.s. c 5 § 10; 1983 c 1 § 1; 1982 1st ex.s. c 18 § 2; 1981 c 35 § 7; 1977 ex.s. c 292 § 11; 1973 c 73 § 7; 1971 c 1 § 2.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Application—1977 ex.s. c 292: "The provisions of section 11 of this 1977 amendatory act shall apply to the week ending May 21, 1977, and all weeks thereafter." [1977 ex.s. c 292 § 25.] This applies to the amendment to RCW 50.22.010 by 1977 ex.s. c 292 § 11.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Emergency—**Effective date**—1971 c 1: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on the Sunday following the day on which the governor signs this enactment." [1971 c 1 § 11.] The effective date of this act, codified as chapter 50.22 RCW, was January 17, 1971.

Repealer—**Effect as to benefits**—1971 c 1: "Section 23, chapter 2, Laws of 1970 ex.s. and RCW 50.20.127 are each hereby repealed. No benefits shall be paid pursuant to RCW 50.20.127 for weeks commencing on or after the effective date of this 1971 amendatory act." [1971 c 1 § 10.]

50.22.020 Application of title provisions and commissioner's regulations—Eligibility for extended benefits. When the result would not be inconsistent with the other provisions of this chapter, the provisions of this title and commissioner's regulations enacted pursuant thereto, which apply to claims for, or the payment of, regular benefits, shall apply to claims for, and the payment of, extended benefits: *Provided*, That

(1) Payment of extended compensation under this chapter shall not be made to any individual for any week of unemployment in his or her eligibility period—

(a) During which he or she fails to accept any offer of suitable work (as defined in subsection (3) of this section) or fails to apply for any suitable work to which he or she was referred by the employment security department; or

(b) During which he or she fails to actively engage in seeking work.

(2) If any individual is ineligible for extended compensation for any week by reason of a failure described in subsections (1)(a) or (1)(b) of this section, the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

(a) Begins with the week following the week in which such failure occurs; and

(b) Does not end until such individual has been employed during at least four weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four multiplied by the individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year.

(3) For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities and which does not involve conditions described in RCW 50.20.110: *Provided*, That if the individual furnishes evidence satisfactory to the employment security department that such individual's prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with RCW 50.20.100.

(4) Extended compensation shall not be denied under subsection (1)(a) of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if:

(a) The gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

(i) The individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year; plus

(ii) The amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954, 26 U.S.C. Sec. 501(c)(17)(D)), payable to such individual for such week;

(b) The position was not offered to such individual in writing and was not listed with the employment security department;

(c) Such failure would not result in a denial of compensation under the provisions of RCW 50.20.080 and 50.20.100 to the extent such provisions are not inconsistent with the provisions of subsections (3) and (5) of this section; or

(d) The position pays wages less than the higher of—

(i) The minimum wage provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) Any applicable state or local minimum wage.

(5) For purposes of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(b) The individual provides tangible evidence to the employment security department that he or she has engaged in such an effort during such week.

(6) The employment security department shall refer applicants for benefits under this chapter to any suitable work to which subsections (4)(a) through (4)(d) of this section would not apply.

(7) No provisions of this title which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

(8) The provisions of subsections (1) through (7) of this section shall apply with respect to weeks of unemployment beginning after March 31, 1981. [1981 c 35 § 8; 1971 c 1 § 3.]

Construction—**Effective dates**—**Severability**—1981 c 35: See notes following RCW 50.22.030.

50.22.030 Extended benefit eligibility conditions—Interstate claims. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the commissioner finds with respect to such week that:

(a) The individual is an "exhaustee" as defined in RCW 50.22.010;

(b) He or she has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not

being subject to a disqualification for the receipt of benefits; and

(c) He or she has earned wages in the applicable base year of at least forty times his or her weekly benefit amount.

(2) An individual filing an interstate claim in any state under the interstate benefit payment plan shall not be eligible to receive extended benefits for any week beyond the first two weeks claimed for which extended benefits are payable unless an extended benefit period embracing such week is also in effect in the agent state. [1982 1st ex.s. c 18 § 4; 1981 c 35 § 9; 1971 c 1 § 4.]

Effective dates—1982 1st ex.s. c 18: "Sections 2, 9[10], 10[11], 11[12], 16[17], and 17[18] of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [April 2, 1982]. Section 4 of this act shall take effect on September 26, 1982." [1982 1st ex.s. c 18 § 23.] The bracketed section references in this section correct erroneous internal references which occurred during the engrossing process after a new section was added by amendment.

Severability—**Conflict with federal requirements**—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Construction—1981 c 35 §§ 3, 5, 8, and 9: "Sections 3, 5, and 8 of this 1981 amendatory act are being enacted to comply with the provisions of Pub. L. 96-499. Ambiguities in those sections should be interpreted in accordance with provisions of that federal law. Section 9 of this 1981 amendatory act is enacted pursuant to Pub. L. 96-364. Any ambiguities in that section should be construed in accordance with that federal law." [1981 c 35 § 15.] For codification of 1981 c 35, see Codification Tables, Volume 0.

Effective dates—1981 c 35 §§ 1, 2, 3, 5, 8, 9, and 12: "Sections 1, 2, 3, 5, 8, and 12 of this amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect immediately [April 20, 1981]; section 9 of this amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect with weeks beginning on and after June 1, 1981." [1981 c 35 § 16.] For codification of 1981 c 35, see Codification Tables, Volume 0.

Severability—1981 c 35: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 35 § 17.]

50.22.040 Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. However, for those individuals whose eligibility period for extended benefits commences with weeks beginning after October 1, 1983, the weekly benefit amount, as computed in RCW 50.20.120(2) and payable under this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar. [1983 1st ex.s. c 23 § 13; 1971 c 1 § 5.]

Conflict with federal requirements—**Effective dates**—**Construction**—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.22.050 Total extended benefit amount—Reduction. (1) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(a) Fifty percent of the total amount of regular benefits which were payable to him under this title in his applicable benefit year;

(b) Thirteen times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year; or

(c) Thirty-nine times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to him under this title with respect to the benefit year.

(2) Notwithstanding any other provision of this chapter, if the benefit year of any eligible individual ends within an extended benefit period, the extended benefits which the individual would otherwise be entitled to receive with respect to weeks of unemployment beginning after the end of the benefit year and within the extended benefit period shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amount as a trade readjustment allowance within that benefit year, multiplied by the individual's weekly extended benefit amount. [1982 1st ex.s. c 18 § 5; 1971 c 1 § 6.]

Severability—**Conflict with federal requirements**—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.22.060 Public announcements when extended benefit periods become effective or are terminated—Computations of rate of insured unemployment. (1) Whenever an extended benefit period is to become effective in this state (or in all states) as a result of an "on" indicator, or an extended benefit period is to be terminated in this state as a result of an "off" indicator, the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of RCW 50.22.010(4) shall be made by the commissioner, in accordance with regulations prescribed by the United States secretary of labor. [1982 1st ex.s. c 18 § 3; 1971 c 1 § 7.]

Severability—**Conflict with federal requirements**—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Chapter 50.24

CONTRIBUTIONS BY EMPLOYERS

Sections	
50.24.010	Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration.
50.24.014	Financing special unemployment assistance—Account—Contributions.
50.24.015	Wages—Deemed paid when contractually due.
50.24.020	Authority to compromise.
50.24.030	Contributions erroneously paid to United States or another state.
50.24.040	Interest on delinquent contributions.
50.24.050	Lien for contributions generally.
50.24.060	Lien in event of insolvency or dissolution.
50.24.070	Order and notice of assessment.
50.24.080	Jeopardy assessment.
50.24.090	Distrain, seizure, and sale.

50.24.100	Distrain procedure.
50.24.110	Notice and order to withhold and deliver.
50.24.115	Warrant—Authorized—Filing—Lien—Enforcement.
50.24.120	Collection by civil action.
50.24.125	Collection by civil action—Collection of delinquent payments in lieu of contributions from political subdivisions or instrumentalities thereof.
50.24.130	Contractor's and principal's liability for contributions—Exceptions.
50.24.140	Collection remedies cumulative.
50.24.150	Contribution adjustments and refunds.
50.24.160	Election of coverage.
50.24.170	Joint accounts.
50.24.180	Injunction proceedings.
50.24.190	Limitation of actions.
50.24.200	Chargeoff of uncollectible accounts.

50.24.010 Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration. Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make payments in lieu of contributions) for each calendar year in which the employer is subject to this title at the rate established pursuant to chapter 50.29 RCW.

In each rate year, the amount of wages subject to tax for each individual shall be one hundred fifteen percent of the amount of wages subject to tax for the previous year rounded to the next lower one hundred dollars: *Provided*, That the amount of wages subject to tax in any rate year shall not exceed eighty percent of the "average annual wage for contributions purposes" for the second preceding calendar year rounded to the next lower one hundred dollars: *Provided further*, That the amount subject to tax shall be twelve thousand dollars for rate year 1984 and ten thousand dollars for rate year 1985.

In making computations under this section and RCW 50.29.010, wages paid based on services for employers making payments in lieu of contributions shall not be considered remuneration. Moneys paid from the fund, based on services performed for employers who make payments in lieu of contributions, which have not been reimbursed to the fund as of any June 30 shall be deemed an asset of the unemployment compensation fund, to the extent that such moneys exceed the amount of payments in lieu of contributions which the commissioner has previously determined to be uncollectible: *Provided further*, That the amount attributable to employment with the state shall also include interest as provided for in RCW 50.44.020.

Contributions shall become due and be paid by each employer to the treasurer for the unemployment compensation fund in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in employment of the employer. Any deduction in violation of the provisions of this section shall be unlawful.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [1984 c 205 § 2; 1977 ex.s. c 33 § 9; 1971 c 3 § 13; 1970 ex.s. c 2 § 8; 1949 c 214 § 18; 1945 c 35 § 89; Rem. Supp. 1949 § 9998–227. Prior: 1943 c 127 § 5; 1941 c 253 § 5; 1939 c 214 § 5; 1937 c 162 § 7.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.24.014 Financing special unemployment assistance—Account—Contributions. A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at the rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st. [1987 c 171 § 4; 1985 ex.s. c 5 § 8.]

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.24.015 Wages—Deemed paid when contractually due. For the purposes of liability for, collection of, and assessment of contributions, wages shall be deemed paid when such wages are contractually due but are unpaid because of the refusal or inability of the employer to make such payment. [1973 1st ex.s. c 158 § 19.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.020 Authority to compromise. The commissioner may compromise any claim for contributions, interest, or penalties, and any amount owed by an individual because of benefit overpayments, whether reduced to judgment or otherwise, existing or arising under this title in any case where collection of the full claim, in the case of contributions, interest, or penalties, would result in the insolvency of the employing unit or individual from whom such contributions, interest, or penalties are claimed, and any case where collection of the full amount of benefit overpayments made to an individual, whether reduced to judgment or otherwise, would be against equity and good conscience.

Whenever a compromise is made by the commissioner in the case of a claim for contributions, interest, or penalties, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of contributions, interest, and penalties imposed by law and claimed due, a complete record of the compromise agreement and the amount actually paid in accordance with the terms of the compromise agreement. Whenever a compromise is made by the commissioner in the case of a claim of a benefit overpayment, whether reduced to judgment or otherwise, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of the benefit overpayment, attorneys' fees and costs, if any, a complete record of the compromise agreement and the amount actually paid in accordance with the terms of the compromise agreement.

If any such compromise is accepted by the commissioner, within such time as may be stated in the compromise or agreed to, such compromise shall be final and conclusive and except upon showing of fraud or malfeasance or misrepresentation of a material fact the case shall not be reopened as to the matters agreed upon. In any suit, action, or proceeding, such agreement or any determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded. [1983 1st ex.s. c 23 § 14; 1955 c 286 § 5; 1945 c 35 § 90; Rem. Supp. 1945 § 9998-228.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1955 c 286: "The provisions of section 5 of this act shall not become effective until the 3rd day of July, 1955." [1955 c 286 § 17.] This applies to RCW 50.24.020.

50.24.030 Contributions erroneously paid to United States or another state. Payments of contributions erroneously paid to an unemployment compensation fund of another state or to the United States government which should have been paid to this state and which thereafter shall be refunded by such other state or the United States government and paid by the employer to this state, shall be deemed to have been paid to this state and to have filed contribution reports thereon at the date of payment to the United States government or such other state. [1953 ex.s. c 8 § 15; 1949 c 214 § 19; 1945 c 35 § 91; Rem. Supp. 1949 § 9998-229.]

50.24.040 Interest on delinquent contributions. If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him. The date as of which payment of contributions, if mailed, is deemed to have been received may be determined by such regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the administrative contingency fund. Interest shall not accrue on contributions from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer shall become due and shall draw interest in the same manner as contributions due from other employers. Where adequate information has been furnished the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived. [1987 c 111 § 3; 1973 1st ex.s. c 158 § 8; 1953 ex.s. c 8 § 16; 1945 c 35 § 92; Rem. Supp. 1945 § 9998-230. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.050 Lien for contributions generally. The claim of the employment security department for any contributions, interest, or penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien hereby created, the department shall file with any county auditor where property of the employer is located a statement and claim of lien specifying the amount of delinquent contributions, interest, and penalties claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him. The lien shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien shall be separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this title. When any such notice of lien has been so filed, the commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent contributions, interest, and penalties have been paid, or when such assurance of payment shall be made as the commissioner may deem to be adequate. Fees for filing and releasing

the lien provided herein may be charged to the employer and may be collected from the employer utilizing the remedies provided in this title for the collection of contributions. [1981 c 302 § 39; 1979 ex.s. c 190 § 2; 1973 1st ex.s. c 158 § 9; 1947 c 215 § 19; 1945 c 35 § 93; Rem. Supp. 1947 § 9998-231. Prior: 1943 c 127 § 10; 1941 c 253 § 11; 1939 c 214 § 12; 1937 c 162 § 14.]

Severability—1981 c 302: See note following RCW 19.76.100.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Penalties for late reports or contributions: RCW 50.12.220.

50.24.060 Lien in event of insolvency or dissolution. In the event of any distribution of an employer's assets pursuant to an order of any court, including any receivership, probate, legal dissolution, or similar proceeding, or in case of any assignment for the benefit of creditors, composition, or similar proceeding, contributions, interest, or penalties then or thereafter due shall be a lien upon all the assets of such employer. Said lien will be prior to all other liens or claims except prior tax liens, other liens provided by this title, and claims for remuneration for services of not more than two hundred and fifty dollars to each claimant earned within six months of the commencement of the proceeding. The mere existence of a condition of insolvency or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution of assets shall cause such a lien to attach without action on behalf of the commissioner or the state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions, interest, or penalties then or thereafter due shall be entitled to such priority as provided in that act, as amended. [1983 1st ex.s. c 23 § 15; 1945 c 35 § 94; Rem. Supp. 1945 § 9998-232. Prior: 1943 c 127 § 10; 1941 c 253 § 11; 1939 c 214 § 12; 1937 c 162 § 14.]

Conflict with federal requirements—**Effective dates**—**Construction**—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.24.070 Order and notice of assessment. At any time after the commissioner shall find that any contributions, interest, or penalties have become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, or by certified mail to the last known address of the employer as shown by the records of the department. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax, or any interest or penalties thereon. [1987 c 111 § 4; 1979 ex.s. c 190 § 3; 1945 c 35 § 95; Rem. Supp. 1945 § 9998-233. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Conflict with federal requirements—**Severability**—**Effective date**—1987 c 111: See notes following RCW 50.12.220.

Commencement of actions: Chapter 4.28 RCW.

50.24.080 Jeopardy assessment. If the commissioner shall have reason to believe that an employer is insolvent or if any reason exists why the collection of any contributions accrued will be jeopardized by delaying collection, he may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest and penalties shall not begin to accrue upon any contributions until the date when such contributions would normally have become delinquent. [1979 ex.s. c 190 § 4; 1945 c 35 § 96; Rem. Supp. 1945 § 9998-234. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.090 Distraint, seizure, and sale. If the amount of contributions, interest, or penalties assessed by the commissioner by order and notice of assessment provided in this title is not paid within ten days after the service or mailing of the order and notice of assessment, the commissioner or his duly authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [1979 ex.s. c 190 § 5; 1945 c 35 § 97; Rem. Supp. 1945 § 9998-235. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Executions: Chapter 6.17 RCW.

Personal exemptions, generally: Chapter 6.15 RCW.

50.24.100 Distraint procedure. The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the commissioner or his authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the commissioner or his representative may declare such property to be purchased by the employment security department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the employment security department as herein prescribed may be sold by the commissioner or his representative at public or private sale, and the amount realized shall be placed in the unemployment compensation trust fund.

In all cases of sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and

said bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the employment security department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent contributions, interest, and penalties the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions. [1979 ex.s. c 190 § 6; 1949 c 214 § 20; 1945 c 35 § 98; Rem. Supp. 1949 § 9998-236. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.110 Notice and order to withhold and deliver.

The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when he has reason to believe that there is in the possession of such person, firm, corporation, political subdivision or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for unemployment compensation contributions, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time.

The notice and order to withhold and deliver shall be served by the sheriff of the county wherein the service is made, or by his deputy, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person, firm, corporation, political subdivision or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or his duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability.

Should any person, firm or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs. [1987 c 111 § 5; 1979 ex.s. c 190 § 7; 1947 c 215 § 20; 1945 c 35 § 99; Rem. Supp. 1947 § 9998-237.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

50.24.115 Warrant—Authorized—Filing—Lien—Enforcement. Whenever any order and notice of assessment or jeopardy assessment shall have become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee of five dollars. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit by certified mail to his last known address within five days of filing with the clerk. [1983 1st ex.s. c 23 § 16; 1979 ex.s. c 190 § 8; 1975 1st ex.s. c 228 § 15.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.24.120 Collection by civil action. (1) If after due notice, any employer defaults in any payment of contributions, interest, or penalties, the amount due may be collected by civil action in the name of the state, and the employer adjudged in default shall pay the cost of such action. Any lien created by this title may be foreclosed by decree of the court in any such action. Civil actions brought under this title to collect contributions, interest, or penalties from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other

civil actions except petitions for judicial review under this title and cases arising under the industrial insurance laws of this state.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any action under this title. In instituting such an action against any such employing unit the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit, and shall be of the same force and validity as if served upon it personally within this state: *Provided*, That the commissioner shall forthwith send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employing unit at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such action is pending.

(3) The courts of this state shall in the manner provided in subsections (1) and (2) of this section entertain actions to collect contributions, interest, or penalties for which liability has accrued under the employment security law of any other state or of the federal government. [1979 ex.s. c 190 § 9; 1959 c 266 § 5; 1953 ex.s. c 8 § 17; 1945 c 35 § 100; Rem. Supp. 1945 § 9998-238. Prior: 1943 c 127 § 10.]

Civil procedure: Title 4 RCW.

Industrial insurance: Title 51 RCW.

50.24.125 Collection by civil action—Collection of delinquent payments in lieu of contributions from political subdivisions or instrumentalities thereof. Delinquent payments in lieu of contributions due the unemployment compensation fund and interest and penalties may be recovered from any of the political subdivisions of this state or any instrumentality of a political subdivision of this state by civil action. The governor is authorized to deduct the amount of delinquent payments in lieu of contributions and interest and penalties from any moneys payable by the state to said political subdivisions or instrumentalities and pay such moneys to the commissioner for deposit in the appropriate account. [1979 ex.s. c 190 § 10; 1971 c 3 § 15.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.24.130 Contractor's and principal's liability for contributions—Exceptions. No employing unit which contracts with or has under it any contractor or subcontractor who is an employer under the provisions of this title shall make any payment or advance to, or secure any credit for, such contractor or subcontractor or on

account of any contract or contracts to which said employing unit is a party unless such contractor or subcontractor has paid contributions, due or to become due for wages paid or to be paid by such contractor or subcontractor for personal services performed pursuant to such contract or subcontract, or has furnished a good and sufficient bond acceptable to the commissioner for payment of contributions, interest, and penalties. Failure to comply with the provisions of this section shall render said employing unit directly liable for such contributions, interest, and penalties and the commissioner shall have all of the remedies of collection against said employing unit under the provisions of this title as though the services in question were performed directly for said employing unit.

For the purposes of this section, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW shall not be responsible for any contributions for the work of any subcontractor if:

(1) The subcontractor is currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) There is no other person, firm or corporation doing the same work at the same time on the same project except two or more persons, firms or corporations may contract and do the same work at the same time on the same project if each person, firm or corporation has employees;

(3) The subcontractor has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(4) The subcontractor maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(5) The subcontractor has contracted to perform:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW. [1982 1st ex.s. c 18 § 15; 1979 ex.s. c 190 § 11; 1973 1st ex.s. c 158 § 10; 1949 c 214 § 21; 1945 c 35 § 101; Rem. Supp. 1949 § 9998-239.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Purchasers of music or entertainment services, liability for unpaid contributions under RCW 50.24.130: RCW 50.04.148.

50.24.140 Collection remedies cumulative. Remedies given to the state under this title for the collection of contributions, interest, or penalties shall be cumulative and no action taken by the commissioner or his duly authorized representative, the attorney general, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other. [1979 ex.s. c 190 §

12; 1945 c 35 § 102; Rem. Supp. 1945 § 9998–240. Prior: 1943 c 127 § 10.]

50.24.150 Contribution adjustments and refunds. No later than three years after the date on which any contributions, interest, or penalties have been paid, an employer who has paid such contributions, interest, or penalties may file with the commissioner a petition in writing for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof when such adjustment cannot be made. If the commissioner upon an ex parte consideration shall determine that such contributions, interest, penalties, or portion thereof were erroneously collected, he shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commissioner shall refund said amount without interest from the unemployment compensation fund: *Provided, however,* That after June 20, 1953, that refunds of interest on delinquent contributions or penalties shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner. For like cause and within the same period, adjustment or refund may be made on the commissioner's own initiative. If the commissioner finds that upon ex parte consideration he cannot readily determine that such adjustment or refund should be allowed, he shall deny such application and notify the employer in writing. [1979 ex.s. c 190 § 13; 1953 ex.s. c 8 § 19; 1945 c 35 § 103; Rem. Supp. 1945 § 9998–241. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.160 Election of coverage. Any employing unit for which services that do not constitute employment as defined in this title are performed may file with the commissioner a written election that all such services performed by any distinct class or group of individuals or by all individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this title for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this title from and after the date stated in such approval. Services covered pursuant to this section shall cease to be deemed employment subject hereto as of January 1st of any calendar year subsequent to such two calendar years, only if the employing unit files with the commissioner prior to the fifteenth day of January of such year a written application for termination of coverage. [1977 ex.s. c 292 § 12; 1972 ex.s. c 35 § 1; 1971 c 3 § 14; 1959 c 266 § 6; 1951 c 265 § 8; 1951 c 215 § 9; 1945 c 35 § 104; Rem. Supp. 1945 § 9998–242.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—**Compliance with federal act**—1971 c 3: See RCW 50.44.080.

Severability—1951 c 265: See note following RCW 50.98.070.
Election of coverage for corporate officers: RCW 50.04.165.

50.24.170 Joint accounts. The commissioner shall prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account. [1945 c 35 § 105; Rem. Supp. 1945 § 9998–243. Prior: 1941 c 253 § 5.]

50.24.180 Injunction proceedings. Any employer who shall be delinquent in the payment of contributions, interest, or penalties may be enjoined upon the suit of the state of Washington from continuing in business in this state or employing persons herein until the delinquent contributions, interest, and penalties shall have been paid, or until the employer shall have furnished a good and sufficient bond in a sum equal to double the amount of contributions, interest, and penalties already delinquent, plus such further sum as the court shall deem adequate to protect the department in the collection of contributions, interest, and penalties which will become due from such employer during the next ensuing calendar year, said bond to be conditioned upon payment of all contributions, interest, and penalties due and owing within thirty days after the expiration of the next ensuing calendar year or at such earlier date as the court may fix.

Action pursuant to the provisions of this section may be instituted in the superior court of any county of the state wherein the employer resides, has its principal place of business, or where it has anyone performing services for it, whether or not such services constitute employment. [1979 ex.s. c 190 § 14; 1945 c 35 § 106; Rem. Supp. 1945 § 998–244. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.190 Limitation of actions. The commissioner shall commence action for the collection of contributions, interest, penalties, and benefit overpayments imposed by this title by assessment or suit within three years after a return is filed or notice of benefit overpayment is served. No proceedings for the collection of such amounts shall be begun after the expiration of such period.

In case of a false or fraudulent return with intent to evade contributions, interest, or penalties, or in the event of a failure to file a return, the contributions, interest, and penalties may be assessed or a proceeding in court for the collection thereof may be begun at any time. [1979 ex.s. c 190 § 15; 1955 c 286 § 7. Prior: 1947 c 215 § 21, part; 1945 c 35 § 107, part; 1943 c 127 § 10, part; Rem. Supp. 1947 § 9998–245, part.]

50.24.200 Chargeoff of uncollectible accounts. The commissioner may charge off as uncollectible and no longer an asset of the unemployment compensation fund or the administrative contingency fund, as the case may be, any delinquent contributions, interest, penalties, credits, or benefit overpayments if the commissioner is

satisfied that there are no cost-effective means of collecting the contributions, interest, penalties, credits, or benefit overpayments. [1989 c 78 § 1; 1979 ex.s. c 190 § 16; 1955 c 286 § 8. Prior: 1947 c 215 § 21, part; 1945 c 35 § 107, part; Rem. Supp. 1947 § 9998-245, part.]

Chapter 50.29

EMPLOYER EXPERIENCE RATING

Sections

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50.29.080	Redetermination and correction of employer's contribution rate, when—Effect—Rights to further review and redetermination.

50.29.010 Definitions. As used in this chapter:

"Computation date" means July 1st of any year;

"Cut-off date" means September 30th next following the computation date;

"Qualification date" means April 1st of the third year preceding the computation date;

"Rate year" means the calendar year immediately following the computation date;

"Payroll" means all wages (as defined for contribution purposes) paid by an employer to individuals in his employment;

"Qualified employer" means any employer who (1) reported some employment in the twelve-month period beginning with the qualification date, (2) had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the computation date, and (3) has submitted by the cut-off date all reports, contributions, interest, and penalties required under this title for the period preceding the computation date. Unpaid contributions, interest, and penalties may be disregarded for the purposes of this section if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding the computation date. Late reports, contributions, penalties, or interest from employment defined under RCW 50.04.160 may be disregarded for the purposes of this section if showing is made to the satisfaction of the commissioner that an otherwise qualified employer acted in good faith and that forfeiture of qualification for a reduced contribution rate because of such delinquency would be inequitable. [1987 c 213 § 2; 1986 c 111 § 1; 1984 c 205 § 3; 1983

1st ex.s. c 23 § 17; 1973 1st ex.s. c 158 § 11; 1971 c 3 § 16; 1970 ex.s. c 2 § 10.]

Construction—1987 c 213: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act, or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted thereunder." [1987 c 213 § 4.]

Conflict with federal requirements—1986 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 111 § 2.]

Severability—1986 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 111 § 4.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Wages defined for contribution purposes: RCW 50.04.320.

50.29.020 Experience rating accounts—Enumeration of benefits not charged. (1) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(2) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual under the provisions of RCW 50.12.050 shall not be charged to the account of any contribution paying employer if the wage credits

earned in this state by the individual during his or her base year are less than the minimum amount necessary to qualify the individual for unemployment benefits.

(c) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer.

(d) Benefits paid which represent the state's share of benefits payable under chapter 50.22 RCW shall not be charged to the experience rating account of any contribution paying employer.

(e) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(f)(i) Benefits paid to an individual as the result of a determination by the commissioner that no stoppage of work exists, pursuant to RCW 50.20.090, shall not be charged to the experience rating account of any contribution paying employer.

(ii) Benefits paid to an individual under RCW 50.20.090(1) for weeks of unemployment ending before February 20, 1987, shall not be charged to the experience rating account of any base year employer.

(g) In the case of individuals identified under RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

(h) Beginning July 1, 1985, a contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if:

(i) The benefit charges result from payment to an individual who last left the employ of such employer voluntarily for reasons not attributable to the employer, or was discharged for misconduct connected with his or her work; and

(ii) The employer requests relief of charges in writing within thirty days following mailing to the last known address of the notification of the initial determination of such a claim, stating the date and reason for the last leaving; and

(iii) Upon investigation of the separation, the commissioner rules that the relief should be granted.

(i) Benefits paid to an individual who does not successfully complete an approved on-the-job training program under RCW 50.12.240 shall not be charged to the experience rating account of the contribution paying employer who provided the approved on-the-job training.

(j) Benefits paid resulting from a closure or severe curtailment of operations at the employer's plant, building, work site, or facility due to damage caused by fire, flood, or other natural disaster shall not be charged to the experience rating account of the employer if:

- (i) The employer petitions for relief of charges; and
- (ii) The commissioner approves granting relief of charges. [1988 c 27 § 1. Prior: 1987 c 213 § 3; 1987 c 2 § 2; prior: 1985 c 299 § 1; 1985 c 270 § 2; 1985 c 42 § 1; 1984 c 205 § 7; 1975 1st ex.s. c 228 § 6; 1970 ex.s. c 2 § 11.]

Conflict with federal requirements—1988 c 27: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 27 § 2.]

Construction—1987 c 213: See note following RCW 50.29.010.

Applicability—**Effective date**—**Severability**—1987 c 2: See notes following RCW 50.20.090.

Conflict with federal requirements—1985 c 42: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 42 § 2.]

Severability—1985 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 42 § 3.]

Conflict with federal requirements—**Severability**—**Effective dates**—1984 c 205: See notes following RCW 50.20.120.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

"Determination period" defined for purposes of RCW 50.29.020: RCW 50.20.015.

50.29.025 Contribution rates. The contribution rate for each employer shall be determined under this section.

(1) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the June 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(2) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in subsection (5) of this section shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
3.40 and above	A
2.90 to 3.39	B
2.40 to 2.89	C

1.90 to 2.39	D
1.40 to 1.89	E
Less than 1.40	F

(3) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (a) Identification number; (b) benefit ratio; (c) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (d) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (e) the percentage equivalent of the cumulative total of taxable payrolls.

(4) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in subsection (5) of this section: *Provided*, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(5) The contribution rate for each employer in the array shall be the rate specified in the following table for the rate class to which he or she has been assigned, as determined under subsection (4) of this section, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls			Schedule of Contribution Rates for Effective Tax Schedule					
From	To	Rate Class	A	B	C	D	E	F
0.00	5.00	1	0.48	0.58	0.98	1.48	1.88	2.48
5.01	10.00	2	0.48	0.78	1.18	1.68	2.08	2.68
10.01	15.00	3	0.58	0.98	1.38	1.78	2.28	2.88
15.01	20.00	4	0.78	1.18	1.58	1.98	2.48	3.08
20.01	25.00	5	0.98	1.38	1.78	2.18	2.68	3.18
25.01	30.00	6	1.18	1.58	1.98	2.38	2.78	3.28
30.01	35.00	7	1.38	1.78	2.18	2.58	2.98	3.38
35.01	40.00	8	1.58	1.98	2.38	2.78	3.18	3.58
40.01	45.00	9	1.78	2.18	2.58	2.98	3.38	3.78
45.01	50.00	10	1.98	2.38	2.78	3.18	3.58	3.98
50.01	55.00	11	2.28	2.58	2.98	3.38	3.78	4.08
55.01	60.00	12	2.48	2.78	3.18	3.58	3.98	4.28
60.01	65.00	13	2.68	2.98	3.38	3.78	4.18	4.48
65.01	70.00	14	2.88	3.18	3.58	3.98	4.38	4.68
70.01	75.00	15	3.08	3.38	3.78	4.18	4.58	4.78
75.01	80.00	16	3.28	3.58	3.98	4.38	4.68	4.88
80.01	85.00	17	3.48	3.78	4.18	4.58	4.88	4.98
85.01	90.00	18	3.88	4.18	4.58	4.88	4.98	5.18
90.01	95.00	19	4.28	4.58	4.98	5.08	5.18	5.38
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40

(6) The contribution rate for each employer not qualified to be in the array shall be as follows:

(a) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned the contribution rate of five and four-tenths percent;

(b) The contribution rate for employers exempt as of December 31, 1989, who are newly covered under the section 78, chapter 380, Laws of 1989, amendment to RCW 50.04.150 and not yet qualified to be in the array

shall be 2.5 percent for employers whose standard industrial code is "016", "017", "018", "021", or "081"; and

(c) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the Standard Industrial Classification code. [1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Effective date—1989 c 380 §§ 78 through 81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—**Severability**—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—**Severability**—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—**Severability**—**Effective dates**—1984 c 205: See notes following RCW 50.20.120.

50.29.027 Benefit ratios to be computed for rate year 1985 and thereafter. For the rate year 1985 and each rate year thereafter, a benefit ratio shall be computed for each qualified employer by dividing the total amount of benefits charged to the account of the employer during the forty-eight consecutive months immediately preceding the computation date by the taxable payrolls of the employer for the same forty-eight month period as reported to the department by the cut-off dates. The division shall be carried to the sixth decimal place with the remaining fraction, if any, disregarded. [1984 c 205 § 4.]

Conflict with federal requirements—**Severability**—**Effective dates**—1984 c 205: See notes following RCW 50.20.120.

50.29.030 "Wages" defined for purpose of prorating benefit charges. For the purpose of prorating benefit charges "wages" shall mean "wages" as defined for purpose of payment of benefits in RCW 50.04.320. [1970 ex.s. c 2 § 12.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Government or retirement pension plan payments as remuneration or wages—*Recovery of excess over benefits allowable, limitations:* RCW 50.04.323.

50.29.062 Contribution rates for predecessor and successor employers. Predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer at the time of the transfer, his or her contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs. From and after January 1 following the transfer, the successor's contribution rate for each rate

year shall be based on his or her experience with payrolls and benefits including the experience of the acquired business or portion of a business from the date of transfer, as of the regular computation date for that rate year.

(2) If the successor is not an employer at the time of the transfer, he or she shall pay contributions at the rate class assigned to the predecessor employer at the time of the transfer for the remainder for that rate year and continuing until such time as he or she qualifies for a different rate in his or her own right.

(3) If the successor is not an employer at the time of the transfer and simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, his or her rate from the date the transfer occurred until the end of that rate year and until he or she qualifies in his or her own right for a new rate, shall be the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition.

(4) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(5) In all cases, from and after January 1 following the transfer, the predecessor's contribution rate for each rate year shall be based on his or her experience with payrolls and benefits as of the regular computation date for that rate year including the experience of the acquired business or portion of business up to the date of transfer: *Provided*, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until he or she satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010. [1989 c 380 § 81; 1984 c 205 § 6.]

Effective date—1989 c 380 §§ 78 through 81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—**Severability**—**Effective dates**—1984 c 205: See notes following RCW 50.20.120.

50.29.065 Quarterly notice of benefits paid and benefits charged to base year employer's experience rating account. Within thirty days after the end of every calendar quarter, the commissioner shall notify each employer of the benefits received during that quarter by each claimant for whom he or she is the base year employer and the amount of those benefits charged to his or her experience rating account. [1984 c 205 § 10.]

Conflict with federal requirements—**Severability**—**Effective dates**—1984 c 205: See notes following RCW 50.20.120.

50.29.070 Notice of employer benefit charges and rate of contribution—Request for review and redetermination—Petition for hearing upon denial—Further appeal. Within a reasonable time after the computation date, each employer shall be notified of the

total amount of benefits charged to his account during the twelve-month period immediately preceding the computation date and, upon request, the amount of such charges with respect to each individual receiving unemployment benefits charged to his account.

Within a reasonable time after the computation date each employer shall be notified of his rate of contribution as determined for the succeeding rate year.

Any employer dissatisfied with the benefit charges made to his account or with his determined rate may file a request for review and redetermination with the commissioner within thirty days of the mailing of the notice to the employer, showing the reason for such request. Should such request for review and redetermination be denied, the employer may, within ten days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this section. [1983 1st ex.s. c 23 § 19; 1973 1st ex.s. c 158 § 14; 1970 ex.s. c 2 § 16.]

Conflict with federal requirements—**Effective dates**—**Construction**—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Appeal on denial of refund: RCW 50.32.030, 50.32.050.

Appeal to the courts: RCW 50.32.120.

Review by commissioner: RCW 50.32.070.

50.29.080 Redetermination and correction of employer's contribution rate, when—Effect—Rights to further review and redetermination. The commissioner may redetermine any contribution rate if, within three years of the rate computation date he finds that the rate as originally computed was erroneous.

In the event that the redetermined rate is lower than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll for the rate year involved shall be established as a credit against his tax liability; however, if the redetermined rate is higher than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll shall be assessed against the employer as contributions owing for the rate year involved.

The redetermination of an employer's contribution rate shall not affect the contribution rates which have been established for any other employer nor shall such redetermination affect any other computation made pursuant to this title.

The employer shall have the same rights to request review and redetermination as he had from his original rate determination. [1970 ex.s. c 2 § 17.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Chapter 50.32
REVIEW, HEARINGS AND APPEALS

Sections

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50.32.010 Appeal tribunals. The commissioner shall establish one or more impartial appeal tribunals, each of which shall consist of an administrative law judge appointed under chapter 34.12 RCW who shall decide the issues submitted to the tribunal. No administrative law judge may hear or decide any disputed claim in any case in which he is an interested party. Wherever the term "appeal tribunal" or "the appeal tribunal" is used in this title the same refers to an appeal tribunal established under the provisions of this section. Notice of any appeal or petition for hearing taken to an appeal tribunal in any proceeding under this title may be filed with such agency as the commissioner may by regulation prescribe. [1981 c 67 § 30; 1945 c 35 § 117; Rem. Supp. 1945 § 9998–255. Prior: 1943 c 127 § 4; 1941 c 253 § 4.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

50.32.020 Filing of benefit appeals. The applicant or claimant, his or her most recent employing unit or any interested party which the commissioner by regulation prescribes, may file an appeal from any determination or redetermination with the appeal tribunal within thirty days after the date of notification or mailing, whichever is earlier, of such determination or redetermination to his or her last known address: *Provided*, That in the event an appeal with respect to any determination is pending as of the date when a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination. Any appeal from a determination of denial of benefits which is effective for an indefinite period shall be deemed to be an appeal as to all weeks subsequent to the effective date of the denial for which benefits have already been denied. If no appeal is taken from any determination, or redetermination, within the time allowed by the provisions of this

section for appeal therefrom, said determination, or redetermination, as the case may be, shall be conclusively deemed to be correct except as hereinbefore provided in respect to reconsideration by the commissioner of any determination. [1987 c 61 § 1; 1951 c 215 § 10; 1945 c 35 § 118; Rem. Supp. 1945 § 9998–256. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.32.025 Mailed appeal or petition—When deemed filed and received. The appeal or petition from a determination, redetermination, order and notice of assessment, appeals decision, or commissioner's decision which is (1) transmitted through the United States mail, shall be deemed filed and received by the addressee on the date shown by the United States postal service cancellation mark stamped by the United States postal service employees upon the envelope or other appropriate wrapper containing it or, (2) mailed but not received by the addressee, or where received and the United States postal service cancellation mark is illegible, erroneous or omitted, shall be deemed filed and received on the date it was mailed, if the sender establishes by competent evidence that the appeal or petition was deposited in the United States mail on or before the date due for filing: *Provided*, That in the case of a metered cancellation mark by the sender and a United States postal service cancellation mark on the same envelope or other wrapper, the latter shall control: *Provided, further*, That in any of the above circumstances, the appeal or petition must be properly addressed and have sufficient postage affixed thereto. [1975 1st ex.s. c 228 § 4; 1969 ex.s. c 200 § 1.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.030 Appeal from order and notice of assessment. When an order and notice of assessment has been served upon or mailed to a delinquent employer, as heretofore provided, such employer may within thirty days thereafter file a petition in writing with the appeal tribunal, stating that such assessment is unjust or incorrect and requesting a hearing thereon. Such petition shall set forth the reasons why the assessment is objected to and the amount of contributions, if any, which said employer admits to be due the employment security department. If no such petition be filed with the appeal tribunal within thirty days, the assessment shall be conclusively deemed to be just and correct: *Provided*, That in such cases, and in cases where payment of contributions, interest, or penalties has been made pursuant to a jeopardy assessment, the commissioner may properly entertain a subsequent application for refund. The filing of a petition on a disputed assessment with the appeal tribunal shall stay the distraint and sale proceeding provided for in this title until a final decision thereon shall have been made, but the filing of such petition shall not affect the right of the commissioner to perfect a lien, as provided by this title, upon the property of the employer. The filing of a petition on a disputed assessment shall stay the accrual of interest and penalties on the disputed

contributions until a final decision shall have been made thereon.

Within thirty days after notice of denial of refund or adjustment has been mailed or delivered (whichever is the earlier) to an employer, the employer may file a petition in writing with the appeal tribunal for a hearing thereon: *Provided*, That this right shall not apply in those cases in which assessments have been appealed from and have become final. The petitioner shall set forth the reasons why such hearing should be granted and the amount which the petitioner believes should be adjusted or refunded. If no such petition be filed within said thirty days, the determination of the commissioner as stated in said notice shall be final. [1987 c 111 § 6; 1987 c 61 § 2; 1983 1st ex.s. c 23 § 20; 1959 c 266 § 7; 1949 c 214 § 23; 1945 c 35 § 119; Rem. Supp. 1949 § 9998-257.]

Reviser's note: This section was amended by 1987 c 61 § 2 and by 1987 c 111 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.32.040 Benefit appeals procedure. In any proceeding before an appeal tribunal involving a dispute of an individual's initial determination, all matters covered by such initial determination shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal.

In any proceeding before an appeal tribunal involving a dispute of an individual's claim for waiting period credit or claim for benefits, all matters and provisions of this title relating to the individual's right to receive such credit or benefits for the period in question, including but not limited to the question and nature of the claimant's availability for work within the meaning of RCW 50.20.010(3) and 50.20.080, shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal in single claimant cases. The claimant's availability for work shall be determined apart from all other matters.

In any proceeding before an appeal tribunal involving an individual's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice in accordance with RCW 34.05.434.

In any proceeding involving an appeal relating to benefit determinations or benefit claims, the appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the unemployment compensation division. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor, which shall be deemed to be the final decision on the initial determination or the claim for waiting period credit or the claim for benefits unless, within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to

the provisions of this title relating to review by the commissioner. [1989 c 175 § 117; 1987 c 61 § 3; 1981 c 35 § 10; 1973 c 73 § 8; 1945 c 35 § 120; Rem. Supp. 1945 § 9998-258. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1981 c 35: See note following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.32.050 Contributions appeals procedure. In any proceeding before an appeal tribunal involving an appeal from a disputed order and notice of assessment (for contributions, interest, or penalties due) a disputed denial of refund or adjustment (of contributions, interest, or penalties paid) or a disputed experience rating credit, the appeal tribunal, after affording the parties a reasonable opportunity for hearing, shall affirm, modify or set aside the notice of assessment, denial of refund or experience rating credit. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor which shall be deemed to be the final decision on the order and notice of assessment, denial of refund or experience rating credit, as the case may be, unless within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner. [1987 c 61 § 4; 1983 1st ex.s. c 23 § 21; 1949 c 214 § 24; 1945 c 35 § 121; Rem. Supp. 1949 § 9998-259.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Review by commissioner: RCW 50.32.070.

50.32.060 Conduct of appeal hearings. The manner in which any dispute shall be presented to the appeal tribunal, and the conduct of hearings and appeals, shall be in accordance with regulations prescribed by the commissioner for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all appeal tribunal proceedings. All testimony at any appeal tribunal hearing shall be recorded, but need not be transcribed unless further appeal is taken. [1945 c 35 § 122; Rem. Supp. 1945 § 9998-260.]

50.32.070 Petition for review by commissioner. Within thirty days from the date of notification or mailing, whichever is the earlier, of any decision of an appeal tribunal, the commissioner on his or her own order may, or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose of review thereof. Appeal from any decision of an appeal tribunal may be perfected so as to prevent finality of such decision if, within thirty days from the date of mailing the appeal tribunal decision, or notification thereof, whichever is the earlier, a petition in writing for review by the commissioner is received by the commissioner or by such representative of the commissioner as the commissioner by regulation shall prescribe. The commissioner may

also prevent finality of any decision of an appeal tribunal and take jurisdiction of the proceedings for his or her review thereof by entering an order so providing on his or her own motion and mailing a copy thereof to the interested parties within the same period allowed herein for receipt of a petition for review. The time limit provided herein for the commissioner's assumption of jurisdiction on his or her own motion for review shall be deemed to be jurisdictional. [1987 c 61 § 5; 1975 1st ex.s. c 228 § 5; 1947 c 215 § 31; 1945 c 35 § 123; Rem. Supp. 1947 § 9998-261.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.075 Waiver of time for appeal or petition. For good cause shown the appeal tribunal or the commissioner may waive the time limitations for administrative appeals or petitions set forth in the provisions of this title. [1975 1st ex.s. c 228 § 16.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.080 Commissioner's review procedure. After having acquired jurisdiction for review, the commissioner shall review the proceedings in question. Prior to rendering his decision, the commissioner may order the taking of additional evidence by an appeal tribunal to be made a part of the record in the case. Upon the basis of evidence submitted to the appeal tribunal and such additional evidence as the commissioner may order to be taken, the commissioner shall render his decision in writing affirming, modifying, or setting aside the decision of the appeal tribunal. Alternatively, the commissioner may order further proceedings to be held before the appeal tribunal, upon completion of which the appeal tribunal shall issue a decision in writing affirming, modifying, or setting aside its previous decision. The new decision may be appealed under RCW 50.32.070. The commissioner shall mail his decision to the interested parties at their last known addresses. [1982 1st ex.s. c 18 § 8; 1945 c 35 § 124; Rem. Supp. 1945 § 9998-262.]

Severability—**Conflict with federal requirements**—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.32.090 Finality of commissioner's decision. Any decision of the commissioner involving a review of an appeal tribunal decision, in the absence of a petition therefrom as provided in chapter 34.05 RCW, becomes final thirty days after service. The commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the attorney general. [1989 c 175 § 118; 1973 1st ex.s. c 158 § 15; 1945 c 35 § 125; Rem. Supp. 1945 § 9998-263.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Procedure for judicial review: RCW 50.32.120.

50.32.095 Commissioner's decisions as precedents—Publication. The commissioner may designate

certain commissioner's decisions as precedents. The commissioner's decisions designated as precedents shall be published and made available to the public by the department. [1982 1st ex.s. c 18 § 9.]

Severability—**Conflict with federal requirements**—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.32.097 Applicability of findings, determinations, etc., under Title 50 RCW to other actions. Any finding, determination, conclusion, declaration, or final order made by the commissioner, or his or her representative or delegate, or by an appeal tribunal, administrative law judge, reviewing officer, or other agent of the department for the purposes of Title 50 RCW, shall not be conclusive, nor binding, nor admissible as evidence in any separate action outside the scope of Title 50 RCW between an individual and the individual's present or prior employer before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts or was reviewed pursuant to RCW 50.32.120. [1988 c 28 § 1.]

50.32.100 Costs. In all proceedings provided by this title prior to court review involving dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena shall be paid at the rate fixed by such regulation as the commissioner shall prescribe and such fees and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund. In all other respects and in all other proceedings under this title the rule in civil cases as to costs and attorney fees shall apply: *Provided*, That cost bills may be served and filed and costs shall be taxed in accordance with such regulation as the commissioner shall prescribe. [1945 c 35 § 126; Rem. Supp. 1945 § 9998-264.]

Costs and attorneys' fees: Chapter 4.84 RCW.

50.32.110 Fees for administrative hearings. No individual shall be charged fees of any kind in any proceeding involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits, under this title by the commissioner or his representatives, or by an appeal tribunal, or any court, or any officer thereof. Any individual in any such proceeding before the commissioner or any appeal tribunal may be represented by counsel or other duly authorized agent who shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding. [1945 c 35 § 127; Rem. Supp. 1945 § 9998-265.]

50.32.120 Procedure for judicial review. Judicial review of a decision of the commissioner involving the review of an appeals tribunal decision may be had only in accordance with the procedural requirements of RCW 34.05.570. [1973 1st ex.s. c 158 § 16; 1971 c 81 § 119;

1945 c 35 § 128; Rem. Supp. 1945 § 9998–266. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Appeals: Chapter 4.88 RCW.

50.32.130 Undertakings on seeking judicial review.

No bond of any kind shall be required of any individual seeking judicial review from a commissioner's decision affecting such individual's application for initial determination or claim for waiting period credit or for benefits.

No commissioner's decision shall be stayed by a petition for judicial review unless the petitioning employer shall first deposit an undertaking in an amount theretofore deemed by the commissioner to be due, if any, from the petitioning employer, together with interest thereon, if any, with the commissioner or in the registry of the court: *Provided, however,* That this section shall not be deemed to authorize a stay in the payment of benefits to an individual when such individual has been held entitled thereto by a decision of the commissioner which decision either affirms, reverses, or modifies a decision of an appeals tribunal. [1973 1st ex.s. c 158 § 17; 1971 c 81 § 120; 1945 c 35 § 129; Rem. Supp. 1945 § 9998–267. Prior: 1943 c 127 § 4; 1941 c 253 § 4.]

Rules of court: *Cf. Title 8 RAP, RAP 18.22.*

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.32.140 Interstate petitions to Thurston county.

RCW 34.05.514 to the contrary notwithstanding, petitions to the superior court from decisions of the commissioner dealing with the applications or claims relating to benefit payments which were filed outside of this state with an authorized representative of the commissioner shall be filed with the superior court of Thurston county which shall have the original venue of such appeals. [1989 c 175 § 119; 1973 1st ex.s. c 158 § 18; 1945 c 35 § 130; Rem. Supp. 1945 § 9998–268.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.32.150 Jurisdiction of the courts. In all court proceedings under or pursuant to this title the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

If the court shall determine that the commissioner has acted within his power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the commissioner with an order directing him to proceed in accordance with the findings of the court.

Whenever any order and notice of assessment shall have become final in accordance with the provisions of this title, the court shall upon application of the commissioner enter a judgment in the amount provided for

in said order and notice of assessment, and said judgment shall have and be given the same effect as if entered pursuant to civil action instituted in said court. [1945 c 35 § 131; Rem. Supp. 1945 § 9998–269. Prior: 1941 c 253 § 4.]

Judgments

entry of: Chapter 4.64 RCW.

generally: Chapter 4.56 RCW.

50.32.160 Attorneys' fees in courts. It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an individual involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits to charge or receive any fee therein in excess of a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken thereto and to be fixed by the supreme court or the court of appeals in the event of appellate review, and if the decision of the commissioner shall be reversed or modified, such fee and the costs shall be payable out of the unemployment compensation administration fund. In the allowance of fees the court shall give consideration to the provisions of this title in respect to fees pertaining to proceedings involving an individual's application for initial determination, claim for waiting period credit, or claim for benefits. In other respects the practice in civil cases shall apply. [1988 c 202 § 48; 1971 c 81 § 121; 1945 c 35 § 132; Rem. Supp. 1945 § 9998–270. Prior: 1941 c 253 § 4.]

Severability—1988 c 202: See note following RCW 2.24.050.

Attorneys' fees: Chapter 4.84 RCW.

Costs: RCW 50.32.100.

Costs on appeal: Chapter 4.84 RCW.

50.32.170 Decisions final by agreement. No appeal from the decision of an appeal tribunal, or of the commissioner, or of any court in any proceedings provided by this title may be taken subsequent to the filing with the appeal tribunal, commissioner, or court which rendered the decision, within the time allowed for appeal, of an agreement in writing approved by all interested parties to the proceedings, providing that no appeal will be taken from such decision. The provisions of this section shall be jurisdictional. [1945 c 35 § 133; Rem. Supp. 1945 § 9998–271.]

50.32.180 Remedies of title exclusive. The remedies provided in this title for determining the justness or correctness of assessments, refunds, adjustments, or claims shall be exclusive and no court shall entertain any action to enjoin an assessment or require a refund or adjustment except in accordance with the provisions of this title. Matters which may be determined by the procedures set out in this title shall not be the subject of any declaratory judgment. [1945 c 35 § 134; Rem. Supp. 1945 § 9998–272.]

50.32.190 Costs, charges, and expenses. Whenever any appeal is taken from any decision of the commissioner to any court, all expenses and costs incurred

therein by said commissioner, including court reporter costs and attorneys' fees and all costs taxed against such commissioner, shall be paid out of the unemployment compensation administration fund.

Neither the commissioner nor the state shall be charged any fee for any service rendered in connection with litigation under the unemployment compensation act by the clerk of any court. [1945 c 35 § 135; Rem. Supp. 1945 § 9998-273.]

Chapter 50.36 PENALTIES

Sections

50.36.010	Violations generally.
50.36.020	Violations by employers.
50.36.030	Concealing cause of discharge.

50.36.010 Violations generally. It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title. Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days: *Provided*, That any person who violates the provisions of RCW 50.40.010 shall be guilty of a gross misdemeanor.

Any person who in connection with any compromise or offer of compromise wilfully conceals from any officer or employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.

The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section. [1953 ex.s. c 8 § 22; 1945 c 35 § 180; Rem. Supp. 1945 § 9998-319. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

50.36.020 Violations by employers. Any person required under this title to collect, account for and pay over any contributions imposed by this title, who wilfully fails to collect or truthfully account for and pay over such contributions, and any person who wilfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or

imprisoned for not more than one year, or both, together with the costs of prosecution.

The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prosecution as prescribed herein for a person. [1953 ex.s. c 8 § 23; 1945 c 35 § 181; Rem. Supp. 1945 § 9998-320. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Crimes and punishment: Titles 9, 9A RCW.

50.36.030 Concealing cause of discharge. Employing units or agents thereof supplying information to the employment security department pertaining to the cause of a benefit claimant's separation from work, which cause stated to the department is contrary to that given the benefit claimant by such employing unit or agent thereof at the time of his separation from the employing unit's employ, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days. [1951 c 265 § 13.]

Severability—1951 c 265: See note following RCW 50.98.070.

Chapter 50.38 OCCUPATIONAL INFORMATION SERVICE— FORECAST

Sections

50.38.010	Purpose.
50.38.020	Department as state entity for occupational information—State occupational forecast, criteria.
50.38.030	State occupational forecast—Consultation with other agencies.
50.38.900	Effective date—1982 c 43.

50.38.010 Purpose. It is the intent of this chapter to establish a single state administered occupational information service, including the state occupational forecast. [1982 c 43 § 1.]

50.38.020 Department as state entity for occupational information—State occupational forecast, criteria. The Washington state employment security department shall be the responsible state entity for the development, administration, and dissemination of Washington state occupational information, including the state occupational forecast. The generation of the forecast is subject to the following criteria:

(1) The occupational forecast shall be consistent with the state economic forecast;

(2) Standardized occupational classification codes shall be adopted, to be cross-referenced with other generally accepted occupational codes. [1982 c 43 § 2.]

50.38.030 State occupational forecast—Consultation with other agencies. The employment security department shall consult with the following agencies prior to the issuance of the state occupational forecast:

- (1) Office of financial management;
- (2) Department of trade and economic development;
- (3) Department of labor and industries;
- (4) State board for community college education;
- (5) Superintendent of public instruction;
- (6) Department of social and health services;
- (7) Department of community development;
- (8) *Commission for vocational education; and
- (9) Other state and local agencies as deemed appropriate by the commissioner of the employment security department.

These agencies shall cooperate with the employment security department, submitting information relevant to the generation of occupational forecasts. [1985 c 466 § 66; 1985 c 6 § 18; 1982 c 43 § 3.]

***Reviser's note:** The commission on vocational education and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.005.

50.38.900 Effective date—1982 c 43. This act shall take effect July 1, 1982. [1982 c 43 § 5.]

Chapter 50.40

MISCELLANEOUS PROVISIONS

Sections

50.40.010	Waiver of rights void.
50.40.020	Exemption of benefits.
50.40.040	No vested rights.
50.40.050	Child support obligations—Disclosure—Notification of enforcement agency—Amounts deducted from payments, paid to enforcement agency—Definitions.

50.40.010 Waiver of rights void. Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this title shall be void. Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this title from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from remuneration for services to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. [1945 c 35 § 182; Rem. Supp. 1945 § 9998–321. Prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15.]

50.40.020 Exemption of benefits. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this title shall be void. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debts, except as

provided in RCW 50.40.050. Benefits received by any individual, so long as they are not commingled with other funds of the recipient, shall be exempt from any remedy whatsoever for collection of all debts except debts incurred for necessities furnished such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. [1982 1st ex.s. c 18 § 10. Prior: 1982 c 201 § 7; 1945 c 35 § 183; Rem. Supp. 1945 § 9998–322; prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15. Formerly codified in RCW 50.40.020, part and 50.40-.030, part.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.40.040 No vested rights. The legislature reserves the right to amend or repeal all or any part of this title at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this title or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this title at any time. [1945 c 35 § 187; no RRS. Prior: 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

50.40.050 Child support obligations—Disclosure—Notification of enforcement agency—Amounts deducted from payments, paid to enforcement agency—Definitions. (1) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations as defined under subsection (7) of this section. If the individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the state or local child support enforcement agency enforcing those obligations that the individual has been determined to be eligible for unemployment compensation.

(2) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes child support obligations as defined under subsection (7) of this section:

(a) The amount specified by the individual to the commissioner to be deducted and withheld under this subsection, if neither (b) nor (c) of this subsection is applicable;

(b) The amount (if any) determined pursuant to an agreement submitted to the commissioner under section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless (c) of this subsection is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the commissioner.

(3) Any amount deducted and withheld under subsection (2) of this section shall be paid by the commissioner

to the appropriate state or local child support enforcement agency.

(4) Any amount deducted and withheld under subsection (2) of this section shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by that individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(5) For the purposes of this section, "unemployment compensation" means any compensation payable under this chapter including amounts payable by the commissioner under an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(6) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(7) "Child support obligations" as used in this section means only those obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under part D of Title IV of the Social Security Act.

(8) "State or local child support enforcement agency" as used in this section means any agency of this state or a political subdivision thereof operating pursuant to a plan described in subsection (7) of this section. [1982 1st ex.s. c 18 § 11. Prior: 1982 c 201 § 3.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Chapter 50.44

SPECIAL COVERAGE PROVISIONS

Sections

50.44.010	Religious, charitable, educational or other nonprofit organizations—Exemption—Payments.
50.44.020	State or any of its wholly owned instrumentalities or jointly owned instrumentalities of this state and another state or this state and one or more of its political subdivisions—Exclusions—Payments.
50.44.030	Political subdivision or instrumentality of one or more political subdivisions of this state or one or more political subdivisions of this state and any other state—Registration—Elections for financing benefits—Pool accounts.
50.44.035	Local government tax.
50.44.037	"Institution of higher education" defined.
50.44.040	Services excluded under "employment" as used in RCW 50.44.010, 50.44.020, and 50.44.030.
50.44.050	Benefits payable, terms and conditions.
50.44.053	Definition of "reasonable assurance" as used in RCW 50.44.050.
50.44.060	Financing benefits paid employees of nonprofit organizations—Election to make payments in lieu of contributions.
50.44.070	Surety bond or deposit of money or securities when election to make payments in lieu of contributions.
50.44.080	Construction—Compliance with federal act—1971 c 3.

50.44.090 Construction—Mandatory coverage of employees of political subdivision provisions of 1977 ex.s. c 292.

Coverage of corporate officers: RCW 50.04.165.

50.44.010 Religious, charitable, educational or other nonprofit organizations—Exemption—Payments. Services performed subsequent to December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization which is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act shall be deemed services performed in employment unless such service is exempted under RCW 50.44.040.

Such organization shall make payments to the unemployment compensation fund based on such services in accordance with the provisions of RCW 50.44.060. [1971 c 3 § 18.]

50.44.020 State or any of its wholly owned instrumentalities or jointly owned instrumentalities of this state and another state or this state and one or more of its political subdivisions—Exclusions—Payments. Commencing with benefit years beginning on or after January 28, 1971, services performed subsequent to September 30, 1969 in the employ of this state or any of its wholly owned instrumentalities or jointly owned instrumentalities of this state and another state or this state and one or more of its political subdivisions shall be deemed services in employment unless such services are excluded from the term employment by RCW 50.44.040.

The state shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (2) and (3) of RCW 50.44.060: *Provided, however,* That for weeks of unemployment beginning after January 1, 1979, the state shall pay in addition to the full amount of regular and additional benefits so attributable the full amount of extended benefits so attributable: *Provided, further,* That no payment will be required from the state until the expiration of the twelve-month period following the end of the biennium in which the benefits attributable to such employment were paid. The amount of this payment shall include an amount equal to the amount of interest that would have been realized for the benefit of the unemployment compensation trust fund had such payments been received within thirty days after the day of the quarterly billing provided for in RCW 50.44.060(2)(a). [1977 ex.s. c 292 § 13; 1971 c 3 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.030 Political subdivision or instrumentality of one or more political subdivisions of this state or one or more political subdivisions of this state and any other state—Registration—Elections for financing benefits—Pool accounts. (1) All services performed for any political subdivision or instrumentality of one or more political subdivisions of this state or one or more

political subdivisions of this state and any other state after December 31, 1977, will be deemed to be services in employment to the extent coverage is not exempted under RCW 50.44.040.

(2) All such units of government shall file, before December 15, 1977, a written registration with the commissioner of the employment security department. Such registration shall specify the manner in which the unit of government will finance the payment of benefits. The elections available to counties, cities and towns are the local government tax, provided for in RCW 50.44.035, or payment in lieu of contributions, as described in RCW 50.44.060. The elections available to other units of government are the contributions plan in chapters 50.24 and 50.29 RCW, or payments in lieu of contributions, described in RCW 50.44.060. Under any election the governmental unit will be charged the full amount of regular, additional, and extended benefits attributable to its account.

(3) A unit of government may switch from its current method of financing the payment of benefits by electing any other method which it would be authorized to select pursuant to the terms of subsection (2) of this section. Notification of such election must be filed with the commissioner no less than thirty days prior to the taxable year for which the new method of financing the payment of benefits is to be effective. An election under this section shall remain in effect for no less than two taxable years.

(4) Any political subdivision or instrumentality of more than one political subdivision of this state is hereby authorized to enter into agreements with other political subdivisions or instrumentalities of more than one political subdivision of this state to form pool accounts for the purpose of making payments in lieu of contributions. These accounts shall be formed and administered in accordance with applicable regulations. The formation of such accounts shall not relieve the governmental unit of the responsibility for making required payments in the event that the pool account does not make the payments. [1981 c 35 § 11; 1977 ex.s. c 292 § 14; 1972 ex.s. c 35 § 2; 1971 c 3 § 20.]

Severability—1981 c 35: See note following RCW 50.22.030.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.035 Local government tax. (1) Any county, city or town not electing to make payments in lieu of contributions shall pay a "local government tax." Taxes paid under this section shall be paid into an administratively identifiable account in the unemployment compensation fund. This account shall be self-sustaining. For calendar years 1978 and 1979 all such employers shall pay local government tax at the rate of one and one-quarter percent of all remuneration paid by the governmental unit for services in its employment. For each year after 1979 each such employer's rate of tax shall be determined in accordance with this section: *Provided, however,* That whenever it appears to the commissioner that the anticipated benefit payments from the account would jeopardize reasonable reserves in this

identifiable account the commissioner may at the commencement of any calendar quarter, impose an emergency excess tax of not more than one percent of remuneration paid by the participating governmental units which "excess tax" shall be paid in addition to the applicable rate computed pursuant to this section until the calendar year following the next September 1.

(2) A reserve account shall be established for each such employer.

(a) The "reserve account" of each such employer shall be credited with tax amounts paid and shall be charged with benefit amounts charged in accordance with the formula set forth in RCW 50.44.060 as now or hereafter amended except that such employer's account shall be charged for the full amount of extended benefits so attributable for weeks of unemployment commencing after January 1, 1979. Such credits and charges shall be cumulative from January 1, 1978.

(b) After the cutoff date, the "reserve ratio" of each such employer shall be computed by dividing its reserve account balance as of the computation date by the total remuneration paid during the preceding calendar year for services in its employment. This division shall be carried to four decimal places, with the remaining fraction, if any, disregarded.

(3) A "benefit cost ratio" for each such employer shall be computed by dividing its total benefit charges during the thirty-six months ending on June 30 by its total remuneration during the three preceding calendar years: *Provided,* That after August 31 in 1979 each employer's total benefit charges for the twelve months ending on June 30 shall be divided by its total remuneration paid in the last three quarters of calendar year 1978; and after August 31 in 1980 each employer's total benefit charges for the twenty-four months ending June 30 shall be divided by its total remuneration paid in the last three calendar quarters of 1978 and the four calendar quarters of 1979. Such computations shall be carried to four decimal places, with the remaining fraction, if any, disregarded.

(4) For each such employer its benefit cost ratio shall be subtracted from its reserve ratio. One-third of the resulting amount shall be subtracted from its benefit cost ratio. The resulting figure, expressed as a percentage and rounded to the nearest tenth of one percent, shall become its local government tax rate for the following rate year. For the rate year 1980 no tax rate shall be less than 0.6 percent nor more than 2.2 percent. For 1981 no tax rate shall be less than 0.4 percent nor more than 2.6 percent. For years after 1981 no tax rate shall be less than 0.2 percent or more than 3.0 percent. No individual rate shall be increased any more than 1.0 percent from one rate year to the next.

(5) Any county, city or town electing participation under this section at any time after December 15, 1977, shall be assigned a tax rate of one and one-quarter percent of total remuneration for the first eight quarters of the participation.

(6) Each year after 1980 the commissioner shall review the local government tax system and make recommendations to the legislature for changes in said system.

(7) "Local government tax" shall be deemed to be "contributions" to the extent that such usage is consistent with the purposes of this title. Such construction shall include but not be limited to those portions of this title and the rules and regulations enacted pursuant thereto dealing with assessments, interest, penalties, liens, collection procedures and remedies, administrative and judicial review, and the imposition of administrative, civil and criminal sanctions. [1983 1st ex.s. c 23 § 22; 1977 ex.s. c 292 § 15.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.037 "Institution of higher education" defined. For the purposes of this chapter, the term "institution of higher education" means an educational institution in this state which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized within this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing subsections, all colleges and universities in this state are "institutions of higher education". [1977 ex.s. c 292 § 16.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.040 Services excluded under "employment" as used in RCW 50.44.010, 50.44.020, and 50.44.030. The term "employment" as used in RCW 50.44.010, 50.44.020, and 50.44.030 shall not include service performed:

(1) In the employ of (a) a church or convention or association of churches, or (b) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) Before January 1, 1978, in the employ of a nongovernmental educational institution, approved or accredited by the state board of education, which is not an "institution of higher education"; or

(4) In a facility conducted for the purpose of carrying out a program of (a) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or (b) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed

in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(5) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or

(6) For a custodial or penal institution by an inmate of the custodial or penal institution; or

(7) In the employ of a hospital, if such service is performed by a patient of such hospital; or

(8) In the employ of a school, college, or university, if such service is performed (a) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (b) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (ii) such employment will not be covered by any program of unemployment insurance; or

(9) By an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employee, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers; or

(10) Before January 1, 1978, in the employ of the state or one of its instrumentalities or a political subdivision or one of its instrumentalities by an individual who is (a) occupying an elective office, or (b) who is compensated solely on a fee or per diem basis; or

(11) Before January 1, 1978, in the employ of the legislature of the state of Washington by an individual who is compensated pursuant to an agreement which provides for a guaranteed rate of compensation for irregular hours worked; or

(12) In the employ of a nongovernmental preschool which is devoted exclusively to the area of child development training of preschool age children through an established curriculum of formal classroom or laboratory instruction which did not employ four or more individuals on each of some twenty days during the calendar year or the preceding calendar year, each day being in a different calendar week; or

(13) After December 31, 1977, in the employ of the state or any of its instrumentalities or political subdivisions of this state in any of its instrumentalities by an individual in the exercise of duties:

(a) As an elected official;

(b) As a member of the national guard or air national guard; or

(c) In a policymaking position the performance of the duties of which ordinarily do not require more than eight hours per week. [1977 ex.s. c 292 § 17; 1975 1st ex.s. c 67 § 1; 1975 c 4 § 1; 1973 c 73 § 9; 1971 c 3 § 21.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Exemption from unemployment compensation coverage conservation corps members: RCW 43.220.170.

Washington service corps enrollees: RCW 50.65.120.

50.44.050 Benefits payable, terms and conditions.

Except as otherwise provided in subsections (1) through (4) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title.

(1) Benefits based on service in an instructional, research or principal administrative capacity for an educational institution shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Any employee of a common school district who is presumed to be reemployed pursuant to RCW 28A.67.070 shall be deemed to have a contract for the ensuing term.

(2) Benefits shall not be paid based on services in any other capacity for an educational institution for any week of unemployment which commences during the period between two successive academic years or terms, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms: *Provided*, That if benefits are denied to any individual under this subsection and that individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in an educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.21 RCW and exists to provide services to local school districts. [1984 c 140 § 2; 1983 1st ex.s. c 23 § 23; 1981 c 35 § 12; 1980 c 74 § 2; 1977 ex.s. c 292 § 18; 1975 1st ex.s. c 288 § 17; 1973 c 73 § 10; 1971 c 3 § 22.]

Effective date—**Applicability**—1984 c 140: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984]. This act shall apply to weeks of unemployment beginning on or after April 1, 1984." [1984 c 140 § 3.]

Conflict with federal requirements—**Effective dates**—**Construction**—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—**Severability**—1981 c 35: See notes following RCW 50.22.030.

Severability—**Effective dates**—1980 c 74: See notes following RCW 50.04.323.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.44.053 Definition of "reasonable assurance" as used in RCW 50.44.050. The term "reasonable assurance," as used in RCW 50.44.050, means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term. A person shall not be deemed to be performing services "in the same capacity" unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term. [1985 ex.s. c 5 § 9.]

Conflict with federal requirements—**Severability**—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.44.060 Financing benefits paid employees of nonprofit organizations—Election to make payments in lieu of contributions. Benefits paid to employees of "nonprofit organizations" shall be financed in accordance with the provisions of this section. For the purpose of this section and RCW 50.44.070, the term "nonprofit organization" is limited to those organizations described in RCW 50.44.010, and joint accounts composed exclusively of such organizations.

(1) Any nonprofit organization which is, or becomes subject to this title on or after January 1, 1972 shall pay contributions under the provisions of RCW 50.24.010, unless it elects, in accordance with this subsection, to pay to the commissioner for the unemployment compensation fund an amount equal to the full amount of regular and additional benefits and one-half of the amount of extended benefits paid to individuals for weeks of unemployment which begin during the effective period of

such election to the extent that such payments are attributable to service in the employ of such nonprofit organization.

(a) Any nonprofit organization which becomes subject to this title after January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(b) Any nonprofit organization which makes an election in accordance with paragraph (a) of this subsection will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(c) Any nonprofit organization which has been paying contributions under this title for a period subsequent to January 1, 1972 may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(d) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(e) The commissioner, in accordance with such regulations as he may prescribe, shall notify each nonprofit organization of any determination which he may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Any nonprofit organization subject to such determination and dissatisfied with such determination may file a request for review and redetermination with the commissioner within thirty days of the mailing of the determination to the organization. Should such request for review and redetermination be denied, the organization may, within ten days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this paragraph.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this section including either paragraph (a) or (b) of this subsection.

(a) At the end of each calendar quarter, the commissioner shall bill each nonprofit organization or group of such organizations which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular and additional benefits plus one-half of the amount of extended benefits paid during such quarter that is attributable to service in the employ of such organization.

(b) (i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as provided in this paragraph. Such method of payment shall become effective upon approval by the commissioner.

(ii) At the end of each calendar quarter, or at the end of such other period as determined by the commissioner, the commissioner shall bill each nonprofit organization for an amount representing one of the following:

(A) The percentage of its total payroll for the immediately preceding calendar year as the commissioner shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

(B) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall determine.

(iii) At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each taxable year, the commissioner shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular and additional benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with paragraph (c). If the total payments exceed the amount so determined for the taxable year, all of the excess payments will be retained in the fund as part of the payments which may be required for the next taxable year, or a part of the excess may, at the discretion of the commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

(c) Payment of any bill rendered under paragraph (a) or (b) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, and if not paid within such thirty days, the reimbursement payments itemized in the bill shall be deemed to be delinquent and the whole or part thereof remaining unpaid shall bear interest and penalties from and after the end of such thirty days at the rate and in the manner set forth in RCW 50.12.220 and 50.24.040.

(d) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization. Any deduction in violation of the provisions of this paragraph shall be unlawful.

(3) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the total amount of regular and additional benefits

plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of paragraphs (a) through (d) of this subsection.

(a) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers. [1983 1st ex.s. c 23 § 24; 1977 ex.s. c 292 § 19; 1971 c 3 § 23.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.070 Surety bond or deposit of money or securities when election to make payments in lieu of contributions. In the discretion of the commissioner, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election, to execute and file with the commissioner a surety bond approved by the commissioner or it may elect instead to deposit with the commissioner money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this section.

(1) The amount of the bond or deposit required by this subsection shall be an amount deemed by the commissioner to be sufficient to cover any reimbursement payments which may be required from the employer attributable to employment during any year for which the election is in effect but in no event shall such amount be in excess of the amount which said employer would pay for such year if he were subject to the contribution provisions of this title. The determination made pursuant to this subsection shall be based on payroll information, employment experience, and such other factors as the commissioner deems pertinent.

(2) Any bond deposited under this section shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the commissioner,

at such times as the commissioner may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The commissioner shall require adjustments to be made in a previously filed bond as he deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in this title, shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

(3) Any deposit of money or securities in accordance with this section shall be retained by the commissioner in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The commissioner may deduct from the money deposited under this section by a nonprofit organization or sell the securities it has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in this act. The commissioner shall require the organization within thirty days following any deduction from a money deposit or sale of deposited securities under the provisions of this subsection to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The commissioner may, at any time review the adequacy of the deposit made by any organization. If, as a result of such review, he determines that an adjustment is necessary he shall require the organization to make an additional deposit within thirty days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(4) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this section, the commissioner may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which termination becomes effective: *Provided*, That the commissioner may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty days. [1973 c 73 § 11; 1971 c 3 § 24.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.44.080 Construction—Compliance with federal act—1971 c 3. RCW 50.44.010 through 50.44.070 have been enacted to meet the requirements imposed by the federal unemployment tax act as amended by

91–373. Internal references in any section of *this 1971 amendatory act to the provisions of that act are intended only to apply to those provisions as they existed as of January 28, 1971.

In view of the importance of compliance of *this 1971 amendatory act with the federal unemployment tax act, any ambiguities contained herein should be resolved in a manner consistent with the provisions of that act. Considerable weight has been given to the commentary contained in that document entitled "Draft Legislation to Implement the Employment Security Amendments of 1970 . . . H.R. 14705", published by the United States Department of Labor, Manpower Administration, and that commentary should be referred to when interpreting the provisions of *this 1971 amendatory act.

Language in *this 1971 amendatory act concerning the extension of coverage to employers entitled to make payments in lieu of contributions should, in a manner consistent with the foregoing paragraph, be construed so as to have a minimum financial impact on the employers subject to the experience rating provisions of this title. [1971 c 3 § 25.]

*Reviser's note: For codification of "this 1971 amendatory act" [1971 c 3], see Codification Tables, Volume 0.

50.44.090 Construction—Mandatory coverage of employees of political subdivision provisions of 1977 ex.s. c 292. (1) The provisions of *this act mandating coverage of employees of political subdivisions have been enacted to comply with the provisions of Public Law 94–566. Therefore, as provided in subsection (2), this mandatory feature shall be contingent on the existence of valid and constitutional federal law requiring the Secretary of Labor to refuse to certify as approved the employment security laws of this state if such laws did not continue such mandatory coverage.

(2) In the event the mandatory coverage feature for political subdivisions ceases to be necessary for compliance with valid and constitutional federal law, then the mandatory feature of *this 1977 act shall cease to be effective as of the end of the next quarter following the quarter in which the mandatory feature contained in *this 1977 act is not necessary for such compliance.

(3) In the event mandatory coverage ceases to be effective pursuant to subsection (2), then the sections, or subsections as the case may be, of *this 1977 amendatory act shall to the extent that they apply to coverage of employees of political subdivisions be deemed nullified and the language of the sections being amended shall be deemed reinstated as the laws of this state.

(4) Benefits paid based on the services covered during the effective life of the mandatory coverage feature shall be financed as follows:

(a) If the political subdivision was financing payment of benefits on a reimbursable basis, benefits attributable to employment with the political subdivision shall be assessed to and paid by the political subdivision;

(b) If the political subdivision is a county, city, or town which elected financing pursuant to RCW 50.44-.035, such political subdivision will pay "the local government tax" for all earnings by employees through the

end of the calendar quarter in which the mandatory coverage is no longer effective pursuant to subsection (2);

(c) If the political subdivision was financing benefits by the contribution method it will pay contributions on wages earned by its employees through the end of the calendar quarter in which mandatory coverage is no longer effective pursuant to subsection (2). [1977 ex.s. c 292 § 23.]

*Reviser's note: The terms "this act," "this 1977 act" and "this 1977 amendatory act" refer to 1977 ex.s. c 292.

For codification of 1977 ex.s. c 292, see Codification Tables, Volume 0.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Chapter 50.60

SHARED WORK COMPENSATION PLANS— BENEFITS

Sections	
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50.60.900	Title and rules to apply to shared work benefits—Conflict with federal requirements.
50.60.901	Rules—Report to legislature—1983 c 207.
50.60.902	Effective date—1983 c 207.

50.60.010 Legislative intent. In order to provide an economic climate conducive to the retention of skilled workers in industries adversely affected by general economic downturns and to supplement depressed buying power of employees affected by such downturns, the legislature finds that the public interest would be served by the enactment of laws providing greater flexibility in the payment of unemployment compensation benefits in situations where qualified employers elect to retain employees at reduced hours rather than instituting layoffs. [1983 c 207 § 1.]

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

(1) "Affected unit" means a specified plant, department, shift, or other definable unit consisting of one or more employees, to which an approved shared work compensation plan applies.

(2) "Fringe benefits" include health insurance, retirement benefits under benefit pension plans as defined in section 3(35) of the employee retirement income security act of 1974, paid vacation and holidays, and sick leave, which are incidents of employment in addition to cash remuneration.

(3) "Shared work benefits" means the benefits payable to employees in an affected unit under an approved shared work compensation plan as distinguished from the benefits otherwise payable under this title.

(4) "Shared work compensation plan" means a plan of an employer, or of an employers' association, under which there is a reduction in the number of hours worked by employees rather than temporary layoffs.

(5) "Shared work employer" means an employer, one or more of whose employees are covered by a shared work compensation plan.

(6) "Usual weekly hours of work" means the normal number of hours of work for full-time employees in the affected unit when that unit is operating on a full-time basis, not to exceed forty hours and not including overtime.

(7) "Unemployment compensation" means the benefits payable under this title other than shared work benefits and includes any amounts payable pursuant to an agreement under federal law providing for compensation, assistance, or allowances with respect to unemployment.

(8) "Employers' association" means an association which is a party to a collective bargaining agreement under which there is a shared work compensation plan. [1983 c 207 § 2.]

50.60.030 Shared work compensation plans—Criteria for approval. An employer or employers' association wishing to participate in a shared work compensation program shall submit a written and signed shared work compensation plan to the commissioner for approval. The commissioner shall approve a shared work compensation plan only if the following criteria are met:

(1) The plan identifies the affected units to which it applies;

(2) An employee in an affected unit are identified by name, social security number, and by any other information required by the commissioner;

(3) The usual weekly hours of work for an employee in an affected unit are reduced by not less than ten percent and not more than fifty percent;

(4) Fringe benefits will continue to be provided on the same basis as before the reduction in work hours. In no event shall the level of health benefits be reduced due to a reduction in hours;

(5) The plan certifies that the aggregate reduction in work hours is in lieu of temporary layoffs which would have affected at least ten percent of the employees in the affected units to which the plan applies and which would have resulted in an equivalent reduction in work hours;

(6) The plan applies to at least ten percent of the employees in the affected unit;

(7) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any employee in the affected unit;

(8) The plan will not subsidize seasonal employers during the off season nor subsidize employers who have traditionally used part-time employees; and

(9) The employer agrees to furnish reports necessary for the proper administration of the plan and to permit access by the commissioner to all records necessary to verify the plan before approval and after approval to evaluate the application of the plan.

In addition to subsections (1) through (9) of this section, the commissioner shall take into account any other factors which may be pertinent. [1985 c 43 § 1; 1983 c 207 § 3.]

Conflict with federal requirements—1985 c 43: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 43 § 2.]

Severability—1985 c 43: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 43 § 3.]

50.60.040 Shared work compensation plans—Approval or rejection—Resubmission. The commissioner shall approve or reject a shared work compensation plan in writing within fifteen days of its receipt. The reasons for the rejection shall be final and nonappealable, but the rejection shall not prevent an employer from submitting another plan for approval not earlier than fifteen days after the date of a previous written rejection. [1983 c 207 § 4.]

50.60.050 Approved shared work compensation plans—Misrepresentation—Penalties. If an approved plan or any representation for implementation of the plan is intentionally and substantially misleading or false, any individual who participated in any such misrepresentation shall be subject to criminal prosecution as well as personal liability for any amount of benefits deemed by the commissioner to have been improperly paid from the fund as a result thereof. This provision for personal liability is in addition to any remedy against individual claimants for collection of overpayment of benefits if such claimants participated in or were otherwise at fault in the overpayment. [1983 c 207 § 5.]

50.60.060 Approved shared work compensation plans—Effective date—Expiration. A shared work compensation plan shall be effective on the date specified in the plan or on the first day of the second calendar week after the date of the commissioner's approval, whichever is later. The plan shall expire at the end of the twelfth full calendar month after its effective date, or on the date specified in the plan if that date is earlier,

unless the plan is revoked before that date by the commissioner. If a plan is revoked by the commissioner, it shall terminate on the date specified in the commissioner's order of revocation. [1983 c 207 § 6.]

50.60.070 Approved shared work compensation plans—Revocation—Review of plans. The commissioner may revoke approval of a shared work compensation plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons for the revocation. Good cause for revocation shall include failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of the criteria on which approval of the plan was based.

Such action may be initiated at any time by the commissioner on his or her own motion, on the motion of any of the affected unit employees, or on the motion of the appropriate collective bargaining agents. The commissioner shall review each plan at least once within the twelve month period the plan is in effect to assure that it continues to meet the requirements of this chapter. [1983 c 207 § 7.]

50.60.080 Approved shared work compensation plans—Modification. An approved shared work compensation plan in effect may be modified with the approval of the commissioner. If the hours of work are increased or decreased beyond the level in the original plan, or any other condition is changed, the employer shall promptly notify the commissioner. If the changes meet the requirements for approval of a plan, the commissioner shall approve the modifications. This approval shall not change the expiration date of the original plan. If the modifications do not meet the requirements for approval, the commissioner shall revoke the plan as specified in RCW 50.60.060. [1983 c 207 § 8.]

50.60.090 Shared work benefits—Eligibility. An individual is eligible to receive shared work benefits with respect to any week only if, in addition to meeting the conditions of eligibility for other benefits under this title, the commissioner finds that:

(1) The individual was employed during that week as a member of an affected unit under an approved shared work compensation plan which was in effect for that week;

(2) The individual was able to work and was available for additional hours of work and for full-time work with the shared work employer; and

(3) Notwithstanding any other provision of this chapter, an individual is deemed to have been unemployed in any week for which remuneration is payable to him or her as an employee in an affected unit for less than his or her normal weekly hours of work as specified under the approved shared work compensation plan in effect for that week. [1983 c 207 § 9.]

50.60.100 Shared work benefits—Weekly amount—Maximum entitlement—Claims—Conditions of entitlement. (1) The shared work weekly benefit amount shall be the product of the regular weekly unemployment compensation benefit amount multiplied by the percentage of reduction in the individual's usual weekly hours of work;

(2) No individual is eligible in any benefit year for more than the maximum entitlement established for benefits under this title, including benefits under this chapter, nor may an individual be paid shared work benefits for more than a total of twenty-six weeks in any twelve-month period under a shared work compensation plan;

(3) The shared work benefits paid an individual shall be deducted from the total benefit amount established for that individual's benefit year;

(4) Claims for shared work benefits shall be filed in the same manner as claims for other benefits under this title or as prescribed by the commissioner by rule;

(5) Provisions otherwise applicable to unemployment compensation claimants under this title apply to shared work claimants to the extent that they are not inconsistent with this chapter;

(6) (a) If an individual works in the same week for an employer other than the shared work employer and his or her combined hours of work for both employers are equal to or greater than the usual weekly hours of work with the shared work employer, the individual shall not be entitled to benefits under this chapter or title;

(b) If an individual works in the same week for both the shared work employer and another employer and his or her combined hours of work for both employers are less than his or her usual weekly hours of work, the benefit amount payable for that week shall be the weekly unemployment compensation benefit amount reduced by the same percentage that the combined hours are of the usual weekly hours of work. A week for which benefits are paid under this subsection shall count as a week of shared work benefits;

(7) An individual who does not work during a week for the shared work employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount. Such a week shall not be counted as a week for which shared work benefits were received;

(8) An individual who does not work for the shared work employer during a week but works for another employer, and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of this title. Such a week shall not be counted as a week for which shared work benefits were received. [1983 c 207 § 10.]

50.60.110 Shared work benefits—Charge to employers' experience rating accounts. Shared work benefits shall be charged to employers' experience rating accounts in the same manner as other benefits under this title are charged. Employers liable for payments in lieu of contributions shall have shared work benefits attributed to their accounts in the same manner as other

benefits under this title are attributed. [1983 c 207 § 11.]

50.60.120 Shared work benefits—Exhaustee. An individual who has received all of the shared work benefits, or all of the combined unemployment compensation and shared work benefits, available in a benefit year shall be considered an exhaustee for purposes of the extended benefits program under chapter 50.22 RCW, and, if otherwise eligible under that chapter, shall be eligible to receive extended benefits. [1983 c 207 § 12.]

50.60.900 Title and rules to apply to shared work benefits—Conflict with federal requirements. Unless inconsistent with or otherwise provided by this section, this title and rules adopted under this title apply to shared work benefits. To the extent permitted by federal law, those rules may make such distinctions and requirements as may be necessary with respect to unemployed individuals to carry out the purposes of this chapter, including rules defining usual hours, days, work week, wages, and the duration of plans adopted under this chapter. To the extent that any portion of this chapter may be inconsistent with the requirements of federal law relating to the payment of unemployment insurance benefits, the conflicting provisions or interpretations of this chapter shall be deemed inoperative, but only to the extent of the conflict. If the commissioner determines that such a conflict exists, a statement to that effect shall be filed with the governor's office for transmission to both houses of the legislature. [1983 c 207 § 13.]

50.60.901 Rules—Report to legislature—1983 c 207. The department shall adopt such rules as are necessary to carry out the purposes of this act. The department shall make a report to the legislature by January 1, 1984 which describes the implementation of this act. [1983 c 207 § 14.]

50.60.902 Effective date—1983 c 207. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect with the weeks beginning after July 31, 1983. [1983 c 207 § 16.]

Chapter 50.62

SPECIAL EMPLOYMENT ASSISTANCE

Sections

50.62.010	Legislative findings.
50.62.020	Definitions.
50.62.030	Job service programs and activities (as amended by 1987 c 171).
50.62.030	Job service programs and activities (as amended by 1987 c 284).
50.62.040	Annual report—Wage and benefit history.

50.62.010 Legislative findings. The legislature finds and declares that:

(1) The number of persons unemployed in the state is significantly above the national average.

(2) Persons who are unemployed represent a skilled resource to the economy and the quality of life for all persons in the state.

(3) There are jobs available in the state that can be filled by unemployed persons.

(4) A public labor exchange can appreciably expedite the employment of unemployed job seekers and filling employer vacancies thereby contributing to the overall health of the state and national economies.

(5) The Washington state job service of the employment security department has provided a proven service of assisting persons to find employment for the past fifty years.

(6) Expediting the reemployment of unemployment insurance claimants will reduce payment of claims drawn from the state unemployment insurance trust fund.

(7) Increased emphasis on assisting in the reemployment of claimants and monitoring claimants' work search efforts will positively impact employer tax rates resulting from the recently enacted experience rating legislation, chapter 205, Laws of 1984.

(8) Special employment service efforts are necessary to adequately serve agricultural employers who have unique needs in the type of workers, recruitment efforts, and the urgency of obtaining sufficient workers.

(9) Study and research of issues related to employment and unemployment provides economic information vital to the decision-making process.

(10) Older workers and the long-term unemployed experience greater difficulty finding new employment at wages comparable to their prelayoff earnings relative to all unemployment insurance claimants who return to work.

(11) After a layoff, older unemployed workers and the long-term unemployed workers fail to find unemployment insurance-covered employment at a much higher rate than other groups of unemployment insurance claimants.

The legislature finds it necessary and in the public interest to have a program of job service to assist persons drawing unemployment insurance claims to find employment, to provide employment assistance to the agricultural industry, and to conduct research into issues related to employment and unemployment. [1987 c 284 § 1; 1987 c 171 § 1; 1985 ex.s. c 5 § 1.]

Reviser's note: This section was amended by 1987 c 171 § 1 and by 1987 c 284 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—1987 c 171: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1987 c 171 § 7.]

Severability—1987 c 171: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 171 § 8.]

Conflict with federal requirements—1985 ex.s. c 5: "If any part of this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act." [1985 ex.s. c 5 § 16.]

Severability—1985 ex.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 ex.s. c 5 § 17.]

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

(1) "Job service" means the employment assistance program of the employment security department;

(2) "Employment assistance" means services to unemployed persons focused on and measured by the obtaining of employment;

(3) "Labor exchange" means those activities which match labor supply and labor demand, including recruitment, screening, and referral of qualified workers to employers;

(4) "Special account of the administrative contingency fund" means that fund under RCW 50.24.014 established within the administrative contingency fund of the employment security department which provides revenue for the purposes of this chapter.

(5) "Continuous wage and benefit history" means an information and research system utilizing a longitudinal data base containing information on both employment and unemployment.

(6) "Long-term unemployed" means demographic groups of unemployment insurance claimants identified by the employment security department pursuant to RCW 50.62.040(1)(e) which have the highest percentages of persons who have drawn at least fifteen weeks of unemployment insurance benefits or have the highest percentage of persons who have exhausted their unemployment insurance benefits.

(7) "Older unemployed workers" means unemployment insurance claimants who are at least fifty years of age. [1987 c 284 § 2; 1985 ex.s. c 5 § 2.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.62.030 Job service programs and activities (as amended by 1987 c 171). Job service resources shall be used to assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery. The job service program of the employment security department may undertake any program or activity for which funds are available and which furthers the goals of this chapter. These programs and activities may include, but are not limited to:

(1) Supplementing basic employment services, with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(2) Providing employment services, such as recruitment, screening, and referral of qualified workers, to agricultural areas where these services have in the past contributed to positive economic conditions for the agricultural industry; and

(3) Providing otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment; ~~(4) To research and consider the degree to which the employment security department can contract with private employment agencies, private for-profit and not-for-profit organizations in the fields of job placement, vocational counseling, career development, career change and employment preparation on a fee for service-performance basis).~~

~~(4) To research and consider the degree to which the employment security department can contract with private employment agencies, private for-profit and not-for-profit organizations in the fields of job placement, vocational counseling, career development, career change and employment preparation on a fee for service-performance basis).~~ [1987 c 171 § 2; 1985 ex.s. c 5 § 3.]

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

50.62.030 Job service programs and activities (as amended by 1987 c 284). Job service resources shall be used to assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery. The job service program of the employment security department may undertake any program or activity for which funds are available and which furthers the goals of this chapter. These programs and activities ~~((may))~~ shall include, but are not limited to:

~~(1) Giving older unemployed workers and the long-term unemployed the highest priority for all services made available under this section. The employment security department shall make the services provided under this chapter available to the older unemployed workers and the long-term unemployed as soon as they register under the employment assistance program;~~

~~(2) Supplementing basic employment services, with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;~~

~~((2)) (3) Providing employment services, such as recruitment, screening, and referral of qualified workers, to agricultural areas where these services have in the past contributed to positive economic conditions for the agricultural industry;~~

~~((3)) (4) Providing otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment; and~~

~~((4)) (5) To research and consider the degree to which the employment security department can contract with private employment agencies, private for-profit and not-for-profit organizations in the fields of job placement, vocational counseling, career development, career change and employment preparation on a fee for service-performance basis. [1987 c 284 § 3; 1985 ex.s. c 5 § 3.]~~

Reviser's note: RCW 50.62.030 was amended twice during the 1987 legislative session, each without reference to the other.

For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.62.040 Annual report—Wage and benefit history. (1) Each year the employment security department shall publish an annual report on the unemployed based on research conducted on the continuous usage [wage] and benefit history and other sources that identifies:

(a) The demographic groups of unemployment insurance claimants that experience the greatest difficulty finding new employment with wages comparable to their prelayoff earnings;

(b) The demographic groups of unemployment insurance claimants that have the highest rates of failure to find unemployment insurance covered—employment after a layoff;

(c) The demographic, industry, and employment characteristics of the unemployment insurance claimant population most closely associated with the exhaustion of an unemployment claim;

(d) The demographic, industry, and employment characteristics of those locked-out workers who are eligible for unemployment compensation under RCW 50.20.090; and

(e) The demographic groups which are defined as the "long-term unemployed" for purposes of this chapter. This listing shall be updated each year.

(2) The employment security department shall continue to fund the continuing wage and benefit history at a level necessary to produce the annual report described in subsection (1) of this section. [1987 c 284 § 4.]

Chapter 50.63

EMPLOYMENT PARTNERSHIP PROGRAM

Sections

50.63.010 Legislative findings.

50.63.020 Employment partnership program—Created—Goals.

50.63.030 Pilot projects—Grants to be used as wage subsidies—Criteria.

50.63.040 Employer eligibility—Conditions.

50.63.050 Diversion of grants to worker-owned businesses.

50.63.060 Program participants—Eligibility for assistance programs.

50.63.070 Program participants—Benefits and salary not to be diminished.

50.63.080 Program participants—Classification under federal job training law.

50.63.090 Department of social and health services to seek federal funds.

50.63.900 Conflicts with federal requirements—1986 c 172.

50.63.901 Severability—1986 c 172.

50.63.010 Legislative findings. The legislature finds that the restructuring in the Washington economy has created rising public assistance caseloads and declining real wages for Washington workers. There is a profound need to develop partnership programs between the private and public sectors to create new jobs with adequate salaries and promotional opportunities for chronically unemployed and underemployed citizens of the state. A voluntary program which utilizes public wage subsidies and employer matching salaries has provided a beneficial financial incentive allowing public assistance recipients transition to permanent full-time employment. [1986 c 172 § 1.]

50.63.020 Employment partnership program—Created—Goals. The employment partnership program is created to develop a series of model projects to provide permanent full-time employment for low-income and unemployed persons. The program shall be a cooperative effort between the employment security department and the department of social and health services. The goals of the program are as follows:

- (1) To reduce inefficiencies in administration and provide model coordination of agencies with responsibilities for employment and human service delivery to unemployed persons;
- (2) To create voluntary financial incentives to simultaneously reduce unemployment and welfare caseloads; and
- (3) To provide other state and federal support services to the client population to enable economic independence. [1986 c 172 § 2.]

50.63.030 Pilot projects—Grants to be used as wage subsidies—Criteria. The commissioner of employment security and the secretary of the department of social and health services shall establish pilot projects that enable grants to be used as a wage subsidy. The department of social and health services is designated as the lead agency for the purpose of complying with applicable federal statutes and regulations. The department shall seek any waivers from the federal government necessary to operate the employment partnership program. The projects shall be available on an individual case-by-case basis or subject to the limitations outlined in RCW 50.63.050 for the start-up or reopening of a plant under worker ownership. The projects shall be subject to the following criteria:

- (1) It shall be a voluntary program and no person may have any sanction applied for failure to participate.
- (2) Employment positions established by this chapter shall not be created as the result of, nor result in, any of the following:
 - (a) Displacement of current employees, including overtime currently worked by these employees;
 - (b) The filling of positions that would otherwise be promotional opportunities for current employees;
 - (c) The filling of a position, before compliance with applicable personnel procedures or provisions of collective bargaining agreements;
 - (d) The filling of a position created by termination, layoff, or reduction in workforce;
 - (e) The filling of a work assignment customarily performed by a worker in a job classification within a recognized collective bargaining unit in that specific work site, or the filling of a work assignment in any bargaining unit in which funded positions are vacant or in which regular employees are on layoff;
 - (f) A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between employees and employers;
 - (g) Decertification of any collective bargaining unit.
- (3) Wages shall be paid at the usual and customary rate of comparable jobs;
- (4) A recoupment process shall recover state supplemented wages from an employer when a job does not last six months following the subsidization period for reasons other than the employee voluntarily quitting or being fired for good cause as determined by the commissioner of employment security under rules prescribed by the commissioner pursuant to chapter 50.20 RCW;
- (5) Job placements shall have promotional opportunities or reasonable opportunities for wage increases;
- (6) Other necessary support services such as training, day care, medical insurance, and transportation shall be provided to the extent possible;
- (7) Employers shall provide monetary matching funds of at least fifty percent of total wages;
- (8) Wages paid to participants shall be a minimum of five dollars an hour; and
- (9) The projects shall target the hardest-to-employ populations to the extent that necessary support services are available. [1986 c 172 § 3.]

50.63.040 Employer eligibility—Conditions. An employer, before becoming eligible to fill a position under the employment partnership program, shall certify to the department of employment security that the employment, offer of employment, or work activity complies with the following conditions:

(1) The conditions of work are reasonable and not in violation of applicable federal, state, or local safety and health standards;

(2) The assignments are not in any way related to political, electoral, or partisan activities;

(3) The employer shall provide industrial insurance coverage as required by Title 51 RCW;

(4) The employer shall provide unemployment compensation coverage as required by Title 50 RCW;

(5) The employment partnership program participants hired following the completion of the program shall be provided benefits equal to those provided to other employees including social security coverage, sick leave, the opportunity to join a collective bargaining unit, and medical benefits. [1986 c 172 § 4.]

50.63.050 Diversion of grants to worker-owned businesses. Grants may be diverted for the start-up or retention of worker-owned businesses if:

(1) A feasibility study or business plan is completed on the proposed business; and

(2) The project is approved by the loan committee of the Washington state development loan fund as created by RCW 43.168.110. [1986 c 172 § 5.]

50.63.060 Program participants—Eligibility for assistance programs. Participants shall be considered recipients of aid to families with dependent children and remain eligible for medicaid benefits even if the participant does not receive a residual grant. Work supplementation participants shall be eligible for (1) the thirty-dollar plus one-third of earned income exclusion from income, (2) the work related expense disregard, and (3) the child care expense disregard deemed available to recipient of aid in computing his or her grant under this chapter, unless prohibited by federal law. [1986 c 172 § 6.]

50.63.070 Program participants—Benefits and salary not to be diminished. An applicant or recipient of aid under this chapter who participates in the employment partnership program shall be guaranteed that the value of the benefits available to him or her before entry into the program shall not be diminished. In addition, a participant employed under this chapter shall be treated in the same manner as are regular employees, and the participant's salary shall be the amount that he or she would have received if employed in that position and not participating under this chapter. [1986 c 172 § 7.]

50.63.080 Program participants—Classification under federal job training law. Applicants for and recipients of aid under this chapter are "individuals in special need" of training as described in section 2 of the federal job training partnership act, 29 U.S.C. Sec. 1501 et seq.,

"individuals who require special assistance" as provided in section 123 of that act, and "most in need" of employment and training opportunities as described in section 141 of that act. [1986 c 172 § 8.]

50.63.090 Department of social and health services to seek federal funds. The department of social and health services shall seek any federal funds available for implementation of this chapter, including, but not limited to, funds available under Title IV of the federal social security act (42 U.S.C. Sec. 601 et seq.) for the work incentive demonstration program, and the employment search program. [1986 c 172 § 9.]

50.63.900 Conflicts with federal requirements—1986 c 172. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. [1986 c 172 § 12.]

50.63.901 Severability—1986 c 172. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 172 § 11.]

Chapter 50.64

SPECIAL EMPLOYMENT ASSISTANCE—FIRST SOURCE CONTRACTS—FINANCIAL INCENTIVES

Sections

50.64.010	Legislative findings.
50.64.020	Definitions.
50.64.030	First source contracts encouraged.
50.64.040	First source contracts—Financial incentives.
50.64.050	Employee training period—Benefits.
50.64.060	Employee training period—Financial incentives.
50.64.900	Expiration date—RCW 50.64.010 through 50.64.060.
50.64.901	Severability—1986 c 116.

50.64.010 Legislative findings. The legislature recognizes that the essential purpose of state economic development programs is to encourage the hiring of the unemployed. It is of even greater benefit to the state if those hired were drawing unemployment benefits or public assistance and the benefits terminate when employment is secured. A targeted program that encourages employers to make a good faith effort to hire public assistance recipients and the unemployed will provide benefits to the state of Washington. [1986 c 116 § 1.]

50.64.020 Definitions. (1) "Department" means the employment security department.

(2) "First source contract" means an agreement by an employer to screen applicants from a pool of qualified

individuals, if any, submitted to the employer by the department and to consider hiring from that pool. [1986 c 116 § 2.]

50.64.030 First source contracts encouraged. The department shall encourage the use of first source contracts with employers looking to locate or expand in the state. The department shall make every effort to guarantee easy access by employers to qualified workers. The commissioner may delegate duties under this chapter to a local organization. [1986 c 116 § 3.]

50.64.040 First source contracts—Financial incentives. The department may provide specific financial incentives to employers who sign first source agreements if state funds are appropriated or if federal funds are made available for that purpose. The incentives may include but shall not be limited to providing an employer with up to fifty percent of a trainee's wages during the first ten weeks of employment and on-the-job training. [1986 c 116 § 4.]

50.64.050 Employee training period—Benefits. An employer and a prospective employee to be hired from the pool may agree to a thirty-day training period, at the end of which time the employer shall make a decision whether to hire the individual. The individual may continue to draw unemployment or public assistance, or both during the thirty-day training period. [1986 c 116 § 5.]

50.64.060 Employee training period—Financial incentives. The funds specified in RCW 50.64.040 shall be available during the thirty-day training period. [1986 c 116 § 6.]

50.64.900 Expiration date—RCW 50.64.010 through 50.64.060. RCW 50.64.010 through 50.64.060 shall expire December 31, 1989. [1986 c 116 § 8.]

50.64.901 Severability—1986 c 116. See RCW 82.62.900.

Chapter 50.65

WASHINGTON SERVICE CORPS

Sections

50.65.010	Legislative findings.
50.65.020	Definitions.
50.65.030	Washington service corps established—Commissioner's duties.
50.65.040	Washington service corps—Criteria for enrollment.
50.65.050	Washington service corps—List of local youth employment opportunities.
50.65.060	Washington service corps—Placement under work agreements.
50.65.070	Enrollees not to displace current workers.
50.65.080	Commissioner to seek assistance for youth employment exchange.
50.65.090	Authority for income-generating projects—Disposition of income.

50.65.100	Work agreements—Nondiscrimination.
50.65.110	Enrollees—Training and subsistence allowance—Medical insurance and medical aid—Notice of coverage.
50.65.120	Exemption of enrollees from unemployment compensation coverage.
50.65.130	Federal and private sector funds and grants.
50.65.138	Use of funds for enrollees and projects in distressed areas—Service corps.
50.65.140	Use of funds for enrollees and members, projects in distressed areas—Youth employment exchange.
50.65.143	Limitation on use of funds for administration—Service corps.
50.65.145	Limitation on use of funds for administration—Youth employment exchange.
50.65.900	Expiration of chapter.
50.65.901	Conflict with federal requirements—1983 1st ex.s. c 50.
50.65.902	Severability—1983 1st ex.s. c 50.
50.65.903	Conflict with federal requirements—1987 c 167.
50.65.904	Severability—1987 c 167.
50.65.905	Effective date—1987 c 167.

Washington conservation corps: Chapter 43.220 RCW.

50.65.010 Legislative findings. The legislature finds that:

(1) The unemployment rate in the state of Washington is the highest since the great depression, with a significantly higher rate among Washington youth.

(2) The policy of the state is to conserve and protect its natural and urban resources, scenic beauty, and historical and cultural sites.

(3) It is in the public interest to target employment projects to those activities which have the greatest benefit to the local economy.

(4) There are many unemployed young adults without hope or opportunities for entrance into the labor force who are unable to afford higher education and who create a serious strain on tax revenues in community services.

(5) The severe cutbacks in community and human services funding leave many local community service agencies without the resources to provide necessary services to those in need.

(6) The talent and energy of Washington's unemployed young adults are an untapped resource which should be challenged to meet the serious shortage in community services and promote and conserve the valuable resources of the state.

Therefore, the legislature finds it necessary and in the public interest to enact the Washington youth employment and conservation act. As part of this chapter, the Washington service corps is established as an operating program of the employment security department. The legislature desires to facilitate the potential of youth to obtain available job opportunities in both public and private agencies. [1987 c 167 § 1; 1983 1st ex.s. c 50 § 1.]

Reviser's note: Wherever the phrase "this act" occurred in RCW 50.65.010 through 50.65.130, it has been changed to "this chapter." "This act" [1983 1st ex.s. c 50] consists of this chapter and three uncodified sections.

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

(1) "Commissioner" means the commissioner of the employment security department.

(2) "Department" means the employment security department.

(3) "Enrollees" means those persons who have completed enrollment forms, completed a work agreement, and who have entered into the Washington service corps following the approval of the director of the supervising agency.

(4) "Corps" means the Washington service corps.

(5) "Work agreement" means the written agreement between the department, the enrollee and the supervising agency under this chapter for a period of up to eighteen months.

(6) "Supervising agencies" means those private or public agencies which develop and implement full-time service projects in which enrollees agree to participate.

(7) "Matching funds" means funding that is provided to the employment security department by agencies or individuals as financial support for a portion of the stipend or wage and benefits paid to the enrollee.

(8) "Financial support" means any thing of value contributed by agencies or individuals to the department for a youth employment project which is reasonably calculated to support directly the development and expansion of a particular program under this chapter and which represents an addition to any financial support previously or customarily provided by the individual or agency. "Financial support" includes, but is not limited to funds, equipment, facilities, and training.

(9) "Director" means the individual who shall serve as the director of the exchange. [1987 c 167 § 2; 1983 1st ex.s. c 50 § 2.]

50.65.030 Washington service corps established—Commissioner's duties. The Washington service corps is established within the employment security department. The commissioner shall:

(1) Appoint a director for the exchange and other personnel as necessary to carry out the purposes of this chapter;

(2) Coordinate youth employment and training efforts under the department's jurisdiction and cooperate with other agencies or departments providing youth services to ensure that funds appropriated for the purposes of this chapter will not be expended to duplicate existing services, but will increase the services of youth to the state;

(3) The employment security department is authorized to place subgrants with other federal, state, and local governmental agencies and private agencies to provide youth employment projects and to increase the numbers of youth employed;

(4) Determine appropriate financial support levels by private business, community groups, foundations, public agencies, and individuals which will provide matching

funds for enrollees in service projects under work agreements. The matching funds requirement may be waived for public agencies or reduced for private agencies;

(5) Recruit enrollees who are residents of the state unemployed at the time of application and are at least eighteen years of age but have not reached their twenty-sixth birthday;

(6) Recruit supervising agencies to host the enrollees in full-time service activities which shall not exceed six months' duration, which may be extended for an additional six months by mutual consent;

(7) Assist supervising agencies in the development of scholarships and matching funds from private and public agencies, individuals, and foundations in order to support a portion of the enrollee's stipend and benefits;

(8) Develop general employment guidelines for placement of enrollees in supervising agencies to establish appropriate authority for hiring, firing, grievance procedures, and employment standards which are consistent with state and federal law;

(9) Match enrollees with appropriate public agencies and available service projects;

(10) Monitor enrollee activities for compliance with this chapter and compliance with work agreements;

(11) Assist enrollees in transition to employment upon termination from the programs, including such activities as orientation to the labor market, on-the-job training, and placement in the private sector;

(12) Establish a program for providing incentives to encourage successful completion of terms of enrollment in the service corps and the continuation of educational pursuits. Such incentives shall be in the form of educational assistance;

(13) Enter into agreements with the state's community college system and other educational institutions or independent nonprofit agencies to provide special education in basic skills, including reading, writing, and mathematics for those participants who may benefit by participation in such classes. Participation is not mandatory but shall be strongly encouraged. [1987 c 167 § 3; 1983 1st ex.s. c 50 § 3.]

50.65.040 Washington service corps—Criteria for enrollment. The commissioner may select and enroll in the Washington service corps program any person who is at least eighteen years of age but has not reached their twenty-sixth birthday, is a resident of the state, and who is not for medical, legal, or psychological reasons incapable of service. In the selection of enrollees of the service corps, preference shall be given to youths residing in areas, both urban and rural, in which there exists substantial unemployment above the state average. Efforts shall be made to enroll youths who are economically, socially, physically, or educationally disadvantaged. The commissioner may prescribe such additional standards and procedures in consultation with supervising agencies as may be necessary in conformance with this chapter. [1987 c 167 § 4; 1983 1st ex.s. c 50 § 4.]

50.65.050 Washington service corps—List of local youth employment opportunities. The commissioner shall

use existing local offices of the employment security department or contract with independent, private nonprofit agencies in a local community to establish the Washington service corps program and to insure coverage of the program state-wide. Each local office shall maintain a list of available youth employment opportunities in the jurisdiction covered by the local office and the appropriate forms or work agreements to enable the youths to apply for employment in private or public supervising agencies. [1987 c 167 § 5; 1983 1st ex.s. c 50 § 5.]

50.65.060 Washington service corps—Placement under work agreements. Placements in the Washington service corps shall be made in supervising agencies under work agreements as provided under this chapter and shall include those assignments which provide for addressing community needs and conservation problems and will assist the community in economic development efforts. Each work agreement shall:

(1) Demonstrate that the service project is appropriate for the enrollee's interests, skills, and abilities and that the project is designed to meet unmet community needs;

(2) Include a requirement of regular performance evaluation. This shall include clear work performance standards set by the supervising agency and procedures for identifying strengths, recommended improvement areas and conditions for probation or dismissal of the enrollee; and

(3) Include a commitment for partial financial support for the enrollee for a private industry, public agency, community group, or foundation. The commissioner may establish additional standards for the development of placements for enrollees with supervising agencies and assure that the work agreements comply with those standards. This section shall not apply to conservation corps programs established by chapter 43.220 RCW.

Agencies of the state may use the youth employment exchange for the purpose of employing youth qualifying under this chapter. [1987 c 167 § 6; 1983 1st ex.s. c 50 § 6.]

50.65.070 Enrollees not to displace current workers. The assignment of enrollees shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits. Supervising agencies that participate in the program may not terminate, lay-off, or reduce the working hours of any employee for the purpose of utilizing an enrollee with funds available. In circumstances where substantial efficiencies or a public purpose may result, supervising agencies may utilize enrollees to carry out essential agency work or contractual functions without displacing current employees. [1983 1st ex.s. c 50 § 7.]

50.65.080 Commissioner to seek assistance for youth employment exchange. The commissioner shall seek and

may accept, on behalf of the *youth employment exchange, charitable donations of cash and other assistance including, but not limited to, equipment and materials if the donations are available for appropriate use for the purposes set forth in this chapter. [1983 1st ex.s. c 50 § 8.]

***Reviser's note:** The youth employment exchange was redesignated the Washington service corps by 1987 c 167.

50.65.090 Authority for income-generating projects—Disposition of income. The commissioner may enter into income-generating projects with public or private organizations to further the purposes of this chapter. Moneys received from contractual projects qualifying under this chapter shall be deposited in the state general fund. This section does not apply to conservation corps programs established by chapter 43.220 RCW. [1983 1st ex.s. c 50 § 9.]

50.65.100 Work agreements—Nondiscrimination. All parties entering into work agreements under this chapter shall agree that they will not discriminate in the providing of any service on the basis of race, creed, ethnic origin, sex, age, or political affiliation. [1983 1st ex.s. c 50 § 10.]

50.65.110 Enrollees—Training and subsistence allowance—Medical insurance and medical aid—Notice of coverage. The compensation received shall be considered a training and subsistence allowance. Comprehensive medical insurance, and medical aid shall be paid for the enrollees in the service corps by the commissioner in accordance with the standards and limitations of the appropriation provided for this chapter. The department shall give notice of coverage to the director of labor and industries after enrollment. The department shall not be deemed an employer of an enrollee for any other purpose.

Other provisions of law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, old age health and survivor's insurance, state retirement plans, and vacation leave do not apply to enrollees. [1987 c 167 § 7; 1985 c 230 § 6; 1983 1st ex.s. c 50 § 11.]

Severability—1985 c 230: See RCW 43.220.902.

50.65.120 Exemption of enrollees from unemployment compensation coverage. The services of enrollees placed with supervising agencies described in chapter 50.44 RCW are exempt from unemployment compensation coverage under RCW 50.44.040(5) and the enrollees shall be so advised by the department. [1983 1st ex.s. c 50 § 12.]

50.65.130 Federal and private sector funds and grants. In addition to any other power, duty, or function described by law or rule, the employment security department, through the program established under this chapter, may accept federal or private sector funds and grants and implement such programs relating to community services or employment programs and may enter

into contracts respecting such funds or grants. The department may also use funds appropriated for the purposes of this chapter as matching funds for federal or private source funds to accomplish the purposes of this chapter. The Washington service corps shall be the sole recipient of federal funds for youth employment and conservation corps programs. [1987 c 167 § 8; 1983 1st ex.s. c 50 § 13.]

50.65.138 Use of funds for enrollees and projects in distressed areas—Service corps. Sixty percent of the general funds available to the service corps program shall be for enrollees from distressed areas and for projects in distressed areas. A distressed area shall mean:

(1) A county which has an unemployment rate which is twenty percent above the state average for the immediately preceding three years;

(2) A community which has experienced sudden and severe loss of employment; or

(3) An area within a county which area:

(a) Is composed of contiguous census tracts;

(b) Has a minimum population of five thousand persons;

(c) The median household income is at least thirty-five percent below the county's median household income, as determined from data collected for the preceding United States ten-year census; and

(d) Has an unemployment rate which is at least forty percent higher than the county's unemployment rate. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations authorizing action grants for economic development and neighborhood revitalization projects. [1987 c 167 § 10.]

50.65.140 Use of funds for enrollees and members, projects in distressed areas—Youth employment exchange. See RCW 43.220.220.

50.65.143 Limitation on use of funds for administration—Service corps. (1) Not more than fifteen percent of the funds available for the service corps shall be expended for administrative costs. For the purposes of this chapter, "administrative costs" include, but are not limited to, program planning and evaluation, budget development and monitoring, personnel management, contract administration, administrative payroll, development of program reports, and administrative office space costs and utilities.

(2) The fifteen percent limitation does not include costs for any of the following: Program support activities such as direct supervision of enrollees and corpsmembers, counseling, education and job training, equipment, advisory board expenses, and extraordinary recruitment and placement procedures necessary to fill project positions.

(3) The total for all items included under subsection (1) of this section and excluded under subsection (2) of this section shall not: (a) Exceed thirty percent of the appropriated funds available during a fiscal biennium

for the service and conservation corps programs; or (b) result in an average cost per enrollee or corpsmember from general funds exceeding seven thousand dollars in the 1987–89 biennium and in succeeding biennia as adjusted by inflation factors established by the office of financial management for state budgeting purposes. The test included in (a) and (b) of this subsection are in the alternative, and it is only required that one of the tests be satisfied. [1987 c 167 § 11.]

50.65.145 Limitation on use of funds for administration—Youth employment exchange. See RCW 43.220.230.

50.65.900 Expiration of chapter. This chapter shall expire on July 1, 1993, unless extended by law for an additional fixed period of time. [1987 c 167 § 9; 1983 1st ex.s. c 50 § 14.]

50.65.901 Conflict with federal requirements—1983 1st ex.s. c 50. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1983 1st ex.s. c 50 § 16.]

50.65.902 Severability—1983 1st ex.s. c 50. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 50 § 17.]

50.65.903 Conflict with federal requirements—1987 c 167. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this chapter is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1987 c 167 § 12.]

50.65.904 Severability—1987 c 167. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 167 § 13.]

50.65.905 Effective date—1987 c 167. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1987. [1987 c 167 § 15.]

Chapter 50.98
CONSTRUCTION

Sections

50.98.010	Saving clause—1945 c 35.
50.98.020	Appointments and regulations continued.
50.98.030	Actions commenced under prior laws.
50.98.040	Acts repealed.
50.98.050	Conflicting acts repealed.
50.98.060	Repealed acts not reenacted.
50.98.070	Separability of provisions—1945 c 35.
50.98.080	Effective date—1945 c 35.
50.98.100	Base year wages to include remuneration paid for previously uncovered services.
50.98.110	Compliance with federal unemployment tax act—Internal references—Interpretation.

50.98.010 Saving clause—1945 c 35. If any provisions of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby. [1945 c 35 § 184; no RRS.]

50.98.020 Appointments and regulations continued. The repeal of any acts or parts of acts by this act shall not affect the appointment or employment of any individual or salary, wages, compensation, powers or duties relating to such individual which would continue in effect except for such repeal. Rules and regulations adopted pursuant to the provisions of any acts or parts of acts repealed by this act consistent with the provisions of this act are not affected by such repeal and are hereby continued in full force and effect. [1945 c 35 § 185; no RRS.]

50.98.030 Actions commenced under prior laws. Any action or proceeding had or commenced in any civil or criminal cause prior to the effective date of this act may be prosecuted and continued with the same effect and under the same provisions of the law in effect at the time the action or proceeding was had or commenced: *Provided*, That no appeal taken subsequent to the effective date of this act will be effective or valid unless there is compliance with the requirements of this act relating to appeals. [1945 c 35 § 186; no RRS.]

50.98.040 Acts repealed. The following acts and parts of acts relating to unemployment compensation are hereby repealed: Chapter 162, Session Laws of 1937; chapter 12, Session Laws of 1939; chapter 214, Session Laws of 1939; section 6 of chapter 201, Session Laws of 1941; chapter 253, Session Laws of 1941; chapter 65, Session Laws of 1943; chapter 127, Session Laws of 1943; chapter 226, Session Laws of 1943. [1945 c 35 § 188; no RRS.]

50.98.050 Conflicting acts repealed. All acts or parts of acts in conflict with or in derogation of this act or any part of this act are hereby repealed insofar as the same are in conflict with or in derogation of this act or any part thereof. [1945 c 35 § 189; no RRS.]

50.98.060 Repealed acts not reenacted. The repeal of any acts or parts of acts hereby shall not be construed to reenact or revive any act or parts of acts repealed or superseded by the acts or parts of acts hereby repealed. [1945 c 35 § 190; no RRS.]

50.98.070 Separability of provisions—1945 c 35. If any section, sentence, clause or phrase of this act should be held to be invalid or unconstitutional the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1945 c 35 § 191; no RRS.]

Severability—1951 c 265: "If any section, sentence, clause or word of this act shall be held unconstitutional, the invalidity of such section, sentence, clause or word shall not affect the validity of any other portion of this act, it being the intent of this legislative assembly to enact the remainder of this act notwithstanding such part so declared unconstitutional should or may be so declared." [1951 c 265 § 14.]

50.98.080 Effective date—1945 c 35. An emergency exists and this act is necessary for the preservation of the public peace, health, safety, and welfare and shall take effect on the first day of July, 1945. [1945 c 35 § 192; no RRS.]

50.98.100 Base year wages to include remuneration paid for previously uncovered services. (1) Effective with benefit years beginning on and after January 1, 1978, base year wages shall include remuneration paid for previously uncovered services: *Provided*, That the maximum benefits payable to an individual as computed for the benefit year will be reduced to the extent that benefits were paid on the basis of identical calendar quarters of the previously uncovered services with respect to a claim filed by the individual under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974. Benefits will be paid, subject to the provisions of this title, based upon the previously uncovered services to the extent that the unemployment compensation trust fund will be reimbursed for the cost thereof by the federal government under section 121 of PL 94-566 and regulations published by the secretary of labor relating thereto.

(2) For the purposes of this section, the term "previously uncovered services" means services performed before January 1, 1978, which are not employment as defined in Title 50 RCW at any time during the one year period ending December 31, 1975, and which:

(a) Is agricultural labor as defined in RCW 50.04.150 and covered by RCW 50.04.155 or domestic services as defined in and covered by RCW 50.04.160; or

(b) Is service performed by an employee of this state or a political subdivision of this state newly covered by *this 1977 amendatory act or by an employee of a non-profit educational institution which is not an institution of higher education as provided in RCW 50.44.040(3).

(3) Any nonprofit organization or governmental entity electing to make payments in lieu of contributions shall not be liable to make payments with respect to benefits paid any individual whose base year wages include

wages for previously uncovered services as defined in subsection (2) (a) and (b) of this section to the extent that the unemployment compensation fund is reimbursed for the benefits under section 121 of PL 94-566.

(4) Benefits paid any individual whose base year wages include wages for previously uncovered services as defined in subsection (2) (a) and (b) of this section shall not be charged to the experience rating account of any contribution paying employer to the extent that the unemployment compensation fund is reimbursed for the benefits under section 121 of PL 94-566. [1977 ex.s. c 292 § 20.]

***Reviser's note:** For codification of "this 1977 amendatory act" [1977 ex.s. c 292], see Codification Tables, Volume 0.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.98.110 Compliance with federal unemployment tax act—Internal references—Interpretation. *This 1977 amendatory act has been enacted to meet the requirements imposed by the federal unemployment tax act as amended by PL 94-566. Internal references in any section of *this 1977 amendatory act to the provisions of that act are intended only to apply to those provisions as they existed as of **the effective date of this 1977 amendatory act.

In view of the importance of compliance of *this 1977 amendatory act with the federal unemployment tax act, any ambiguities contained herein should be resolved in a manner consistent with the provisions of that act. Considerable weight has been given to the commentary contained in that document entitled "Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976 PL 94-566", published by the United States department of labor, employment and training administration, and that commentary should be referred to when interpreting the provisions of *this 1977 amendatory act. [1977 ex.s. c 292 § 21.]

Reviser's note: *(1) For translation of "this 1977 amendatory act", see Codification Tables, Volume 0.

** (2) For the effective dates of 1977 ex.s. c 292, see note following RCW 50.04.116.

Title 51

INDUSTRIAL INSURANCE

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- 51.08** Definitions.
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Autopsies in industrial deaths: RCW 68.50.103.
Civil defense workers, compensation for: Chapter 38.52 RCW.
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Constitutional protection of employees: State Constitution Art. 2 § 35.
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Fisheries patrol officers, compensation insurance and medical aid: RCW 75.08.206.
Labor regulations, generally: Title 49 RCW.
Lien of employees for contributions to benefit plans: Chapter 60.76 RCW.
Occupational and environmental research facility at University of Washington: RCW 28B.20.450 through 28B.20.458.
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Chapter 51.04 GENERAL PROVISIONS

Sections

- 51.04.010 Declaration of police power—Jurisdiction of courts abolished.
- 51.04.020 Departmental functions, generally.
- 51.04.030 Departmental medical aid function—Rules—
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- 51.04.040 Subpoena power of director—Enforcement by superior court.
- 51.04.050 Testimony of physicians not privileged.
- 51.04.060 No evasion of benefits or burdens.
- 51.04.070 Minor worker is sui juris—Guardianship expense.
- 51.04.080 Sending notices, orders, warrants to claimants.
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- 51.04.105 Continuation of medical aid contracts.
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- 51.04.120 Certificate of coverage required—Contents.

Public assistance recipient receiving industrial insurance compensation, recovery by department: RCW 74.04.530 through 74.04.580.

51.04.010 Declaration of police power—Jurisdiction of courts abolished. The common law system governing the remedy of workers against employers for injuries received in employment is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the worker and that little only at large expense to the public. The remedy of the worker has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker. The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this title; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided. [1977 ex.s. c 350 § 1; 1972 ex.s. c 43 § 1; 1961 c 23 § 51.04.010. Prior: 1911 c 74 § 1; RRS § 7673.]

51.04.020 Departmental functions, generally. The director shall:

- (1) Establish and promulgate rules governing the administration of this title;
- (2) Ascertain and establish the amounts to be paid into and out of the accident fund;
- (3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency;
- (4) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery;
- (5) Issue proper receipts for moneys received and certificates for benefits accrued or accruing;
- (6) Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department;

(7) Create a division of statistics within which shall be compiled such statistics as will afford reliable information upon which to base operations of all divisions under the department;

(8) Make an annual report to the governor of the workings of the department;

(9) Be empowered to enter into agreements with the appropriate agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and injuries are received in the other state, and insofar as permitted by the Constitution and laws of the United States, to enter into similar agreements with the provinces of Canada. [1977 c 75 § 77; 1963 c 29 § 1; 1961 c 23 § 51.04.020. Prior: 1957 c 70 § 3; prior: (i) 1921 c 182 § 9; 1911 c 74 § 24; RRS § 7703. (ii) 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

Severability—1963 c 29: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 29 § 2.] This applies to RCW 51.04.020.

Assignment of wage claims: RCW 49.48.040.

Electricians, installations: Chapters 19.28, 19.29 RCW.

Farm labor contractors: Chapter 19.30 RCW.

Health and safety, underground workers: Chapter 49.24 RCW.

Minimum wage act: Chapter 49.46 RCW.

Seasonal labor disputes: Chapter 49.40 RCW.

Washington Industrial Safety and Health Act: Chapter 49.17 RCW.

51.04.030 Departmental medical aid function—Rules—Adoption of maximum fees—Maintenance of records and payment of medical bills. The director shall, through the division of industrial insurance, supervise the providing of prompt and efficient care and treatment, including care provided by physicians' assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and promulgate and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: *Provided*, That, the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: *And provided further*, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as state-wide access to quality service is maintained for injured workers.

The director shall make and, from time to time, change as may be, and promulgate a fee bill of the maximum charges to be made by any physician, surgeon, hospital, druggist, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. No service covered under

this title shall be charged or paid at a rate or rates exceeding those specified in such fee bill, and no contract providing for greater fees shall be valid as to the excess.

The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the promulgated rules, regulations, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules and regulations promulgated under it. [1989 c 189 § 1; 1986 c 200 § 8; 1980 c 14 § 1. Prior: 1977 ex.s. c 350 § 2; 1977 ex.s. c 239 § 1; 1971 ex.s. c 289 § 74; 1961 c 23 § 51.04.030; prior: (i) 1917 c 28 § 6; RRS § 7715. (ii) 1919 c 129 § 3; 1917 c 29 § 7; RRS § 7716. (iii) 1923 c 136 § 10; RRS § 7719.]

51.04.040 Subpoena power of director—Enforcement by superior court. The director and his or her authorized assistants shall have power to issue subpoenas to enforce the attendance and testimony of witnesses and the production and examination of books, papers, photographs, tapes, and records before the department in connection with any claim made to the department, any billing submitted to the department, or the assessment or collection of premiums. The superior court shall have the power to enforce any such subpoena by proper proceedings. [1987 c 316 § 1; 1986 c 200 § 9; 1977 ex.s. c 323 § 1; 1961 c 23 § 51.04.040. Prior: 1915 c 188 § 7; RRS § 7699.]

Severability—1977 ex.s. c 323: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 323 § 29.]

Effective date—1977 ex.s. c 323: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977." [1977 ex.s. c 323 § 30.]

51.04.050 Testimony of physicians not privileged. In all hearings, actions or proceedings before the department or the board of industrial insurance appeals, or before any court on appeal from the board, any physician having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of physician to patient. [1961 c 23 § 51.04.050. Prior: 1915 c 188 § 4; RRS § 7687.]

Nurse-patient privilege subject to RCW 51.04.050: RCW 5.62.030.

51.04.060 No evasion of benefits or burdens. No employer or worker shall exempt himself or herself from the burden or waive the benefits of this title by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void. [1977 ex.s. c 350 § 3; 1961 c 23 § 51.04.060. Prior: 1911 c 74 § 11; RRS § 7685.]

51.04.070 Minor worker is sui juris—Guardianship expense. A minor shall be deemed sui juris for the purpose of this title, and no other person shall have any cause of action or right to compensation for an injury to such minor worker, except as expressly provided in this title, but in the event of any disability payments becoming due under this title to a minor worker, under the age of eighteen, such disability payments shall be paid to his or her parent, guardian or other person having legal custody of his or her person until he or she reaches the age of eighteen. Upon the submission of written authorization by any such parent, guardian, or other person, any such disability payments may be paid directly to such injured worker under the age of eighteen years. If it is necessary to appoint a legal guardian to receive such disability payments, there shall be paid from the accident fund or by the self-insurer, as the case may be, toward the expenses of such guardianship a sum not to exceed three hundred dollars. [1980 c 14 § 2. Prior: 1977 ex.s. c 350 § 4; 1977 ex.s. c 323 § 2; 1961 c 23 § 51.04.070; prior: 1959 c 308 § 1; 1957 c 70 § 4; prior: 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.04.080 Sending notices, orders, warrants to claimants. On all claims under this title, claimants' written notices, orders, or warrants shall not be forwarded to, or in care of, any representative of the claimant, but shall be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the board of industrial insurance appeals. [1972 ex.s. c 43 § 2; 1961 c 23 § 51.04.080. Prior: 1959 c 308 § 2; 1957 c 70 § 5; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

51.04.082 Notices and orders—Mail or personal service. Any notice or order required by this title to be mailed to any employer may be served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state, but if the notice or order is mailed, it shall be addressed to the address of the employer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax or any increases or penalties thereon. [1986 c 9 § 2.]

51.04.085 Transmission of amounts payable to claimants, beneficiaries or suppliers to their accounts. The department may, at any time, on receipt of written authorization, transmit amounts payable to a claimant, beneficiary, or any supplier of goods or services to the account of such person in a bank or other financial institution regulated by state or federal authority. [1977 ex.s. c 323 § 26.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.04.090 Effect of adjudication of applicability. If any employer shall be adjudicated to be outside the lawful scope of this title, the title shall not apply to him or her or his or her worker, or if any worker shall be adjudicated to be outside the lawful scope of this title because of remoteness of his or her work from the hazard of his or her employer's work, any such adjudication shall not impair the validity of this title in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions for the creation of the accident fund, or the provisions of this title making the compensation to the worker provided in it exclusive of any other remedy on the part of the worker shall be held invalid the entire title shall be thereby invalidated. In other respects an adjudication of invalidity of any part of this title shall not affect the validity of the title as a whole or any other part thereof. [1977 ex.s. c 350 § 5; 1961 c 23 § 51.04.090. Prior: 1911 c 74 § 27; RRS § 7706.]

51.04.100 Statutes of limitation saved. If the provisions of this title relative to compensation for injuries to or death of workers become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: *Provided*, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the worker on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by this title, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed. [1977 ex.s. c 350 § 6; 1961 c 23 § 51.04.100. Prior: 1911 c 74 § 28; RRS § 7707.]

51.04.105 Continuation of medical aid contracts. The obligations of all medical aid contracts approved by the supervisor prior to the repeal of any section of this title pertaining to medical aid contracts shall continue until the expiration of such contracts notwithstanding any such repeal and all provisions of this title pertaining to the operation of medical aid contracts and the control and supervision of such contracts which were in effect at the time of such approval shall, notwithstanding any other provision of law, remain in full force and effect. [1977 ex.s. c 323 § 25.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.04.110 Workers' compensation advisory committee—Members, terms, compensation—Duties—Expenses—Study. The director shall appoint a workers' compensation advisory committee composed of ten members: Three representing subject workers, three representing subject employers, one representing self-insurers, one representing workers of self-insurers, and two ex officio members, without a vote, one of whom shall be the chairman of the board of industrial appeals and the other the representative of the department. The member representing the department shall be chairman. This committee shall conduct a continuing study of any aspects of workers' compensation as the committee shall determine require their consideration. The committee shall report its findings to the department or the board of industrial insurance appeals for such action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1971 and the terms of the members representing the workers and employers shall be staggered so that the director shall designate one member from each such group initially appointed whose term shall expire on June 30, 1972 and one member from each such group whose term shall expire on June 30, 1973. The members shall serve without compensation, but shall be entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The committee may hire such experts, if any, as it shall require to discharge its duties, and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it shall need without charge. All expenses of this committee shall be paid by the department. [1982 c 109 § 2; 1980 c 14 § 3. Prior: 1977 ex.s. c 350 § 7; 1977 c 75 § 78; 1975-'76 2nd ex.s. c 34 § 150; 1975 ex.s. c 224 § 1; 1972 ex.s. c 43 § 37; 1971 ex.s. c 289 § 67.]

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

Effective date—1975 1st ex.s. c 224: "This 1975 amendatory act shall take effect on July 1, 1975." [1975 1st ex.s. c 224 § 20.]

51.04.120 Certificate of coverage required—Contents. Any employer other than a self-insurer subject to this title shall, under such rules as the department shall prescribe, apply for and obtain from the department a certificate of coverage. The certificate shall be personal and nontransferable and shall be valid as long as the employer continues in business and pays the taxes due the state. In case the employer maintains more than one place of business, a separate certificate of coverage for each place at which business is transacted shall be required. Each certificate shall be numbered and shall show the name, residence, and place and character of business of the employer and such other information as the department deems necessary and shall be posted conspicuously at the place of business for which it is issued. Where a place of business of the employer is changed, the employer must notify the department within thirty days of the new address and a new certificate shall be issued for the new place of business. No employer may engage in any business for which taxes are due under this title without having a certificate of

coverage in compliance with this section, except that the department, by general rule, may provide for the issuance of a certificate of coverage to employers with temporary places of business. [1986 c 9 § 1.]

Penalties for engaging in business without certificate of coverage:
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Chapter 51.08 DEFINITIONS

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51.08.010 Meaning of words. Unless the context indicates otherwise, words used in this title shall have the meaning given in this chapter. [1961 c 23 § 51.08.010. Prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.012 "Accredited school." For the purposes of this title, "accredited school" means a school or course of instruction which is:

(1) Approved by the state superintendent of public instruction, the state board of education, the state board for community college education, or the state division of vocational education of the *coordinating council for occupational education; or

(2) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under an agreement registered with the apprenticeship council pursuant to chapter 49.04 RCW. [1975 1st ex.s. c 224 § 2; 1969 ex.s. c 77 § 3.]

***Reviser's note:** The coordinating council for occupational education was abolished by 1975 1st ex.s. c 174 § 9.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.08.013 "Acting in the course of employment." "Acting in the course of employment" means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the job-site, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking areas, and it is not necessary that at the time an injury is sustained by a worker he or she be doing the work on which his or her compensation is based or that the event be within the time limits on which industrial insurance or medical aid premiums or assessments are paid. The term shall not include time spent going to or coming from the employer's place of business in commuter ride sharing, as defined in RCW 46.74.010(1), notwithstanding any participation by the employer in the ride-sharing arrangement. [1979 c 111 § 15; 1977 ex.s. c 350 § 8; 1961 c 107 § 3.]

Severability—1979 c 111: See note following RCW 46.74.010.

51.08.014 "Agriculture." "Agriculture" means the business of growing or producing any agricultural or horticultural produce or crop, including the raising of any animal, bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. [1971 ex.s. c 289 § 75.]

Effective dates—**Severability**—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.015 "Amount," "payment," "premium," "contribution," "assessment." Wherever and whenever in any of the provisions of this title relating to any payments by an employer or worker the words "amount" and/or "amounts," "payment" and/or "payments," "premium" and/or "premiums," "contribution" and/or "contributions," and "assessment" and/or "assessments" appear said words shall be construed to mean taxes, which are the money payments by an employer or worker which are required by this title to be made to the state treasury for the accident fund, the medical aid fund, the supplemental pension fund, or any other fund created by this title. [1977 ex.s. c 350 § 9; 1972 ex.s. c 43 § 3; 1961 c 23 § 51.08.015. Prior: 1959 c 308 § 25.]

51.08.018 "Average monthly wage." For purposes of this title, the average monthly wage in the state shall be the average annual wage as determined under RCW 50.04.355 as now or hereafter amended divided by twelve. [1977 ex.s. c 323 § 3; 1971 ex.s. c 289 § 15.]

Severability—**Effective date**—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—**Severability**—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.020 "Beneficiary." "Beneficiary" means a husband, wife, child, or dependent of a worker in whom

shall vest a right to receive payment under this title: *Provided*, That a husband or wife of an injured worker, living separate and apart in a state of abandonment, regardless of the party responsible therefor, for more than one year at the time of the injury or subsequently, shall not be a beneficiary. A spouse who has lived separate and apart from the other spouse for the period of two years and who has not, during that time, received, or attempted by process of law to collect, funds for maintenance, shall be deemed living in a state of abandonment. [1977 ex.s. c 350 § 10; 1973 1st ex.s. c 154 § 91; 1961 c 23 § 51.08.020. Prior: 1957 c 70 § 6; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

51.08.030 "Child." "Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the worker, all while under the age of eighteen years, or under the age of twenty-three years while permanently enrolled at a full time course in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap. [1986 c 293 § 1; 1980 c 14 § 4. Prior: 1977 ex.s. c 323 § 4; 1977 ex.s. c 80 § 36; 1975-'76 2nd ex.s. c 42 § 37; 1972 ex.s. c 65 § 1; 1969 ex.s. c 77 § 1; 1961 c 23 § 51.08.030; prior: 1957 c 70 § 7; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1941 c 209 § 3, part; Rem. Supp. 1941 § 7679, part.]

Severability—**Effective date**—1977 ex.s. c 323: See notes following RCW 51.04.040.

Purpose—**Intent**—**Severability**—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—**Construction**—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

51.08.040 "Department." "Department" means department of labor and industries. [1961 c 23 § 51.08.040.]

Department of labor and industries: Chapter 43.22 RCW.

51.08.050 "Dependent." "Dependent" means any of the following named relatives of a worker whose death results from any injury and who leaves surviving no widow, widower, or child, viz: father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident are actually and necessarily dependent in whole or in part for their support upon the earnings of the worker: *Provided*,

That unless otherwise provided by treaty, aliens other than father or mother, not residing within the United States at the time of the accident, are not included. [1977 ex.s. c 350 § 11; 1961 c 23 § 51.08.050. Prior: 1957 c 70 § 8; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.060 "Director." "Director" means the director of labor and industries. [1961 c 23 § 51.08.060.]

51.08.070 "Employer"—Exception. "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers.

For the purposes of this title, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an employer when:

(1) Contracting with any other person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(3) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(4) The work which the person, firm, or corporation has contracted to perform is:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW. [1981 c 128 § 1; 1977 ex.s. c 350 § 12; 1971 ex.s. c 289 § 1; 1961 c 23 § 51.08.070. Prior: 1957 c 70 § 9; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.095 "Health services provider"—"Provider." "Health services provider" or "provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of

services related to the treatment of an industrially injured worker. [1986 c 200 § 12.]

51.08.100 "Injury." "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom. [1961 c 23 § 51.08.100. Prior: 1959 c 308 § 3; 1957 c 70 § 12; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.110 "Invalid." "Invalid" means one who is physically or mentally incapacitated from earning. [1961 c 23 § 51.08.110. Prior: 1957 c 70 § 13; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.140 "Occupational disease." "Occupational disease" means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title. [1961 c 23 § 51.08.140. Prior: 1959 c 308 § 4; 1957 c 70 § 16; prior: 1951 c 236 § 1; 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

51.08.142 "Occupational disease"—Exclusion of mental conditions caused by stress. The department shall adopt a rule pursuant to chapter 34.05 RCW that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease in RCW 51.08.140. [1988 c 161 § 16.]

51.08.150 "Permanent partial disability." "Permanent partial disability" means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known in surgery to be permanent partial disability. [1961 c 23 § 51.08.150. Prior: 1957 c 70 § 17; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.08.160 "Permanent total disability." "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful occupation. [1977 ex.s. c 350 § 13; 1961 c 23 § 51.08.160. Prior: 1957 c 70 § 18; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.08.173 "Self-insurer." "Self-insurer" means an employer or group of employers which has been authorized under this title to carry its own liability to its employees covered by this title. [1983 c 174 § 1; 1971 ex.s. c 289 § 80.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.175 "State fund"——"State of Washington industrial insurance fund." "State fund" means those funds held by the state or any agency thereof for the purposes of this title. The "state of Washington industrial insurance fund" means the department when acting as the agency to insure the industrial insurance obligation of employers. The terms "state fund" and "state of Washington industrial insurance fund" shall be deemed synonymous when applied to the functions of the department connected with the insuring of employers who secure the payment of industrial insurance benefits through the state. The director shall manage the state fund and the state of Washington industrial insurance fund and shall have such powers as are necessary to carry out its functions and may reinsure any risk insured by the state fund. [1977 ex.s. c 323 § 5; 1972 ex.s. c 43 § 5; 1971 ex.s. c 289 § 88.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.177 "Successor." "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, a major part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. [1986 c 9 § 3.]

51.08.178 "Wages"——Monthly wages as basis of compensation——Computation thereof. (1) For the purposes of this title, the monthly wages the worker was receiving from all employment at the time of injury shall be the basis upon which compensation is computed unless otherwise provided specifically in the statute concerned. In cases where the worker's wages are not fixed by the month, they shall be determined by multiplying the daily wage the worker was receiving at the time of the injury:

(a) By five, if the worker was normally employed one day a week;

(b) By nine, if the worker was normally employed two days a week;

(c) By thirteen, if the worker was normally employed three days a week;

(d) By eighteen, if the worker was normally employed four days a week;

(e) By twenty-two, if the worker was normally employed five days a week;

(f) By twenty-six, if the worker was normally employed six days a week;

(g) By thirty, if the worker was normally employed seven days a week.

The term "wages" shall include the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer as part of the contract of hire, but shall not include overtime pay except in cases under subsection (2) of this section. However, tips shall also be considered wages only to the extent such tips are reported to the employer for federal income tax purposes. The daily wage shall be the hourly wage multiplied by the number of hours the worker is normally employed. The number of hours the worker is normally employed shall be determined by the department in a fair and reasonable manner, which may include averaging the number of hours worked per day.

(2) In cases where (a) the worker's employment is exclusively seasonal in nature or (b) the worker's current employment or his or her relation to his or her employment is essentially part-time or intermittent, the monthly wage shall be determined by dividing by twelve the total wages earned, including overtime, from all employment in any twelve successive calendar months preceding the injury which fairly represent the claimant's employment pattern.

(3) If, within the twelve months immediately preceding the injury, the worker has received from the employer at the time of injury a bonus as part of the contract of hire, the average monthly value of such bonus shall be included in determining the worker's monthly wages.

(4) In cases where a wage has not been fixed or cannot be reasonably and fairly determined, the monthly wage shall be computed on the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed. [1988 c 161 § 12; 1980 c 14 § 5. Prior: 1977 ex.s. c 350 § 14; 1977 ex.s. c 323 § 6; 1971 ex.s. c 289 § 14.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.180 "Worker"——Exceptions. (1) "Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment: *Provided*, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

(2) For the purposes of this title, any person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not a worker when:

(a) Contracting to perform work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(b) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(c) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(d) The work which the person, firm, or corporation has contracted to perform is:

(i) The work of a contractor as defined in RCW 18.27.010; or

(ii) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW.

(3) Any person, firm, or corporation registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW including those performing work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is a worker when the contractor supervises or controls the means by which the result is accomplished or the manner in which the work is performed.

(4) For the purposes of this title, any person participating as a driver or back-up driver in commuter ride sharing, as defined in RCW 46.74.010(1), is not a worker while driving a ride-sharing vehicle on behalf of the owner or lessee of the vehicle. [1987 c 175 § 3; 1983 c 97 § 1; 1982 c 80 § 1; 1981 c 128 § 2; 1977 ex.s. c 350 § 15; 1961 c 23 § 51.08.180. Prior: 1957 c 70 § 20; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1937 c 211 § 2; RRS § 7674-1.]

51.08.185 "Employee." "Employee" shall have the same meaning as "worker" when the context would so indicate, and shall include all officers of the state, state agencies, counties, municipal corporations, or other public corporations, or political subdivisions. [1977 ex.s. c 350 § 16; 1972 ex.s. c 43 § 4.]

Chapter 51.12

EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

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Health and safety of underground workers: Chapter 49.24 RCW.

51.12.010 Employments included—Declaration of policy. There is a hazard in all employment and it is the purpose of this title to embrace all employments which are within the legislative jurisdiction of the state.

This title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment. [1972 ex.s. c 43 § 6; 1971 ex.s. c 289 § 2; 1961 c 23 § 51.12.010. Prior: 1959 c 55 § 1; 1955 c 74 § 2; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

51.12.020 Employments excluded. The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, repair, remodeling, or similar work in or about the private home of the employer.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners: *Provided*, That after July 26, 1981, sole proprietors or partners who for the first time register under chapter 18.27 RCW or become licensed for the first time under chapter 19.28 RCW shall be included under the mandatory coverage provisions of this title subject to the provisions of RCW 51.32.030. These persons may elect to withdraw from coverage under RCW 51.12.115.

(6) Any child under eighteen years of age employed by his parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8) Any officer of a corporation elected and empowered in accordance with the articles of incorporation or bylaws of a corporation who at all times during the period involved is also a director and shareholder of the corporation. However, any corporation may elect to cover such officers who are in fact employees of the corporation in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers. [1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020. Prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.12.035 Volunteers, inclusion for medical aid benefit purposes—"Volunteer" defined. (1) Volunteers shall be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under chapter 51.36 RCW.

A "volunteer" shall mean a person who performs any assigned or authorized duties for the state or any agency thereof, except emergency services workers as described by chapter 38.52 RCW, brought about by one's own free choice, receives no wages, and is registered and accepted as a volunteer by the state or any agency thereof, prior to the occurrence of the injury or the contraction of an occupational disease, for the purpose of engaging in authorized volunteer service: *Provided*, That such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties.

Any and all premiums or assessments due under this title on account of such volunteer service shall be the obligation of and be paid by the state or any agency thereof which has registered and accepted the services of volunteers.

(2) Volunteers may be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under chapter 51.36 RCW at the option of any city, county, town, special district, municipal corporation, or political subdivision of any type, or any private nonprofit charitable organization, when any such unit of local government or any such nonprofit organization has given notice of covering all of its volunteers to the director prior to the occurrence of the injury or contraction of an occupational disease.

A "volunteer" shall mean a person who performs any assigned or authorized duties for any such unit of local government, or any such organization, except emergency services workers as described by chapter 38.52 RCW, or fire fighters covered by chapter 41.24 RCW, brought about by one's own free choice, receives no wages, and is registered and accepted as a volunteer by any such unit of local government, or any such organization which has given such notice, for the purpose of engaging in authorized volunteer services: *Provided*, That such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties: *Provided further*, That juveniles performing community services under chapter 13.40 RCW may not be granted coverage as volunteers under this section.

Any and all premiums or assessments due under this title on account of such volunteer service for any such unit of local government, or any such organization shall be the obligation of and be paid by such organization which has registered and accepted the services of volunteers and exercised its option to secure the medical aid benefits under chapter 51.36 RCW for such volunteers. [1981 c 266 § 3; 1977 ex.s. c 350 § 17; 1975 1st ex.s. c 79 § 1; 1974 ex.s. c 171 § 44; 1971 c 20 § 1.]

51.12.045 Offenders performing community service. Offenders performing community services pursuant to court order or under RCW 13.40.080 may be deemed employees and/or workers under this title at the option of the state, county, city, town, or nonprofit organization under whose authorization the services are performed. Any premiums or assessments due under this title for community services work shall be the obligation of and be paid for by the state agency, county, city, town, or nonprofit organization for which the offender performed the community services. Coverage commences when a state agency, county, city, town, or nonprofit organization has given notice to the director that it wishes to cover offenders performing community services before the occurrence of an injury or contraction of an occupational disease. [1986 c 193 § 1; 1984 c 24 § 4; 1981 c 266 § 1.]

Counties, cities, and towns authorized to treat offenders as employees or workers under Title 51 RCW: RCW 35.21.209, 35A.21.220, 36.16.139.

51.12.050 State, county and municipal work—Liability for premiums. Whenever the state, county, any municipal corporation, or other taxing district shall engage in any work, or let a contract therefor, in which workers are employed for wages, this title shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county, municipality, or other taxing district. If the work is being done by contract, the payroll of the contractor and the subcontractor shall be the basis of computation and, in the case of contract work consuming less than one year in performance, the required payment into the accident fund shall be based upon the total payroll. The

contractor and any subcontractor shall be subject to the provisions of this title, and the state for its general fund, the county, municipal corporation, or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund and the contractor, in turn, shall be entitled to collect from the subcontractor his or her proportionate amount of the payment.

Whenever and so long as, by state law, city charter, or municipal ordinance, provision is made for employees or peace officers injured in the course of employment, such employees shall not be entitled to the benefits of this title and shall not be included in the payroll of the municipality under this title: *Provided*, That whenever any state law, city charter, or municipal ordinance only provides for payment to the employee of the difference between his or her actual wages and that received under this title such employees shall be entitled to the benefits of this title and may be included in the payroll of the municipality. [1977 ex.s. c 350 § 18; 1972 ex.s. c 43 § 8; 1961 c 23 § 51.12.050. Prior: 1955 c 74 § 6; prior: (i) 1923 c 136 § 5, part; 1921 c 182 § 8, part; 1915 c 188 § 6, part; 1911 c 74 § 17, part; RRS § 7692, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

51.12.060 Federal projects. The application of this title and related safety laws is hereby extended to all lands and premises owned or held by the United States of America, by deed or act of cession, by purchase or otherwise, which are within the exterior boundaries of the state of Washington, and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which are within the exterior boundaries of the state, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the state, and as fully as is permitted under the provisions of that act of the congress of the United States approved June 25, 1936, granting to the several states jurisdiction and authority to apply their state workers' compensation laws on all property and premises belonging to the United States of America, being 49 United States Statutes at large 1938, title 40, section 290 United States code, 1958 edition: *Provided*, That this title shall not apply to employees of the United States of America. [1977 ex.s. c 350 § 19; 1961 c 23 § 51.12.060. Prior: 1937 c 147 § 1; RRS § 7676-2.]

51.12.070 Work done by contract—Liability for premiums—Subcontractors. The provisions of this title shall apply to all work done by contract; the person, firm, or corporation who lets a contract for such work shall be responsible primarily and directly for all premiums upon the work. The contractor and any subcontractor shall be subject to the provisions of this title and the person, firm, or corporation letting the contract shall be entitled to collect from the contractor the full amount payable in premiums and the contractor in turn shall be entitled to collect from the subcontractor his proportionate amount of the payment.

For the purposes of this section, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW shall not be responsible for any premiums upon the work of any subcontractor if:

(1) The subcontractor is currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) The subcontractor has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(3) The subcontractor maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(4) The subcontractor has contracted to perform:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW.

It shall be unlawful for any county, city or town to issue a construction building permit to any person who has not submitted to the department an estimate of payroll and paid premium thereon as provided by chapter 51.16 RCW of this title or proof that such person has qualified as a self-insurer. [1981 c 128 § 4; 1971 ex.s. c 289 § 81; 1965 ex.s. c 20 § 1; 1961 c 23 § 51.12.070. Prior: 1955 c 74 § 7; prior: 1923 c 136 § 5, part; 1921 c 182 § 8, part; 1915 c 188 § 6, part; 1911 c 74 § 17, part; RRS § 7692, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.12.080 Interstate, foreign and intrastate railway employees. Inasmuch as it has proved impossible in the case of employees of common carriers by railroad, engaged in maintenance and operation of railways doing interstate, foreign and intrastate commerce, and in maintenance and construction of their equipment, to separate and distinguish the connection of such employees with interstate or foreign commerce from their connection with intrastate commerce, and such employees have, in fact, received no compensation under this title, the provisions of this title shall not apply to work performed by such employees in the maintenance and operation of such railroads or performed in the maintenance or construction of their equipment, or to the employees of such common carriers by railroad engaged therein, but nothing herein shall be construed as excluding from the operation of this title railroad construction work, or the employees engaged thereon: *Provided*, That common carriers by railroad engaged in such interstate or foreign commerce and in intrastate commerce shall, in all cases where liability does not exist under the laws of the United States, be liable in damages to any person suffering injury while employed by such carrier, or in case of the death of such employee, to the surviving spouse and child, or children, and if no surviving spouse or child or children, then to the parents, minor sisters, or minor

brothers, residents of the United States at the time of such death, and who were dependent upon such deceased for support, to the same extent and subject to the same limitations as the liability now existing, or hereafter created, by the laws of the United States governing recoveries by railroad employees injured while engaged in interstate commerce: *Provided further*, That if any interstate common carrier by railroad shall also be engaged in one or more intrastate enterprises or industries (including street railways and power plants) other than its railroad, the foregoing provisions of this section shall not exclude from the operation of the other sections of this title or bring under the foregoing proviso of this section any work of such other enterprise or industry, the payroll of which may be clearly separable and distinguishable from the payroll of the maintenance or operation of such railroad, or of the maintenance or construction of its equipment: *Provided further*, That nothing in this section shall be construed as relieving an independent contractor engaged through or by his employees in performing work for a common carrier by railroad, from the duty of complying with the terms of this title, nor as depriving any employee of such independent contractor of the benefits of this title. [1973 1st ex.s. c 154 § 92; 1972 ex.s. c 43 § 9; 1961 c 23 § 51.12-.080. Prior: 1925 ex.s. c 84 § 1; 1919 c 67 § 1; 1917 c 29 § 19; 1911 c 74 § 18; RRS § 7693.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

51.12.090 Intrastate and interstate commerce. The provisions of this title shall apply to employers and workers (other than railways and their workers) engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation now exists under or may hereafter be established by the congress of the United States, only to the extent that the payroll of such workers may and shall be clearly separable and distinguishable from the payroll of workers engaged in interstate or foreign commerce: *Provided*, That as to workers whose payroll is not so clearly separable and distinguishable the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of RCW 51.12.080: *Provided further*, That nothing in this title shall be construed to exclude goods or materials and/or workers brought into this state for the purpose of engaging in work. [1983 c 170 § 1; 1982 c 63 § 16; 1977 ex.s. c 350 § 20; 1972 ex.s. c 43 § 10; 1961 c 23 § 51.12.090. Prior: 1959 c 308 § 10; 1919 c 67 § 3; RRS § 7695.]

Effective dates—**Implementation**—1982 c 63: See note following RCW 51.32.095.

51.12.095 Common carrier employees—Owners and operators of trucks. (1) Common or contract carriers doing business in this state that are engaged exclusively in interstate or foreign commerce, or any combination thereof, shall provide coverage under this title for their Washington employees, unless the employer has furnished workers' compensation insurance

coverage under the laws of another state for the coverage of employees in this state: *Provided*, That any common or contract carrier or its successor that formerly had coverage under this title and by virtue of being exclusively engaged in interstate or foreign commerce, or any combination thereof, withdrew its acceptance of liability under this title by filing written notice with the director of the withdrawal of its acceptance prior to January 2, 1987, shall be governed by the provisions of this section that were in effect as of that date.

(2) A person who is domiciled in this state and who owns and operates a truck engaged in intrastate, interstate, or foreign commerce, or any combination thereof, may elect coverage under this title in the manner provided by RCW 51.32.030, whether or not the truck is leased to a common or contract carrier. [1989 c 368 § 1; 1983 c 170 § 2.]

Effective date—1989 c 368: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 368 § 2.]

51.12.100 Maritime occupations—Segregation of payrolls—Common enterprise. (1) The provisions of this title shall not apply to a master or member of a crew of any vessel, or to employers and workers for whom a right or obligation exists under the maritime laws for personal injuries or death of such workers.

(2) If an accurate segregation of payrolls of workers for whom such a right or obligation exists under the maritime laws cannot be made by the employer, the director is hereby authorized and directed to fix from time to time a basis for the approximate segregation of the payrolls of employees to cover the part of their work for which no right or obligation exists under the maritime laws for injuries or death occurring in such work, and the employer, if not a self-insurer, shall pay premiums on that basis for the time such workers are engaged in their work.

(3) Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workers, such site or place shall be deemed for the purposes of this title to be the common plant of such employers.

(4) In the event payments are made under this title prior to the final determination under the maritime laws, such benefits shall be repaid by the worker or beneficiary if recovery is subsequently made under the maritime laws. [1988 c 271 § 2; 1977 ex.s. c 350 § 21; 1975 1st ex.s. c 224 § 3; 1972 ex.s. c 43 § 11; 1961 c 23 § 51.12.100. Prior: 1931 c 79 § 1; 1925 ex.s. c 111 § 1; RRS § 7693a.]

Effective date—**Applicability**—1988 c 271 §§ 1-4: See note following RCW 51.12.102.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Ferry system employees in extrahazardous employment: RCW 47.64.070.

51.12.102 Benefits resulting from asbestos-related disease in maritime workers—Expiration of section.

(1) The department shall furnish the benefits provided under this title to any worker or beneficiary who may have a right or claim for benefits under the maritime laws of the United States resulting from an asbestos-related disease if (a) there are objective clinical findings to substantiate that the worker has an asbestos-related claim for occupational disease and (b) the worker's employment history has a prima facie indicia of injurious exposure to asbestos fibers while employed in the state of Washington in employment covered under this title. The department shall render a decision as to the liable insurer and shall continue to pay benefits until the liable insurer initiates payments or benefits are otherwise properly terminated under this title.

(2) The benefits authorized under subsection (1) of this section shall be paid from the medical aid fund, with the self-insurers and the state fund each paying a pro rata share, based on number of worker hours, of the costs necessary to fund the payments. For the purposes of this subsection only, the employees of self-insured employers shall pay an amount equal to one-half of the share charged to the self-insured employer.

(3) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a self-insurer or the state fund, then the self-insurer or state fund shall reimburse the medical aid fund for all benefits paid and costs incurred by the fund.

(4) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program other than the federal social security, old age survivors, and disability insurance act, 42 U.S.C. or an insurer under the maritime laws of the United States:

(a) The department shall pursue the federal program insurer on behalf of the worker or beneficiary to recover from the federal program insurer the benefits due the worker or beneficiary and on its own behalf to recover the benefits previously paid to the worker or beneficiary and costs incurred;

(b) For the purpose of pursuing recovery under this subsection, the department shall be subrogated to all of the rights of the worker or beneficiary receiving compensation under subsection (1) of this section; and

(c) The department shall not pursue the worker or beneficiary for the recovery of benefits paid under subsection (1) of this section unless the worker or beneficiary receives recovery from the federal program insurer, in addition to receiving benefits authorized under this section. The director may exercise his or her discretion to waive, in whole or in part, the recovery of any such benefits where the recovery would be against equity and good conscience.

(5) The provisions of subsection (1) of this section shall not apply if the worker or beneficiary refuses, for whatever reason, to assist the department in making a proper determination of coverage. If a worker or beneficiary refuses to cooperate with the department, self-insurer, or federal program insurer by failing to provide

information that, in the opinion of the department, is relevant in determining the liable insurer, or if a worker refuses to submit to medical examination, or obstructs or fails to cooperate with the examination, the department shall reject the application for benefits. No information obtained under this section is subject to release by subpoena or other legal process.

(6) The amount of any third party recovery by the worker or beneficiary shall be subject to a lien by the department to the full extent that the medical aid fund has not been otherwise reimbursed by another insurer. Reimbursement shall be made immediately to the medical aid fund upon recovery from the third party suit. If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program insurer, the department shall not participate in the costs or attorneys' fees incurred in bringing the third party suit.

(7) This section shall expire July 1, 1993. [1988 c 271 § 1.]

Report to legislature—1988 c 271 § 1: "The department of labor and industries shall conduct a study of the program established by RCW 51.12.102. The department's study shall include the use of benefits under the program and the cost of the program. The department shall report the results of the study to the economic development and labor committee of the senate and the commerce and labor committee of the house of representatives, or the appropriate successor committees, at the start of the 1993 regular legislative session." [1988 c 271 § 4.]

Effective date—Applicability—1988 c 271 §§ 1-4: "Sections 1 through 4 of this act shall take effect July 1, 1988, and shall apply to all claims filed on or after that date or pending a final determination on that date." [1988 c 271 § 5.]

51.12.110 Elective adoption—Withdrawal—Cancellation. Any employer who has in his or her employment any person or persons excluded from mandatory coverage pursuant to *RCW 51.12.020 (1), (2), (3), (4), (6), (7), (8), or (9) may file notice in writing with the director, on such forms as the department may provide, of his or her election to make such persons otherwise excluded subject to this title. The employer shall forthwith display in a conspicuous manner about his or her works, and in a sufficient number of places to reasonably inform his or her workers of the fact, printed notices furnished by the department stating that he or she has so elected. Said election shall become effective upon the filing of said notice in writing. The employer and his or her workers shall be subject to all the provisions of this title and entitled to all of the benefits thereof: *Provided*, That those who have heretofore complied with the foregoing conditions and are carried and considered by the department as within the purview of this title shall be deemed and considered as having fully complied with its terms and shall be continued by the department as entitled to all of the benefits and subject to all of the liabilities without other or further action. Any employer who has complied with this section may withdraw his or her acceptance of liability under this title by filing written notice with the director of the withdrawal of his or her acceptance. Such withdrawal shall become effective thirty days after the filing of such notice or on the date of the termination of the security for

payment of compensation, whichever last occurs. The employer shall, at least thirty days before the effective date of the withdrawal, post reasonable notice of such withdrawal where the affected worker or workers work and shall otherwise notify personally the affected workers. Withdrawal of acceptance of this title shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period of acceptance.

The department shall have the power to cancel the elective adoption coverage if any required payments or reports have not been made. Cancellation by the department shall be no later than thirty days from the date of notice in writing by the department advising of cancellation being made. [1982 c 63 § 17; 1980 c 14 § 6. Prior: 1977 ex.s. c 350 § 22; 1977 ex.s. c 323 § 8; 1971 ex.s. c 289 § 85; 1961 c 23 § 51.12.110; prior: 1959 c 308 § 11; 1929 c 132 § 5; 1923 c 136 § 6; 1911 c 74 § 19; RRS § 7696.]

***Reviser's note:** RCW 51.12.020 was amended by 1987 c 316 § 2, resulting in the deletion of subsection (6) and the renumbering of subsections (7), (8), and (9) as subsections (6), (7), and (8) respectively.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.12.115 Registered contractors and electrical contractors—Sole proprietor or partner—Exemption. After July 26, 1981, any sole proprietor or partner who registers for the first time under chapter 18.27 RCW or becomes licensed for the first time under chapter 19.28 RCW may file notice with the director at the sole proprietor's or partner's election to be exempted from the mandatory coverage of this title. Such exemption shall become effective immediately after the director has received the notice of withdrawal. However, any sole proprietor or partner who has elected exemption from mandatory coverage may at any time voluntarily reelect to be covered under this title and shall be subject to all the provisions and entitled to all of the benefits under this title. [1981 c 128 § 5.]

Electricians: Chapter 19.28 RCW.

Registration of contractors: Chapter 18.27 RCW.

51.12.120 Extra territorial coverage—Injuries incurred outside state—Injuries incurred in employ of nondomiciled employer—Conflicts of jurisdiction—Agreements. (1) If a worker, while working outside the territorial limits of this state, suffers an injury on account of which he or she, or his or her beneficiaries, would have been entitled to compensation under this title had such injury occurred within this state, such worker, or his or her beneficiaries, shall be entitled to compensation under this title: *Provided*, That if at the time of such injury:

(a) His or her employment is principally localized in this state; or

(b) He or she is working under a contract of hire made in this state for employment not principally localized in any state; or

(c) He or she is working under a contract of hire made in this state for employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or

(d) He or she is working under a contract of hire made in this state for employment outside the United States and Canada.

(2) The payment or award of compensation under the workers' compensation law of another state, territory, province, or foreign nation to a worker or his or her beneficiaries otherwise entitled on account of such injury to compensation under this title shall not be a bar to a claim for compensation under this title: *Provided*, That claim under this title is timely filed. If compensation is paid or awarded under this title, the total amount of compensation paid or awarded the worker or beneficiary under such other workers' compensation law shall be credited against the compensation due the worker or beneficiary under this title.

(3) If a worker or beneficiary is entitled to compensation under this title by reason of an injury sustained in this state while in the employ of an employer who is domiciled in another state and who has neither opened an account with the department nor qualified as a self-insurer under this title, such an employer or his or her insurance carrier shall file with the director a certificate issued by the agency which administers the workers' compensation law in the state of the employer's domicile, certifying that such employer has secured the payment of compensation under the workers' compensation law of such other state and that with respect to said injury such worker or beneficiary is entitled to the benefits provided under such law. In such event:

(a) The filing of such certificate shall constitute appointment by the employer or his or her insurance carrier of the director as its agent for acceptance of the service of process in any proceeding brought by any claimant to enforce rights under this title;

(b) The director shall send to such employer or his or her insurance carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the director by the claimant in any proceeding brought to enforce rights under this title;

(c) (i) If such employer is a self-insurer under the workers' compensation law of such other state, such employer shall, upon submission of evidence or security, satisfactory to the director, of his or her ability to meet his or her liability to such claimant under this title, be deemed to be a qualified self-insurer under this title;

(ii) If such employer's liability under the workers' compensation law of such other state is insured, such employer's carrier, as to such claimant only, shall be deemed to be subject to this title: *Provided*, That unless its contract with said employer requires it to pay an amount equivalent to the compensation benefits provided by this title, the insurer's liability for compensation shall

not exceed its liability under the workers' compensation law of such other state;

(d) If the total amount for which such employer's insurer is liable under (c)(ii) above is less than the total of the compensation to which such claimant is entitled under this title, the director may require the employer to file security satisfactory to the director to secure the payment of compensation under this title; and

(e) If such employer has neither qualified as a self-insurer nor secured insurance coverage under the workers' compensation law of another state, such claimant shall be paid compensation by the department;

(f) Any such employer shall have the same rights and obligations as other employers subject to this title and where he or she has not provided coverage or sufficient coverage to secure the compensation provided by this title to such claimant, the director may impose a penalty payable to the department of a sum not to exceed fifty percent of the cost to the department of any deficiency between the compensation provided by this title and that afforded such claimant by such employer or his or her insurance carrier if any.

(4) As used in this section:

(a) A person's employment is principally localized in this or another state when (i) his or her employer has a place of business in this or such other state and he or she regularly works at or from such place of business, or (ii) if clause (i) foregoing is not applicable, he or she is domiciled in and spends a substantial part of his or her working time in the service of his or her employer in this or such other state;

(b) "Workers' compensation law" includes "occupational disease law" for the purposes of this section.

(5) A worker whose duties require him or her to travel regularly in the service of his or her employer in this and one or more other states may agree in writing with his or her employer that his or her employment is principally localized in this or another state, and, unless such other state refuses jurisdiction, such agreement shall govern as to any injury occurring after the effective date of the agreement.

(6) The director shall be authorized to enter into agreements with the appropriate agencies of other states and provinces of Canada which administer their workers' compensation law with respect to conflicts of jurisdiction and the assumption of jurisdiction in cases where the contract of employment arises in one state or province and the injury occurs in another, and when any such agreement has been executed and promulgated as a regulation of the department under chapter 34.05 RCW, it shall bind all employers and workers subject to this title and the jurisdiction of this title shall be governed by this regulation. [1977 ex.s. c 350 § 23; 1972 ex.s. c 43 § 12; 1971 ex.s. c 289 § 82.]

51.12.130 Registered apprentices or trainees. (1) All persons registered as apprentices or trainees with the state apprenticeship council and participating in supplemental and related instruction classes conducted by a

school district, a community college, a vocational school, or a local joint apprenticeship committee, shall be considered as workers of the state apprenticeship council and subject to the provisions of Title 51 RCW, for the time spent in actual attendance at such supplemental and related instruction classes.

(2) The assumed wage rate for all apprentices or trainees during the hours they are participating in supplemental and related instruction classes, shall be three dollars per hour. This amount shall be used for purposes of computations of premiums. For purposes of computing disability compensation payments, the actual wage rate during employment shall be used.

(3) Only those apprentices or trainees who are registered with the state apprenticeship council prior to their injury or death and who incur such injury or death while participating in supplemental and related instruction classes shall be entitled to benefits under the provisions of Title 51 RCW.

(4) The filing of claims for benefits under the authority of this section shall be the exclusive remedy of apprentices or trainees and their beneficiaries for injuries or death compensable under the provisions of Title 51 RCW against the state, its political subdivisions, the school district, community college, or vocational school and their members, officers or employees or any employer regardless of negligence.

(5) This section shall not apply to any apprentice or trainee who has earned wages for the time spent in participating in supplemental and related instruction classes. [1988 c 140 § 1; 1987 c 185 § 31; 1973 c 110 § 1.]

Intent—1987 c 185: "In 1977, in two separate pieces of legislation relating to industrial insurance, the Washington legislature changed certain references from "workmen's" or "workman's" compensation to "workers'" compensation. The purpose of this act is to correct remaining obsolete references to "workmen's compensation" and "workmen." [1987 c 185 § 1.]

Severability—1987 c 185: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 185 § 41.]

51.12.140 Volunteer law enforcement officers. (1) As used in this section:

(a) "Municipal corporation" means any city, town, or county authorized by law to maintain and operate a law enforcement department;

(b) "Law enforcement department" means any regularly organized police department, sheriff's department, department of public safety, or other similar organization which has as its primary purpose the enforcement of state or local penal laws and the preservation of public order, which consists wholly of volunteer law enforcement officers or a combination of volunteer and paid law enforcement officers, and which is duly organized and maintained by a municipal corporation;

(c) "Volunteer law enforcement officer" means a person who is a member of a law enforcement department and who (i) performs assigned or authorized duties for the law enforcement department by his or her own free

choice; (ii) serves in a position that is not basically clerical or secretarial in nature; (iii) is registered and accepted as a volunteer by the law enforcement department; and (iv) receives no monetary remuneration other than maintenance and reimbursement for actual expenses necessarily incurred in performing assigned duties; and

(d) "Performance of duty" includes any work in and about the volunteer law enforcement officers' quarters, police station, or any other place under the direction or general orders of the officer having the authority to order a volunteer law enforcement officer to perform the work; providing law enforcement assistance; patrol; drill; and any work of an emergency nature performed in accordance with the rules of the law enforcement department.

(2) Any municipal corporation maintaining and operating a law enforcement department may elect to provide coverage under this title for all of its volunteer law enforcement officers for death or disability occurring in the performance of their duties as volunteer law enforcement officers. Any municipal corporation electing to provide the coverage shall file a written notice of coverage with the director.

(3) Coverage under this section shall be for all the applicable death, disability, and medical aid benefits of this title and shall be effective only for injuries which occur and occupational diseases which are contracted after the notice of coverage has been filed with the director.

Nothing in this subsection shall be construed to prohibit a municipal corporation from covering its volunteer law enforcement officers and other volunteers under RCW 51.12.035(2), as now or hereafter amended, for medical aid benefits only.

(4) Volunteer law enforcement officers for whom municipal corporations have given notice of coverage under this section shall be deemed workers or employees, as the case may be, and the performance of their duties shall be deemed employment or in the course of employment, as the case may be, for all purposes of this title except where expressly excluded or where the context clearly requires otherwise.

(5) All premiums, assessments, contributions, and penalties due under this title because coverage is provided under this section shall be the obligation of and be paid by the municipal corporation giving the notice of coverage to the director.

(6) Any municipal corporation electing coverage under this section shall maintain a time log in which the number of hours worked by each of its volunteer law enforcement officers is recorded. The log shall be made available for inspection upon the request of any authorized employee of the department.

(7) Any municipal corporation electing coverage under this section may withdraw the coverage by filing a written notice of the withdrawal with the director. The withdrawal shall become effective thirty days after filing the notice or on the date of the termination of the security for payment of compensation, whichever occurs

later. At least thirty days before the effective date of the withdrawal, the municipal corporation shall notify each of its volunteer law enforcement officers of the withdrawal. Withdrawal of coverage under this section shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period in which coverage was provided. [1977 ex.s. c 113 § 1.]

Severability—1977 ex.s. c 113: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 113 § 2.]

51.12.150 Musicians and entertainers. Any musician or entertainer who performs as a member of a group or recognized entity is deemed an employee of the group or entity and the leader of the group or entity shall be required to properly register as an employer with the department and pay industrial insurance premiums on behalf of his or her employees. If a musician or entertainer is a sole performer or performs as a partner in a group or entity, or performs on a casual basis, the musician or entertainer shall be exempted from mandatory coverage of this title. However, any such sole performer, partner, or casual performer may elect to be covered under this title and shall be subject to all the provisions and entitled to all the benefits under this title. [1983 c 252 § 2.]

Employments excluded—Musicians and entertainers: RCW 51.12.020.

Chapter 51.14 SELF-INSURERS

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51.14.010 Duty to secure payment of compensation—Options. Every employer under this title shall secure the payment of compensation under this title by:

(1) Insuring and keeping insured the payment of such benefits with the state fund; or

(2) Qualifying as a self-insurer under this title. [1971 ex.s. c 289 § 26.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.14.020 Qualification as self-insurer—Application for certification—Security deposit—Reinsurance. (1) An employer may qualify as a self-insurer by establishing to the director's satisfaction that he or she has sufficient financial ability to make certain the prompt payment of all compensation under this title and all assessments which may become due from such employer. Each application for certification as a self-insurer submitted by an employer shall be accompanied by payment of a fee of one hundred fifty dollars or such larger sum as the director shall find necessary for the administrative costs of evaluation of the applicant's qualifications. Any employer who has formerly been certified as a self-insurer and thereafter ceases to be so certified may not apply for certification within three years of ceasing to have been so certified.

(2) A self-insurer may be required by the director to supplement existing financial ability by depositing in an escrow account in a depository designated by the director, money and/or corporate or governmental securities approved by the director, or a surety bond written by any company admitted to transact surety business in this state filed with the department. The money, securities, or bond shall be in an amount reasonably sufficient in the director's discretion to insure payment of reasonably foreseeable compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars. In arriving at the amount of money, securities, or bond required under this subsection, the director shall take into consideration the financial ability of the employer to pay compensation and assessments and his or her probable continuity of operation. The money, securities, or bond so deposited shall be held by the director to secure the payment of compensation by the self-insurer and to secure payment of his or her assessments. The amount of security may be increased or decreased from time to time by the director. The income from any securities deposited may be distributed currently to the self-insurer.

(3) Securities or money deposited by an employer pursuant to subsection (2) of this section shall be returned to him or her upon his or her written request provided the employer files the bond required by such subsection.

(4) If the employer seeking to qualify as a self-insurer has previously insured with the state fund, the director shall require the employer to make up his or her proper share of any deficit or insufficiency in the state fund as a condition to certification as a self-insurer.

(5) A self-insurer may reinsure a portion of his or her liability under this title with any reinsurer authorized to transact such reinsurance in this state: *Provided*, That the reinsurer may not participate in the administration of the responsibilities of the self-insurer under this title. Such reinsurance may not exceed eighty percent of the liabilities under this title.

(6) For purposes of the application of this section, the department may adopt separate rules establishing the security requirements applicable to units of local government. In setting such requirements, the department shall take into consideration the ability of the governmental unit to meet its self-insured obligations, such as but not limited to source of funds, permanency, and right of default. [1986 c 57 § 1; 1977 ex.s. c 323 § 9; 1972 ex.s. c 43 § 16; 1971 ex.s. c 289 § 27.]

Intent—1986 c 57: See note following RCW 51.14.077.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.14.030 Certification of employer as self-insurer—Requirements. The director may issue a certification that an employer is qualified as a self-insurer when such employer meets the following requirements:

(1) He or she has fulfilled the requirements of RCW 51.14.020.

(2) He or she has submitted to the department a payroll report for the preceding consecutive twelve month period.

(3) He or she has submitted to the department a sworn itemized statement accompanied by an independent audit of the employer's books demonstrating to the director's satisfaction that the employer has sufficient liquid assets to meet his or her estimated liabilities as a self-insurer.

(4) He or she has demonstrated to the department the existence of the safety organization maintained by him or her within his or her establishment that indicates a record of accident prevention.

(5) He or she has submitted to the department a description of the administrative organization to be maintained by him or her to manage industrial insurance matters including:

(a) The reporting of injuries;

(b) The authorization of medical care;

(c) The payment of compensation;

(d) The handling of claims for compensation;

(e) The name and location of each business location of the employer; and

(f) The qualifications of the personnel of the employer to perform this service.

Such certification shall remain in effect until withdrawn by the director or surrendered by the employer with the approval of the director. An employer's qualification as a self-insurer shall become effective on the date of certification or any date specified in the certificate after the date of certification. [1977 ex.s. c 323 § 10; 1971 ex.s. c 289 § 28.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.14.040 Surety liability—Termination. (1) The surety on a bond filed by a self-insurer pursuant to this title may terminate its liability thereon by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective.

(2) In case of such termination, the surety shall remain liable, in accordance with the terms of the bond, with respect to future compensation for injuries to employees of the self-insurer occurring prior to the termination of the surety's liability.

(3) If the bond is terminated for any reason other than the employer's terminating his status as a self-insurer, the employer shall, prior to the date of termination of the surety's liability, otherwise comply with the requirements of this title.

(4) The liability of a surety on any bond filed pursuant to this section shall be released and extinguished and the bond returned to the employer or surety provided either such liability is secured by another bond filed, or money or securities deposited as required by this title. [1971 ex.s. c 289 § 29.]

51.14.050 Termination of self-insurer status—Notice—Financial requirements. (1) Any employer may at any time terminate his status as a self-insurer by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective, provided such termination shall not be effective until the employer either shall have ceased to be an employer or shall have filed with the director for state industrial insurance coverage under this title.

(2) An employer who ceases to be a self-insurer, and who so files with the director, must maintain money, securities or surety bonds deemed sufficient in the director's discretion to cover the entire liability of such employer for injuries or occupational diseases to his employees which occurred during the period of self-insurance: *Provided*, That the director may agree for the medical aid and accident funds to assume the obligation of such claims, in whole or in part, and shall adjust the employer's premium rate to provide for the payment of such obligations on behalf of the employer. [1971 ex.s. c 289 § 30.]

51.14.060 Default by self-insurer—Director authorized to sue, sell securities, fulfill employer obligations—Liability for reimbursement. (1) The director may, in cases of default upon any obligation under this title by the self-insurer, after ten days notice by certified mail to the defaulting self-insurer of the intention to do so, bring suit upon such bond or collect the interest and principal of any of the securities as they may become due or sell the securities or any of them as may be required or apply the money deposited, all in order to pay compensation and discharge the obligations of the defaulting self-insurer under this title.

(2) The director shall be authorized to fulfill the defaulting self-insured employer's obligations under this title from the defaulting self-insured employer's deposit or from other funds provided under this title for the satisfaction of claims against the defaulting self-insured

employer. The defaulting self-insured employer is liable to and shall reimburse the director for the amounts necessary to fulfill the obligations of the defaulting self-insured employer that are in excess of the amounts received by the director from any bond filed, or securities or money deposited, by the defaulting self-insured employer pursuant to chapter 51.14 RCW. The amounts to be reimbursed shall include all amounts paid or payable as compensation under this title together with administrative costs, including attorneys' fees, and shall be considered taxes due the state of Washington. [1986 c 57 § 2; 1971 ex.s. c 289 § 31.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.070 Payment of compensation upon default. Whenever compensation due under this title is not paid because of an uncorrected default of a self-insurer, such compensation shall be paid from the medical aid and accidents funds, and any moneys obtained by the director from the bonds or other security provided under RCW 51.14.020 shall be deposited to the appropriate fund for the payment of compensation and administrative costs, including attorneys' fees. [1986 c 57 § 3; 1971 ex.s. c 289 § 36.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.073 Default by self-insurer—Lien created—Priority—Assessment. (1) In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the amounts necessary to fulfill the obligations of a defaulting self-insured employer together with administrative costs and attorneys' fees is a lien prior to all other liens or claims and on a parity with prior tax liens and the mere existence of a default by a self-insured employer is sufficient to create the lien without any prior or subsequent action by the state. All administrators, receivers, and assignees for the benefit of creditors shall notify the director of such administration, receivership, or assignment within thirty days of their appointment or qualification.

(2) Separate and apart and in addition to the lien established by this section, the department may issue an assessment, as provided for in RCW 51.48.120, for the amount necessary to fulfill the defaulting self-insured employer's obligations, including all amounts paid and payable as compensation under this title and administrative costs, including attorneys' fees. [1986 c 57 § 4.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.077 Self-insurers' insolvency trust—Insolvency assessments—Rules. (1) A self-insurers' insolvency trust is established to provide for the unsecured benefits paid to the injured workers of self-insured employers under this title for insolvent or defaulting self-insured employers and for the department's associated administrative costs, including attorneys' fees. The self-insurers' insolvency trust shall be funded by an insolvency assessment which shall be levied on a post-insolvency basis and after the defaulting self-insured

employer's security deposit, assets, and reinsurance, if any, have been exhausted. Insolvency assessments shall be imposed on all self-insured employers, except school districts, cities, and counties. The manner of imposing and collecting assessments to the insolvency fund shall be set forth in rules adopted by the department to ensure that self-insured employers pay into the fund in proportion to their claim costs. The department's rules shall provide that self-insured employers who have surrendered their certification shall be assessed for a period of not more than three calendar years following the termination date of their certification.

(2) The director shall adopt rules to carry out the purposes of this section, including but not limited to:

(a) Governing the formation of the self-insurers' insolvency trust for the purpose of this chapter;

(b) Governing the organization and operation of the self-insurers' insolvency trust to assure compliance with the requirements of this chapter;

(c) Requiring adequate accountability of the collection and disbursement of funds in the self-insurers' insolvency trust; and

(d) Any other provisions necessary to carry out the requirements of this chapter. [1986 c 57 § 6.]

Intent—1986 c 57: "It is the intent of the legislature to provide for the continuation of workers' compensation benefits in the event of the failure of a self-insured employer to meet its compensation obligations when the employer's security deposit, assets, and reinsurance are inadequate. The legislature finds and declares that the establishment of a self-insurers' insolvency trust is necessary to assure that benefit payments to injured workers of self-insured employers will not become the responsibility of the state fund." [1986 c 57 § 5.]

51.14.080 Withdrawal of certification—Grounds. Certification of a self-insurer shall be withdrawn by the director upon one or more of the following grounds:

(1) The employer no longer meets the requirements of a self-insurer; or

(2) The self-insurer's deposit is insufficient; or

(3) The self-insurer intentionally or repeatedly induces employees to fail to report injuries, induces claimants to treat injuries in the course of employment as off-the-job injuries, persuades claimants to accept less than the compensation due, or unreasonably makes it necessary for claimants to resort to proceedings against the employer to obtain compensation; or

(4) The self-insurer habitually fails to comply with rules and regulations of the director regarding reports or other requirements necessary to carry out the purposes of this title; or

(5) The self-insurer habitually engages in a practice of arbitrarily or unreasonably refusing employment to applicants for employment or discharging employees because of nondisabling bodily conditions; or

(6) The self-insurer fails to pay an insolvency assessment under the procedures established pursuant to RCW 51.14.077. [1986 c 57 § 7; 1971 ex.s. c 289 § 32.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.090 Petition by employees for hearing to withdraw certification or for corrective action—

Grounds—Notice—Opportunity to cure—Appeal.

(1) Upon the petition of any employee or union or association having a substantial number of employees in the employ of the self-insurer the director shall hold a hearing to determine whether or not there are grounds for the withdrawal of certification of a self-insurer or for corrective action by the department.

(2) The director shall serve upon the self-insurer and upon any employee or union or association having a substantial number of employees in the employ of said self-insurer, personally or by certified mail, a notice of intention to withdraw, or not to withdraw, certification of the self-insurer, which notice shall describe the nature and location or locations of the plants or operations involved; and the specific nature of the reasons for the decision. Similar notice shall be provided for decisions regarding corrective actions.

(3) If the decision is to withdraw certification, it shall include the period of time within which the ground or grounds therefor existed or arose; a directive to the self-insurer specifying the manner in which the grounds may be eliminated; and the date, not less than thirty days after the self-insurer's receipt of the notice, when the certification will be withdrawn in the absence of a satisfactory elimination of the grounds for withdrawal of the certificate.

(4) An appeal of any action taken by the director under this section may be taken by the self-insurer, or by any employee or union or association having a substantial number of employees in the employ of the self-insurer. Proceedings on the appeal shall be as prescribed in this title. Appeal by a self-insurer of notice of intention to withdraw certification or to take corrective action shall not act as a stay of the withdrawal or corrective action, unless the board or court, for good cause shown, orders otherwise. [1983 c 21 § 1; 1971 ex.s. c 289 § 33.]

51.14.095 Corrective action against employer authorized—Appeal. (1) The director shall take corrective action against a self-insured employer if the director determines that:

(a) The employer is not following proper industrial insurance claims procedures;

(b) The employer's accident prevention program is inadequate; or

(c) Any condition described in RCW 51.14.080 (1) through (5) exists.

(2) Corrective actions may be taken upon the director's initiative or in response to a petition filed under RCW 51.14.090. Corrective actions which may be taken by the director shall include:

(a) Probationary certification for a period of time determined by the director;

(b) Mandatory training for employers in areas including claims management, safety procedures, and administrative reporting requirements; and

(c) Monitoring of the activities of the employer to determine progress towards compliance.

The director shall adopt rules defining the corrective actions which may be taken in response to a given condition.

Corrective actions shall be limited to those described in (a), (b), and (c) of this subsection.

(3) Upon the termination of the corrective action, the director shall review the employer's program for compliance with state statutes and regulations. A written report regarding the employer's compliance shall be provided to the employer and to any party to a petition filed under RCW 51.14.090. If the director determines that compliance has been attained, no further action shall be taken. If compliance has not been attained, the director may take additional corrective action as defined in this section, or proceed toward decertification as described in RCW 51.14.080.

(4) An employer may appeal any action taken by the director under this section. Proceedings during the appeal shall be as prescribed in this title. An appeal by a self-insurer shall not act as a stay of the corrective action, unless the board or court, for good cause shown, orders otherwise.

(5) This section shall not be construed to limit the responsibilities or authority of the department under RCW 51.14.080 or 51.14.090. [1983 c 21 § 2.]

51.14.100 Notice of compliance with title to be posted—Penalty. (1) Every employer subject to the provisions of this title shall post and keep posted in a conspicuous place or places in and about his place or places of business a reasonable number of typewritten or printed notices of compliance substantially identical to a form prescribed by the director, stating that such employer is subject to the provisions of this title. Such notice shall advise whether the employer is self-insured or has insured with the department, and shall designate a person or persons on the premises to whom report of injury shall be made.

(2) Any employer who has failed to open an account with the department or qualify as a self-insurer shall not post or permit to be posted on or about his place of business or premises any notice of compliance with this title and any wilful violation of this subsection by any officer or supervisory employee of an employer shall be a misdemeanor. [1971 ex.s. c 289 § 34.]

51.14.110 Employer's duty to maintain records, furnish information. Every self-insurer shall maintain a record of all payments of compensation made under this title. The self-insurer shall furnish to the director all information he has in his possession as to any disputed claim, upon forms approved by the director. [1971 ex.s. c 289 § 35.]

51.14.150 School districts, ESD's, or hospitals as self-insurers—Authorized—Organization—Qualifications. (1) Any two or more employers which are school districts or educational service districts, (2) any two or more employers which are hospitals, as defined in RCW 70.39.020(3), and are owned or operated by a state agency or municipal corporation of this state, or (3) any two or more employers which are hospitals, as defined in RCW 70.39.020(3), no one of which is owned or operated by a state agency or municipal corporation

of this state or subject to RCW 70.39.150(3), may enter into agreements to form self-insurance groups for the purposes of this chapter: *Provided*, That no more than one group may be formed under subsection (2) of this section and no more than one group may be formed under subsection (3) of this section. The self-insurance groups shall be organized and operated under rules promulgated by the director under RCW 51.14.160. Such a self-insurance group shall be deemed an employer for the purposes of this chapter, and may qualify as a self-insurer if it meets all the other requirements of this chapter. [1983 c 174 § 2; 1982 c 191 § 7.]

Effective date—Severability—1982 c 191: See notes following RCW 28A.57.170.

Educational service district as self-insurer—Authority: RCW 28A.21.255.

School district as self-insurer—Authority: RCW 28A.58.410.

51.14.160 School districts, ESD's, or hospitals as self-insurers—Rules—Scope. The director shall promulgate rules to carry out the purposes of RCW 51.14.150:

(1) Governing the formation of self-insurance groups for the purposes of this chapter;

(2) Governing the organization and operation of the groups to assure their compliance with the requirements of this chapter;

(3) Requiring adequate monetary reserves, determined under accepted actuarial practices, to be maintained by each group to assure financial solvency of the group; and

(4) Requiring each group to carry adequate reinsurance. [1983 c 174 § 3; 1982 c 191 § 8.]

Effective date—Severability—1982 c 191: See notes following RCW 28A.57.170.

Chapter 51.16

ASSESSMENT AND COLLECTION OF PREMIUMS—PAYROLLS AND RECORDS

Sections

- 51.16.035 Classification of occupations or industries—Premium rates fixed, readjusted—Rules and regulations authorized—Employer group plans.
- 51.16.040 Occupational diseases—Compensation and benefits.
- 51.16.042 Occupational and environmental research facility at University of Washington—Employers to share costs.
- 51.16.060 Quarterly report of payrolls.
- 51.16.070 Employer's office record of employment—Confidentiality.
- 51.16.090 Employer may not evade unfavorable cost experience—Continuation of experience rating when legal structure of employer changes.
- 51.16.100 Changes in classification.
- 51.16.105 Expenses of safety division, how financed.
- 51.16.110 New businesses or resumed or continued operations.
- 51.16.115 Failure to comply with cash deposit or bond requirements of RCW 51.16.110.
- 51.16.120 Distribution of further accident cost.
- 51.16.130 Distribution of catastrophe cost.
- 51.16.140 Premium liability of worker.
- 51.16.150 Delinquent employers—Penalty after demand—Injunctive relief.

- 51.16.155 Failure or refusal of employer to report or pay premiums due—Collection.
- 51.16.160 Lien for payments due—Priority—Probate, insolvency, etc.
- 51.16.170 Lien for premiums, assessments, contributions, and penalties—Priority—In general—Notice.
- 51.16.180 Property acquired by state on execution.
- 51.16.190 Limitation upon actions to collect delinquent premiums, assessments, penalties, etc.—Exceptions—Claims by employers waived unless brought within three years.
- 51.16.200 Payment of tax by employer quitting or disposing of business—Liability of successor.
- 51.16.210 Horse racing employment—Premium assessments.

51.16.035 Classification of occupations or industries—Premium rates fixed, readjusted—Rules and regulations authorized—Employer group plans. The department shall classify all occupations or industries in accordance with their degree of hazard and fix therefor basic rates of premium which shall be the lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles. The department shall formulate and adopt rules and regulations governing the method of premium calculation and collection and providing for a rating system consistent with recognized principles of workers' compensation insurance which shall be designed to stimulate and encourage accident prevention and to facilitate collection. The department may annually, or at such other times as it deems necessary to maintain solvency of the funds, readjust rates in accordance with the rating system to become effective on such dates as the department may designate.

The department may insure the workers' compensation obligations of employers as a group if the following conditions are met:

- (1) All the employers in the group are members of an organization that has been in existence for at least two years;
- (2) The organization was formed for a purpose other than that of obtaining workers' compensation coverage;
- (3) The occupations or industries of the employers in the organization are substantially similar, taking into consideration the nature of the services being performed by workers of such employers; and
- (4) The formation and operation of the group program in the organization will substantially improve accident prevention and claim management for the employers in the group.

In providing an employer group plan under this section, the department may consider an employer group as a single employing entity for purposes of dividends or premium discounts. [1989 c 49 § 1; 1980 c 129 § 4; 1977 ex.s. c 350 § 24; 1971 ex.s. c 289 § 16.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.040 Occupational diseases—Compensation and benefits. The compensation and benefits provided for occupational diseases shall be paid and in the same manner as compensation and benefits for injuries under

this title. [1971 ex.s. c 289 § 83; 1961 c 23 § 51.16.040. Prior: 1959 c 308 § 12; 1941 c 235 § 2; Rem. Supp. 1941 7679–1.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.042 Occupational and environmental research facility at University of Washington—Employers to share costs. Inasmuch as business, industry and labor desire to provide for testing, research, training and teaching facilities and consulting services at the University of Washington for industrial and occupational health for workers in the environmental research facility thereat, all employers shall bear their proportionate share of the cost therefor. The director may require payments to the department from all employers under this title and may make rules and regulations in connection therewith, which costs shall be paid from the department, in lieu of the previous provisions of RCW 28B.20.458. [1977 ex.s. c 350 § 25; 1971 ex.s. c 289 § 84; 1963 c 151 § 2.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Occupational and environmental research facility at University of Washington: RCW 28B.20.450 through 28B.20.458.

51.16.060 Quarterly report of payrolls. Every employer not qualifying as a self-insurer, shall insure with the state and shall, on or before the last day of January, April, July and October of each year thereafter, furnish the department with a true and accurate payroll for the period in which workers were employed by it during the preceding calendar quarter, the total amount paid to such workers during such preceding calendar quarter, and a segregation of employment in the different classes established pursuant to this title, and shall pay its premium thereon to the appropriate fund. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter. The sufficiency of such statement shall be subject to the approval of the director: *Provided*, That the director may in his or her discretion and for the effective administration of this title require an employer in individual instances to furnish a supplementary report containing the name of each individual worker, his or her hours worked, his or her rate of pay and the class or classes in which such work was performed: *Provided further*, That in the event an employer shall furnish the department with four consecutive quarterly reports wherein each such quarterly report indicates that no premium is due the department may close the account: *Provided further*, That the department may promulgate rules and regulations in accordance with chapter 34.05 RCW to establish other reporting periods and payment due dates in lieu of reports and payments following each calendar quarter, and may also establish terms and conditions for payment of premiums and assessments based on estimated payrolls, with such payments being subject to approval as to sufficiency of the estimated payroll by the

department, and also subject to appropriate periodic adjustments made by the department based on actual payroll: *And provided further*, That a temporary help company which provides workers on a temporary basis to its customers shall be considered the employer for purposes of reporting and paying premiums and assessments under this title according to the appropriate rate classifications as determined by the department: *Provided*, That the employer shall be liable for paying premiums and assessments, should the temporary help company fail to pay the premiums and assessments under this title. [1985 c 315 § 1; 1981 c 260 § 13. Prior: 1977 ex.s. c 350 § 26; 1977 ex.s. c 323 § 11; 1973 1st ex.s. c 32 § 1; 1971 ex.s. c 289 § 76; 1965 ex.s. c 80 § 1; 1961 c 23 § 51.16.060; prior: 1959 c 308 § 14; 1957 c 70 § 47; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.070 Employer's office record of employment—Confidentiality. Every employer shall keep at his place of business a record of his employment from which the information needed by the department may be obtained and such record shall at all times be open to the inspection of the director, supervisor of industrial insurance, or the traveling auditors, agents, or assistants of the department, as provided in RCW 51.48.040.

Information obtained from employing unit records under the provisions of this title shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but any interested party shall be supplied with information from such records to the extent necessary for the proper presentation of the case in question: *Provided*, That any employing unit may authorize inspection of its records by written consent. [1961 c 23 § 51.16.070. Prior: 1957 c 70 § 48; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

51.16.090 Employer may not evade unfavorable cost experience—Continuation of experience rating when legal structure of employer changes. To the end that no employer shall evade the burdens imposed by an unfavorable or high cost experience, the director may determine whether or not an increase, decrease, or change (1) of operating property; (2) of interest in operating property; (3) of employer; (4) of personnel or interest in employer is sufficient to show a bona fide change which would make inoperative any high cost experience: *Provided*, That where an employer is now or has prior to January 1, 1958, been covered under the provisions of this title for a period of at least two years and subsequent thereto the legal structure of the employer changes by way of incorporation, disincorporation, merger, consolidation, transfer of stock ownership, or by any other means, such person or entity as legally reconstituted shall be entitled to a continuation of the experience rating which existed prior to such change in the

employer's legal structure unless there has been such a substantial change as provided in subdivisions (1), (2), (3) or (4) of this section as would warrant making inoperative any high cost experience. [1961 c 23 § 51.16.090. Prior: 1959 c 179 § 1; 1957 c 70 § 49; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

51.16.100 Changes in classification. It is the intent that the accident fund shall ultimately become neither more nor less than self-supporting, except as provided in RCW 51.16.105 and, if in the adjustment of premium rates by the director the moneys paid into the fund by any class or classes shall be insufficient to properly and safely distribute the burden of accidents occurring therein, the department may divide, rearrange, or consolidate such class or classes, making such adjustment or transfer of funds as it may deem proper. The director shall make corrections of classifications or subclassifications or changes in rates, classes and subclasses when the best interest of such classes or subclasses will be served thereby. [1961 c 23 § 51.16.100. Prior: 1953 c 218 § 1; prior: (i) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part. (ii) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

51.16.105 Expenses of safety division, how financed. All expenses of the industrial safety and health division of the department pertaining to workers' compensation shall be paid by the department and financed by premiums and by assessments collected from a self-insurer as provided in this title. [1977 ex.s. c 350 § 27; 1973 1st ex.s. c 52 § 8; 1971 ex.s. c 289 § 86; 1961 c 23 § 51.16.105. Prior: 1953 c 218 § 2.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.110 New businesses or resumed or continued operations. Every employer who shall enter into any business, or who shall resume operations in any work or plant after the final adjustment of his or her payroll in connection therewith, or who was formerly a self-insurer and wishes to continue his or her operations subject to this title, shall, before so commencing or resuming or continuing operations, as the case may be, notify the department of such fact, accompanying such notification with a cash deposit in a sum equal to the estimated premiums for the first three full calendar months of his or her proposed operations which shall remain on deposit subject to the other provisions of this section.

The department may, in its discretion and in lieu of such deposit, accept a bond, in an amount which it deems sufficient, to secure payment of premiums due or to become due to the accident fund and medical aid fund. The deposit or posting of a bond shall not relieve the employer from paying premiums subsequently due.

Should the employer acquire sufficient assets to assure the payment of premiums due to the accident fund and the medical aid fund the department may, in its discretion, refund the deposit or cancel the bond.

If the employer ceases to be an employer under this title, the department shall, upon receipt of all payments due the accident fund and medical aid fund, or any other fund under this title, refund to the employer all deposits remaining to the employer's credit and shall cancel any bond given under this section. [1977 ex.s. c 323 § 12; 1971 ex.s. c 289 § 4; 1961 c 23 § 51.16.110. Prior: 1959 c 179 § 2; 1959 c 308 § 15; prior: 1957 c 70 § 50; 1951 c 236 § 4; 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.115 Failure to comply with cash deposit or bond requirements of RCW 51.16.110. Any employer who has not complied with the cash deposit or bond in lieu of cash deposit requirements of RCW 51.16.110 shall have failed to secure the payment of compensation under this title and the department may collect the cash deposit pursuant to RCW 51.48.120 or by any other method of collection provided by this title. [1986 c 9 § 7.]

51.16.120 Distribution of further accident cost. (1) Whenever a worker has a previous bodily disability from any previous injury or disease, whether known or unknown to the employer, and shall suffer a further disability from injury or occupational disease in employment covered by this title and become totally and permanently disabled from the combined effects thereof or die when death was substantially accelerated by the combined effects thereof, then the experience record of an employer insured with the state fund at the time of said further injury or disease shall be charged and a self-insured employer shall pay directly into the reserve fund only the accident cost which would have resulted solely from said further injury or disease, had there been no preexisting disability, and which accident cost shall be based upon an evaluation of the disability by medical experts. The difference between the charge thus assessed to such employer at the time of said further injury or disease and the total cost of the pension reserve shall be assessed against the second injury fund. The department shall pass upon the application of this section in all cases where benefits are paid for total permanent disability or death and issue an order thereon appealable by the employer. Pending outcome of such appeal the transfer or payment shall be made as required by such order.

(2) The department shall, in cases of claims of workers sustaining injuries or occupational diseases in the employ of state fund employers, recompute the experience record of such employers when the claims of workers injured in their employ have been found to qualify for payments from the second injury fund after the regular time for computation of such experience records and the department may make appropriate adjustments in such cases including cash refunds or credits to such employers.

(3) To encourage employment of injured workers who are not reemployed by the employer at the time of injury, the department may adopt rules providing for the reduction or elimination of premiums or assessments from subsequent employers of such workers and may also adopt rules for the reduction or elimination of charges against such employers in the event of further injury to such workers in their employ. [1984 c 63 § 1; 1980 c 14 § 7. Prior: 1977 ex.s. c 350 § 28; 1977 ex.s. c 323 § 13; 1972 ex.s. c 43 § 13; 1961 c 23 § 51.16.120; prior: 1959 c 308 § 16; 1945 c 219 § 1; 1943 c 16 § 1; Rem. Supp. 1945 § 7676–1a.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.16.130 Distribution of catastrophe cost. Whenever there shall occur an accident in which three or more employees of an employer insured with the state fund are fatally injured or sustain permanent total disability, the amount of total cost other than medical aid costs arising out of such accident that shall be charged to the account of the employer, shall be twice the average cost of the pension claims arising out of such accident. The entire cost of such accident, exclusive of medical aid costs, shall be charged against and defrayed by the catastrophe injury account. [1972 ex.s. c 43 § 14; 1961 c 23 § 51.16.130. Prior: 1957 c 70 § 22; prior: 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.16.140 Premium liability of worker. (1) Every employer who is not a self-insurer shall deduct from the pay of each of his or her workers one-half of the amount he or she is required to pay, for medical benefits within each risk classification. Such amount shall be periodically determined by the director and reported by him or her to all employers under this title: *Provided*, That the state governmental unit shall pay the entire amount into the medical aid fund for volunteers, as defined in RCW 51.12.035, and the state apprenticeship council shall pay the entire amount into the medical aid fund for registered apprentices or trainees, for the purposes of RCW 51.12.130. The deduction under this section is not authorized for premiums assessed under RCW 51.16.210.

(2) It shall be unlawful for the employer, unless specifically authorized by this title, to deduct or obtain any part of the premium or other costs required to be by him or her paid from the wages or earnings of any of his or her workers, and the making of or attempt to make any such deduction shall be a gross misdemeanor. [1989 c 385 § 3; 1977 ex.s. c 350 § 29; 1973 c 110 § 2; 1971 ex.s. c 289 § 77; 1971 c 20 § 2; 1961 c 23 § 51.16.140. Prior: (i) 1923 c 136 § 8, part; 1919 c 129 § 1, part; 1917 c 29 § 4, part; RRS § 7713, part. (ii) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.150 Delinquent employers—Penalty after demand—Injunctive relief. If any employer shall default in any payment to any fund, the sum due may be

collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default occurs after demand, the director may require from the defaulting employer a bond to the state for the benefit of any fund, with surety to the director's satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, together with any penalty or penalties incurred. In case of refusal or failure after written demand personally served to furnish such bond, the state shall be entitled to an injunction restraining the delinquent from prosecuting an occupation or work until such bond is furnished, and until all delinquent premiums, penalties, interest and costs are paid, conditioned for the prompt and punctual making of all payments into said funds during such periods, and any sale, transfer, or lease attempted to be made by such delinquent during the period of any of the defaults herein mentioned, of his works, plant, or lease thereto, shall be invalid until all past delinquencies are made good, and such bond furnished. [1986 c 9 § 4; 1985 c 315 § 2; 1972 ex.s. c 43 § 15; 1961 c 23 § 51.16.150. Prior: 1959 c 308 § 22; prior: 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

51.16.155 Failure or refusal of employer to report or pay premiums due—Collection. In every case where an employer insured with the state fails or refuses to file any report of payroll required by the department and fails or refuses to pay the premiums due on such unreported payroll, the department shall have authority to estimate such payroll and the premiums due thereon and collect premiums on the basis of such estimate.

If the report required and the premiums due thereon are not made within ten days from the mailing of such demand by the department, which shall include the amount of premiums estimated by the department, the employer shall be in default as provided by this title and the department may have and recover judgment, warrant, or file liens for such estimated premium or the actual premium, whichever is greater. [1985 c 315 § 3; 1971 ex.s. c 289 § 87.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.160 Lien for payments due—Priority—Probate, insolvency, etc. In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the payments due shall be a lien prior to all other liens or claims and on a parity with prior tax liens and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and all administrators, receivers, or assignees for the benefit of creditors shall notify the department of such administration, receivership, or assignment within thirty days from date of their appointment and qualification. In any action or proceeding brought for the recovery of payments

due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department and the amount of such payroll for the period stated in the certificate shall be prima facie evidence of such fact. [1985 c 315 § 4; 1971 ex.s. c 289 § 78; 1961 c 23 § 51.16.160. Prior: 1959 c 308 § 23; prior: 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.170 Lien for premiums, assessments, contributions, and penalties—Priority—In general—Notice. Separate and apart from and in addition to the foregoing provisions in this chapter, the claims of the state for payments and penalties due under this title shall be a lien prior to all other liens or claims and on a parity with prior tax liens not only against the interest of any employer, in real estate, plant, works, equipment, and buildings improved, operated, or constructed by any employer, and also upon any products or articles manufactured by such employer.

The lien created by this section shall attach from the date of the commencement of the labor upon such property for which such premiums are due. In order to avail itself of the lien hereby created, the department shall, within four months after the employer has made report of his payroll and has defaulted in the payment of his premiums thereupon, file with the county auditor of the county within which such property is then situated, a statement in writing describing in general terms the property upon which a lien is claimed and stating the amount of the lien claimed by the department. If any employer fails or refuses to make report of his payroll, the lien hereby created shall continue in full force and effect, although the amount thereof is undetermined and the four months' time within which the department shall file its claim of lien shall not begin to run until the actual receipt by the department of such payroll report. From and after the filing of such claim of lien, the department shall be entitled to commence suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property, and in such suit the certificate of the department stating the date of the actual receipt by the department of such payroll report shall be prima facie evidence of such fact. [1986 c 9 § 5; 1961 c 23 § 51.16.170. Prior: 1959 c 308 § 24; prior: 1951 c 214 § 1; 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

51.16.180 Property acquired by state on execution. The director shall have the custody of all property acquired by the state at execution sale upon judgments obtained for delinquent payments and penalties therefor and costs, and may sell and dispose of the same at private sales for the sale purchase price, and shall pay the

proceeds into the state treasury to the credit of the appropriate fund. In case of the sale of real estate the director shall execute the deed in the name of the state. [1971 ex.s. c 289 § 79; 1961 c 23 § 51.16.180. Prior: 1921 c 7 § 78, subdivision (4); RRS § 10836(4).]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.190 Limitation upon actions to collect delinquent premiums, assessments, penalties, etc.—Exceptions—Claims by employers waived unless brought within three years. (1) "Action" means, but is not limited to, a notice of assessment pursuant to RCW 51.48.120, an action at law pursuant to RCW 51.16.150, or any other administrative or civil process authorized by this title for the determination of liability for premiums, assessments, penalties, contributions, or other sums, or the collection of premiums, assessments, penalties, contributions, or other sums.

(2) Any action to collect any delinquent premium, assessment, contribution, penalty, or other sum due to the department from any employer subject to this title shall be brought within three years of the date any such sum became due.

(3) In case of a false or fraudulent report with intent to evade premiums, assessments, contributions, penalties, interest, or other sums, or in the event of a failure to file a report, action may be begun at any time.

(4) Any claim for refund or adjustment by an employer of any premium, assessment, contribution, penalty, or other sum collected by the department shall be made in writing to the department within three years of the date the sum became due. [1987 c 111 § 7; 1985 c 315 § 5; 1977 ex.s. c 323 § 27.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.16.200 Payment of tax by employer quitting or disposing of business—Liability of successor. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any tax payable hereunder shall become immediately due and payable, and the employer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the employer until such time as the employer shall produce a receipt from the department showing payment in full of any tax due or a certificate that no tax is due and, if such tax is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any tax due from the person from whom that person has acquired a business or stock of goods if that person gives written notice to the department of such acquisition and no assessment is issued by the department within sixty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [1986 c 9 § 6.]

51.16.210 Horse racing employment—Premium assessments. (1) The department shall assess premiums, under the provisions of this section, for certain horse racing employments licensed in accordance with chapter 67.16 RCW. This premium assessment shall be for the purpose of providing industrial insurance coverage for employees of trainers licensed under chapter 67.16 RCW, including but not limited to exercise riders, pony riders, and grooms, and including all on or off track employment. For the purposes of RCW 51.16.210, 67.16.300, 51.16.140, 51.32.073, and 67.16.020 a hot-walker shall be considered a groom. The department may adopt rules under chapter 34.05 RCW to carry out the purposes of this section, including rules providing for alternative reporting periods and payment due dates for coverage under this section. The department rules shall ensure that no licensee licensed prior to May 13, 1989, shall pay more than the assessment fixed at the basic manual rate.

(2) The department shall compute industrial insurance premium rates on a per license basis, which premiums shall be assessed at the time of each issuance or renewal of the license for owners, trainers, and grooms in amounts established by department rule for coverage under this section. Premium assessments shall be determined in accordance with the requirements of this title, except that assessments shall not be experience rated and shall be fixed at the basic manual rate. However, rates may vary according to differences in working conditions at major tracks and fair tracks.

(3) For the purposes of paying premiums and assessments under this section and making reports under this title, individuals licensed as trainers by the Washington horse racing commission shall be considered employers. The premium assessment for a groom's license shall be paid by the trainer responsible for signing the groom's license application and shall be payable at the time of license issuance or renewal.

(4) The fee to be assessed on owner licenses as required by this section shall not exceed one hundred fifty dollars. However, those owners having less than a full ownership in a horse or horses shall pay a percentage of the required license fee that is equal to the total percentage of the ownership that the owner has in the horse or horses. In no event shall an owner having an ownership percentage in more than one horse pay more than a one hundred fifty-dollar license fee. The assessment on each owner's license shall not imply that an owner is an employer, but shall be required as part of the privilege of holding an owner's license.

(5) Premium assessments under this section shall be collected by the Washington horse racing commission

and deposited in the industrial insurance trust funds as provided under department rules. [1989 c 385 § 1.]

Chapter 51.24

ACTIONS AT LAW FOR INJURY OR DEATH

Sections

- 51.24.020 Action against employer for intentional injury.
- 51.24.030 Action against third person—Election by injured person or beneficiary authorized—Statutory interest in recovery—"Injury" defined—Applicability of chapter to underinsured motorist insurance coverage.
- 51.24.035 Action against third person—Immunity of design professional and employees—"Design professional" defined.
- 51.24.040 Action against third person—Election or recovery not bar to compensation or benefits.
- 51.24.050 Action against third person—Assignment of cause of action to department or self-insurer—Disposition of award or settlement—Adjustment of experience rating.
- 51.24.060 Action against third person—Distribution of award or settlement recovered by injured worker or beneficiary—Lien—Adjustment of experience rating—Enforcement.
- 51.24.070 Action against third person—Requiring injured worker or beneficiary to exercise right of election—Procedures—Right of reelection.
- 51.24.080 Action against third person—Notice of election or copy of complaint to be given department or self-insurer—Filing notice.
- 51.24.090 Action against third person—Compromise or settlement less than benefits—Approval by department or self-insurer—Assignment of action.
- 51.24.100 Action against third person—Right to compensation not pleadable or admissible—Challenge to right to bring action.
- 51.24.110 Action against third person—Assignment to department—Appointment of special assistant attorneys general.
- 51.24.120 Department authorized to adopt rules.
- 51.24.900 Application—1977 ex.s. c 85.
- 51.24.902 Application—1984 c 218.

51.24.020 Action against employer for intentional injury. If injury results to a worker from the deliberate intention of his or her employer to produce such injury, the worker or beneficiary of the worker shall have the privilege to take under this title and also have cause of action against the employer as if this title had not been enacted, for any damages in excess of compensation and benefits paid or payable under this title. [1984 c 218 § 2; 1977 ex.s. c 350 § 31; 1973 1st ex.s. c 154 § 94; 1961 c 23 § 51.24.020. Prior: 1957 c 70 § 24; prior: 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

51.24.030 Action against third person—Election by injured person or beneficiary authorized—Statutory interest in recovery—"Injury" defined—Applicability of chapter to underinsured motorist insurance coverage. (1) If a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compensation are provided under this title, the injured

worker or beneficiary may elect to seek damages from the third person.

(2) In every action brought under this section, the plaintiff shall give notice to the department or self-insurer when the action is filed. The department or self-insurer may file a notice of statutory interest in recovery. When such notice has been filed by the department or self-insurer, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department or self-insurer. The department or self-insurer may then intervene as a party in the action to protect its statutory interest in recovery.

(3) For the purposes of this chapter, "injury" shall include any physical or mental condition, disease, ailment or loss, including death, for which compensation and benefits are paid or payable under this title.

(4) Damages recoverable by a worker or beneficiary pursuant to the underinsured motorist coverage of an insurance policy shall be subject to this chapter only if the owner of the policy is the employer of the injured worker. [1987 c 212 § 1701; 1986 c 58 § 1; 1984 c 218 § 3; 1977 ex.s. c 85 § 1.]

51.24.035 Action against third person—Immunity of design professional and employees—"Design professional" defined. (1) Notwithstanding RCW 51.24.030(1), the injured worker or beneficiary may not seek damages against a design professional who is a third person and who has been retained to perform professional services on a construction project, or any employee of a design professional who is assisting or representing the design professional in the performance of professional services on the site of the construction project, unless responsibility for safety practices is specifically assumed by contract, the provisions of which were mutually negotiated, or the design professional actually exercised control over the portion of the premises where the worker was injured.

(2) The immunity provided by this section does not apply to the negligent preparation of design plans and specifications.

(3) For the purposes of this section, "design professional" means an architect, professional engineer, land surveyor, or landscape architect, who is licensed or authorized by law to practice such profession, or any corporation organized under chapter 18.100 RCW or authorized under RCW 18.08.420 or 18.43.130 to render design services through the practice of one or more of such professions. [1987 c 212 § 1801.]

51.24.040 Action against third person—Election or recovery not bar to compensation or benefits. The injured worker or beneficiary shall be entitled to the full compensation and benefits provided by this title regardless of any election or recovery made under this chapter. [1977 ex.s. c 85 § 2.]

51.24.050 Action against third person—Assignment of cause of action to department or self-insurer—Disposition of award or settlement—Adjustment of experience rating. (1) An election not to

proceed against the third person operates as an assignment of the cause of action to the department or self-insurer, which may prosecute or compromise the action in its discretion in the name of the injured worker, beneficiary or legal representative.

(2) If an injury to a worker results in the worker's death, the department or self-insurer to which the cause of action has been assigned may petition a court for the appointment of a special personal representative for the limited purpose of maintaining an action under this chapter and chapter 4.20 RCW.

(3) If a beneficiary is a minor child, an election not to proceed against a third person on such beneficiary's cause of action may be exercised by the beneficiary's legal custodian or guardian.

(4) Any recovery made by the department or self-insurer shall be distributed as follows:

(a) The department or self-insurer shall be paid the expenses incurred in making the recovery including reasonable costs of legal services;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the recovery made, which shall not be subject to subsection (5) of this section: *Provided*, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the compensation and benefits paid to or on behalf of the injured worker or beneficiary by the department and/or self-insurer; and

(d) The injured worker or beneficiary shall be paid any remaining balance.

(5) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(6) In the case of an employer not qualifying as a self-insurer, the department shall make a retroactive adjustment to such employer's experience rating in which the third party claim has been included to reflect that portion of the award or settlement which is reimbursed for compensation and benefits paid and, if the claim is open at the time of recovery, applied against further compensation or benefits to which the injured worker or beneficiary may be entitled.

(7) When the cause of action has been assigned to the self-insurer and compensation and benefits have been paid and/or are payable from state funds for the same injury:

(a) The prosecution of such cause of action shall also be for the benefit of the department to the extent of compensation and benefits paid and payable from state funds;

(b) Any compromise or settlement of such cause of action which results in less than the entitlement under this title is void unless made with the written approval of the department;

(c) The department shall be reimbursed for compensation and benefits paid from state funds;

(d) The department shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the self-insurer in obtaining the award or settlement; and

(e) Any remaining balance under subsection (4)(d) of this section shall be applied, under subsection (5) of this section, to reduce the obligations of the department and self-insurer to pay further compensation and benefits in proportion to which the obligations of each bear to the remaining entitlement of the worker or beneficiary. [1984 c 218 § 4; 1983 c 211 § 1; 1977 ex.s. c 85 § 3.]

Applicability—1983 c 211: "Sections 1 and 2 of this act apply to all actions against third persons in which judgment or settlement of the underlying action has not taken place prior to July 24, 1983." [1983 c 211 § 3.] "Sections 1 and 2 of this act" consist of the 1983 amendments of RCW 51.24.050 and 51.24.060.

Severability—1983 c 211: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 211 § 4.]

51.24.060 Action against third person—Distribution of award or settlement recovered by injured worker or beneficiary—Lien—Adjustment of experience rating—Enforcement. (1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: *Provided*, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for compensation and benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid or payable under this title: *Provided*, That the department or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees.

(ii) The sum representing the department's and/or self-insurer's proportionate share shall not be subject to subsection (1) (d) and (e) of this section.

(d) Any remaining balance shall be paid to the injured worker or beneficiary;

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person;

(f) If the employer or a co-employee are determined under RCW 4.22.070 to be at fault, (c) and (e) of this subsection do not apply and benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In the case of an employer not qualifying as a self-insurer, the department shall make a retroactive adjustment to such employer's experience rating in which the third party claim has been included to reflect that portion of the award or settlement which is reimbursed for compensation and benefits paid and, if the claim is open at the time of recovery, applied against further compensation and benefits to which the injured worker or beneficiary may be entitled.

(5) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(6) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(7) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by registered or certified mail, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The

amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(8) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [1987 c 442 § 1118; 1986 c 305 § 403; 1984 c 218 § 5; 1983 c 211 § 2; 1977 ex.s. c 85 § 4.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Applicability—Severability—1983 c 211: See notes following RCW 51.24.050.

51.24.070 Action against third person—Requiring injured worker or beneficiary to exercise right of election—Procedures—Right of reelection. (1) The department or self-insurer may require the injured worker or beneficiary to exercise the right of election under this chapter by serving a written demand by registered mail, certified mail, or personal service on the worker or beneficiary.

(2) Unless an election is made within sixty days of the receipt of the demand, and unless an action is instituted or settled within the time granted by the department or self-insurer, the injured worker or beneficiary is deemed to have assigned the action to the department or self-insurer. The department or self-insurer shall allow the worker or beneficiary at least ninety days from the election to institute or settle the action. When a beneficiary is a minor child the demand shall be served upon the legal custodian or guardian of such beneficiary.

(3) If an action which has been filed is not diligently prosecuted, the department or self-insurer may petition the court in which the action is pending for an order assigning the cause of action to the department or self-insurer. Upon a sufficient showing of a lack of diligent prosecution the court in its discretion may issue the order.

(4) If the department or self-insurer has taken an assignment of the third party cause of action under subsection (2) of this section, the injured worker or beneficiary may, at the discretion of the department or self-insurer, exercise a right of reelection and assume the cause of action subject to reimbursement of litigation expenses incurred by the department or self-insurer. [1984 c 218 § 6; 1977 ex.s. c 85 § 5.]

51.24.080 Action against third person—Notice of election or copy of complaint to be given department or self-insurer—Filing notice. (1) If the injured worker or beneficiary elects to seek damages from the third person, notice of the election must be given to the department or self-insurer. The notice shall be by registered mail, certified mail, or personal service. If an action is filed by the injured worker or beneficiary, a copy of the complaint must be sent by registered mail to the department or self-insurer.

(2) A return showing service of the notice on the department or self-insurer shall be filed with the court but shall not be part of the record except as necessary to give notice to the defendant of the lien imposed by RCW 51.24.060(2). [1977 ex.s. c 85 § 6.]

51.24.090 Action against third person—Compromise or settlement less than benefits—Approval by department or self-insurer—Assignment of action. (1) Any compromise or settlement of the third party cause of action by the injured worker or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department or self-insurer: *Provided*, That for the purposes of this

chapter, "entitlement" means benefits and compensation paid and payable.

(2) If a compromise or settlement is void because of subsection (1) of this section, the department or self-insurer may petition the court in which the action was filed for an order assigning the cause of action to the department or self-insurer. If an action has not been filed, the department or self-insurer may proceed as provided in chapter 7.24 RCW. [1984 c 218 § 7; 1977 ex.s. c 85 § 7.]

51.24.100 Action against third person—Right to compensation not pleadable or admissible—Challenge to right to bring action. The fact that the injured worker or beneficiary is entitled to compensation under this title shall not be pleaded or admissible in evidence in any third party action under this chapter. Any challenge of the right to bring such action shall be made by supplemental pleadings only and shall be decided by the court as a matter of law. [1977 ex.s. c 85 § 8.]

51.24.110 Action against third person—Assignment to department—Appointment of special assistant attorneys general. (1) Actions against third persons that are assigned by the claimant to the department, voluntarily or by operation of law in accordance with chapter 51.24 RCW, may be prosecuted by special assistant attorneys general.

(2) The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state bar association, shall promulgate rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate third party actions under subsection (1) of this section. [1984 c 218 § 1.]

51.24.120 Department authorized to adopt rules. The department may adopt, amend, and rescind under chapter 34.05 RCW such rules as may be necessary to the administration of this chapter. [1984 c 218 § 8.]

51.24.900 Application—1977 ex.s. c 85. This 1977 amendatory act shall apply only to causes of action which arise on or after its effective date. [1977 ex.s. c 85 § 9.]

Reviser's note: "This 1977 amendatory act" [1977 ex.s. c 85] is codified as RCW 51.24.030 through 51.24.100, and 51.24.900.

51.24.902 Application—1984 c 218. This act applies to all causes of action against third persons in which judgment or settlement of the underlying action has not taken place before June 7, 1984. [1984 c 218 § 9.]

Reviser's note: For codification of "this act" [1984 c 218], see Codification Tables, Volume 0.

Chapter 51.28

NOTICE AND REPORT OF ACCIDENT—
APPLICATION FOR COMPENSATION

Sections

51.28.010	Notice of accident—Notification of worker's rights.
51.28.020	Worker's application for compensation—Physician to aid in.
51.28.025	Duty of employer to report injury or disease—Contents—Penalty.
51.28.030	Beneficiaries' application for compensation—Notification of rights.
51.28.040	Application for change in compensation.
51.28.050	Time limitation for filing application or enforcing claim for injury.
51.28.055	Time limitation for filing claim for occupational disease—Notice.
51.28.060	Proof of dependency.
51.28.070	Claim files and records confidential.
51.28.080	Determination of compensation for temporary total disability—Notification of employer.
51.28.090	Notification of availability of basic health plan.

51.28.010 Notice of accident—Notification of worker's rights. Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer, superintendent or foreman or forewoman in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department pursuant to RCW 51.28.025, as now or hereafter amended, where the worker has received treatment from a physician, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury.

Upon receipt of such notice of accident, the department shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title. [1977 ex.s. c 350 § 32; 1975 1st ex.s. c 224 § 4; 1971 ex.s. c 289 § 5; 1961 c 23 § 51.28.010. Prior: 1915 c 188 § 9; 1911 c 74 § 14; RRS § 7689.]

Effective date—1975 ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.020 Worker's application for compensation—Physician to aid in. Where a worker is entitled to compensation under this title he or she shall file with the department or his or her self-insuring employer, as the case may be, his or her application for such, together with the certificate of the physician who attended him or her, and it shall be the duty of the physician to inform the injured worker of his or her rights under this title and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the worker. The department shall provide physicians with a manual which outlines the procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims. If application for compensation is made to a

self-insuring employer, he or she shall forthwith send a copy thereof to the department. [1984 c 159 § 3; 1977 ex.s. c 350 § 33; 1971 ex.s. c 289 § 38; 1961 c 23 § 51.28.020. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.025 Duty of employer to report injury or disease—Contents—Penalty. (1) Whenever an employer has notice or knowledge of an injury or occupational disease sustained by any worker in his or her employment who has received treatment from a physician, has been hospitalized, disabled from work or has died as the apparent result of such injury or occupational disease, the employer shall immediately report the same to the department on forms prescribed by it. The report shall include:

- The name, address, and business of the employer;
- The name, address, and occupation of the worker;
- The date, time, cause, and nature of the injury or occupational disease;
- Whether the injury or occupational disease arose in the course of the injured worker's employment;
- All available information pertaining to the nature of the injury or occupational disease including but not limited to any visible signs, any complaints of the worker, any time lost from work, and the observable effect on the worker's bodily functions, so far as is known; and
- Such other pertinent information as the department may prescribe by regulation.

(2) Failure or refusal to file the report required by subsection (1) shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars for each offense, to be collected in a civil action in the name of the department and paid into the supplemental pension fund. [1987 c 185 § 32; 1985 c 347 § 1; 1975 1st ex.s. c 224 § 5; 1971 ex.s. c 289 § 39.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.030 Beneficiaries' application for compensation—Notification of rights. Where death results from injury the parties entitled to compensation under this title, or someone in their behalf, shall make application for the same to the department or self-insurer as the case may be, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this title, certificates of attending physician, if any, and such proof as required by the rules of the department.

Upon receipt of notice of accident under RCW 51.28.010, the director shall immediately forward to the party or parties required to make application for compensation

under this section, notification, in nontechnical language, of their rights under this title. [1972 ex.s. c 43 § 17; 1971 ex.s. c 289 § 6; 1961 c 23 § 51.28.030. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.040 Application for change in compensation. If change of circumstances warrants an increase or rearrangement of compensation, like application shall be made therefor. Where the application has been granted, compensation and other benefits if in order shall be allowed for periods of time up to sixty days prior to the receipt of such application. [1977 ex.s. c 199 § 1; 1961 c 23 § 51.28.040. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.050 Time limitation for filing application or enforcing claim for injury. No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued, except as provided in RCW 51.28.055. [1984 c 159 § 1; 1961 c 23 § 51.28.050. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.055 Time limitation for filing claim for occupational disease—Notice. Claims for occupational disease or infection to be valid and compensable must be filed within two years following the date the worker had written notice from a physician: (1) Of the existence of his or her occupational disease, and (2) that a claim for disability benefits may be filed. The notice shall also contain a statement that the worker has two years from the date of the notice to file a claim. The physician shall file the notice with the department. The department shall send a copy to the worker and to the self-insurer if the worker's employer is self-insured. However, a claim is valid if it is filed within two years from the date of death of the worker suffering from an occupational disease. [1984 c 159 § 2; 1977 ex.s. c 350 § 34; 1961 c 23 § 51.28.055. Prior: 1959 c 308 § 18; prior: 1957 c 70 § 16, part; 1951 c 236 § 1, part.]

51.28.060 Proof of dependency. A dependent shall at all times furnish the department with proof satisfactory to the director of the nature, amount and extent of the contribution made by the deceased worker.

Proof of dependency by any beneficiary residing without the United States shall be made before the nearest United States consul or consular agency, under the seal of such consul or consular agent, and the department may cause any warrant or warrants to which such beneficiary is entitled to be transmitted to the beneficiary through the nearest United States consul or consular agent. [1977 ex.s. c 350 § 35; 1961 c 23 § 51.28.060. Prior: 1957 c 70 § 25; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911

c 74 § 3, part; RRS § 7675, part. (ii) 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

51.28.070 Claim files and records confidential. Information contained in the claim files and records of injured workers, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. Employers or their duly authorized representatives may review any files of their own injured workers in connection with any pending claims. Physicians treating or examining workers claiming benefits under this title, or physicians giving medical advice to the department regarding any claim may, at the discretion of the department, inspect the claim files and records of injured workers, and other persons may make such inspection, at the department's discretion, when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this title. [1977 ex.s. c 350 § 36; 1975 1st ex.s. c 224 § 6; 1961 c 23 § 51.28.070. Prior: 1957 c 70 § 51.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.28.080 Determination of compensation for temporary total disability—Notification of employer. An employer shall be promptly notified by the department when it has determined that a worker of that employer is entitled to compensation under RCW 51.32.090. Notification shall include, in nontechnical language, an explanation of the employer's rights under this title. [1985 c 338 § 2.]

51.28.090 Notification of availability of basic health plan. The director shall notify persons receiving time-loss payments under this chapter of the availability of basic health care coverage to qualified enrollees under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the director of closure of enrollment in the plan. The director shall maintain supplies of Washington basic health plan enrollment application forms in all field service offices where the plan is available, which shall be provided in reasonably necessary quantities by the administrator for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 17.]

Sunset Act application: See note following chapter 70.47 RCW digest.

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

Chapter 51.32

COMPENSATION—RIGHT TO AND AMOUNT

Sections

- 51.32.010 Who entitled to compensation.
- 51.32.015 Benefits provided for injury during course of employment and during lunch period—"Jobsite" defined—When worker lunch hours not reported.
- 51.32.020 Who not entitled to compensation.
- 51.32.025 Payments for children cease at age eighteen—Exceptions.
- 51.32.030 When compensation payable to employer or member of corporate employer.
- 51.32.040 Exemption of awards—Payment of awards after death—Time limitations for filing—Confinement in institution under conviction and sentence.
- 51.32.045 Direct deposit of benefits into financial institutions authorized.
- 51.32.050 Death benefits.
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- 51.32.230 Recovery of overpayments under RCW 51.32.220—Limitation.
- 51.32.240 Payments made due to error, mistake, erroneous adjudication, fraud, etc.
- 51.32.250 Payment of job modification costs.
- 51.32.260 Compensation for loss or damage to personal clothing, footwear or protective equipment.

Public assistance recipient receiving industrial insurance compensation, recovery by department: RCW 74.04.530 through 74.04.580.

Victims of crimes, benefits: Chapter 7.68 RCW.

51.32.010 Who entitled to compensation. Each worker injured in the course of his or her employment, or his or her family or dependents in case of death of the worker, shall receive compensation in accordance with this chapter, and, except as in this title otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever: *Provided*, That if an injured worker, or the surviving spouse of an injured worker shall not have the legal custody of a child for, or on account of whom payments are required to be made under this title, such payment or payments shall be made to the person or persons having the legal custody of such child but only for the periods of time after the department has been notified of the fact of such legal custody, and it shall be the duty of any such person or persons receiving payments because of legal custody of any child immediately to notify the department of any change in such legal custody. [1977 ex.s. c 350 § 37; 1975 1st ex.s. c 224 § 7; 1971 ex.s. c 289 § 40; 1961 c 23 § 51.32.010. Prior: 1957 c 70 § 26; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.015 Benefits provided for injury during course of employment and during lunch period—"Jobsite" defined—When worker lunch hours not reported. The benefits of Title 51 RCW shall be provided to each worker receiving an injury, as defined therein, during the course of his or her employment and also during his or her lunch period as established by the employer while on the jobsite. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business or work process in which the employer is then engaged: *Provided*, That if a worker by reason of his or her employment leaves such jobsite under the direction, control or request of the employer and if such worker is injured during his or her lunch period while so away from the jobsite, the worker shall receive the benefits as provided herein: *And provided further*, That the employer need not consider the lunch period in his or her payroll for the purpose of reporting to the department unless the worker is actually paid for such period of time. [1977 ex.s. c 350 § 38; 1971 ex.s. c 289 § 41; 1961 c 107 § 1.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.32.020 Who not entitled to compensation. If injury or death results to a worker from the deliberate intention of the worker himself or herself to produce such injury or death, or while the worker is engaged in the attempt to commit, or the commission of, a felony, neither the worker nor the widow, widower, child, or dependent of the worker shall receive any payment under this title.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased worker and, at the same time, as the step-child of a deceased worker. [1977 ex.s. c 350 § 39; 1971 ex.s. c 289 § 42; 1961 c 23 § 51.32.020. Prior: 1957 c 70 § 27; prior: (i) 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.32.025 Payments for children cease at age eighteen—Exceptions. Any payments to or on account of any child or children of a deceased or temporarily or totally permanently disabled worker pursuant to any of the provisions of chapter 51.32 RCW shall terminate when any such child reaches the age of eighteen years unless such child is a dependent invalid child or is permanently enrolled at a full time course in an accredited school, in which case such payments after age eighteen shall be made directly to such child. Payments to any dependent invalid child over the age of eighteen years shall continue in the amount previously paid on account of such child until he shall cease to be dependent. Payments to any child over the age of eighteen years permanently enrolled at a full time course in an accredited school shall continue in the amount previously paid on account of such child until the child reaches an age over that provided for in the definition of "child" in this title or ceases to be permanently enrolled whichever occurs first. Where the worker sustains an injury or dies when any of the worker's children is over the age of eighteen years and is either a dependent invalid child or is a child permanently enrolled at a full time course in an accredited school the payment to or on account of any such child shall be made as herein provided. [1987 c 185 § 33; 1975 1st ex.s. c 224 § 11.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.030 When compensation payable to employer or member of corporate employer. Any sole proprietor, partner, or joint venturer who has requested coverage under this title and who shall thereafter be injured or

sustain an occupational disease, shall be entitled to the benefit of this title, as and under the same circumstances and subject to the same obligations as a worker: *Provided*, That no such person or the beneficiaries thereof shall be entitled to benefits under this title unless the department has received notice in writing of such request on such forms as the department may provide prior to the date of the injury or occupational disease as the result of which claims are made: *Provided*, That the department shall have the power to cancel the personal coverage of any such person if any required payments or reports have not been made. [1980 c 14 § 8. Prior: 1977 ex.s. c 350 § 40; 1977 ex.s. c 323 § 14; 1961 c 23 § 51-32.030; prior: 1957 c 70 § 28; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.040 Exemption of awards—Payment of awards after death—Time limitations for filing—Confinement in institution under conviction and sentence. No money paid or payable under this title shall, except as provided for in RCW 43.20B.720 or 74.20A.260, prior to the issuance and delivery of the check or warrant therefor, be capable of being assigned, charged, or ever be taken in execution or attached or garnished, nor shall the same pass, or be paid, to any other person by operation of law, or by any form of voluntary assignment, or power of attorney. Any such assignment or charge shall be void, unless the transfer is to a financial institution at the request of a worker or other beneficiary and in accordance with RCW 51.32.045 shall be made: *Provided*, That if any worker suffers a permanent partial injury, and dies from some other cause than the accident which produced such injury before he or she shall have received payment of his or her award for such permanent partial injury, or if any worker suffers any other injury before he or she shall have received payment of any monthly installment covering any period of time prior to his or her death, the amount of such permanent partial award, or of such monthly payment or both, shall be paid to the surviving spouse, or to the child or children if there is no surviving spouse: *Provided further*, That, if any worker suffers an injury and dies therefrom before he or she shall have received payment of any monthly installment covering time loss for any period of time prior to his or her death, the amount of such monthly payment shall be paid to the surviving spouse, or to the child or children if there is no surviving spouse: *Provided further*, That any application for compensation under the foregoing provisos of this section shall be filed with the department or self-insuring employer within one year of the date of death: *Provided further*, That if the injured worker resided in the United States as long as three years prior to the date of injury, such payment shall not be made to any surviving spouse or child who was at the time of the injury a nonresident of the United States: *Provided further*, That any worker receiving benefits under this title who is subsequently

confined in, or who subsequently becomes eligible therefor while confined in any institution under conviction and sentence shall have all payments of such compensation canceled during the period of confinement but after discharge from the institution payment of benefits thereafter due shall be paid if such worker would, but for the provisions of this proviso, otherwise be entitled thereto: *Provided further*, That if any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she shall be entitled to payments under this title subject to the requirements of chapter 72.65 RCW unless his or her participation in such program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence: *Provided further*, That if such incarcerated worker has during such confinement period, any beneficiaries, they shall be paid directly the monthly benefits which would have been paid to him or her for himself or herself and his or her beneficiaries had he or she not been so confined. Any lump sum benefits to which the worker would otherwise be entitled but for the provisions of these provisos shall be paid on a monthly basis to his or her beneficiaries. [1987 c 75 § 7; 1983 c 2 § 13. Prior: 1982 c 201 § 8; 1982 c 109 § 10; 1979 ex.s. c 171 § 11; 1977 ex.s. c 350 § 41; 1975 1st ex.s. c 224 § 8; 1974 ex.s. c 30 § 1; prior: 1973 1st ex.s. c 154 § 95; 1972 ex.s. c 43 § 18; 1971 ex.s. c 289 § 43; 1965 ex.s. c 165 § 2; 1961 c 23 § 51.32.040; prior: 1957 c 70 § 29; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

51.32.045 Direct deposit of benefits into financial institutions authorized. Any worker or other recipient of benefits under this title may elect to have any payments due transferred to such person's account in a financial institution for either: (1) Credit to the recipient's account in such financial institution; or (2) immediate transfer therefrom to the recipient's account in any other financial institution. A single warrant may be drawn in favor of such financial institution, for the total amount due the recipients involved, and written directions provided to such financial institution of the amount to be credited to the account of a recipient or to be transferred to an account in another financial institution for such recipient. The issuance and delivery by the disbursing officer of a warrant in accordance with the procedure set forth in this section and proper indorsement thereof by the financial institution shall have the same legal effect as payment directly to the recipient.

For the purposes of this section "financial institution" shall have the meaning given in RCW 41.04.240 as now or hereafter amended. [1982 c 109 § 11.]

51.32.050 Death benefits. (1) Where death results from the injury the expenses of burial not to exceed two thousand dollars shall be paid.

(2) (a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker but not less than one hundred eighty-five dollars;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker but not less than two hundred twenty-two dollars;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker but not less than two hundred fifty-three dollars;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker but not less than two hundred seventy-six dollars;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker but not less than two hundred ninety-nine dollars; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker but not less than three hundred twenty-two dollars.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: *Provided*, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a

sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section exceed one hundred percent of the average monthly wage in the state as computed under RCW 51.08.018.

(e) In addition to the monthly payments provided for in (2)(a) through (2)(c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid the sum of one thousand six hundred dollars, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of seventy-five hundred dollars or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: *Provided*, That if the injury occurred prior to July 1, 1971, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum of seventy-five hundred dollars or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under (2)(f)(ii) of this section to a surviving spouse based

upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: *Provided*, That benefits under this subsection or subsection (4) shall not exceed sixty-five percent of the wages of the deceased worker at the time of his or her death or one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, whichever is the lesser of the two sums.

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed sixty-five percent of the wages of the deceased worker at the time of the death or one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, whichever is the lesser of the two sums. If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067. [1988 c 161 § 2; 1986 c 58 § 3; 1982 c 63 § 18; 1977 ex.s. c 350 § 42; 1975-'76 2nd ex.s. c 45 § 2; 1975 1st ex.s. c 179 § 1; 1973 1st ex.s. c 154 § 96; 1972 ex.s. c 43 § 19; 1971 ex.s. c 289 § 7; 1965 ex.s. c 122 § 1; 1961 c 274 § 1; 1961 c 23 § 51.32.050. Prior: 1957 c 70 § 30; 1951 c 115 § 1; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Benefit increases—Application to certain retrospective rating agreements—1988 c 161: "The increases in benefits in RCW 51.32.050, 51.32.060, 51.32.090, and 51.32.180, contained in chapter 161, Laws of 1988 do not affect a retrospective rating agreement entered into by any employer with the department before July 1, 1988." [1988 c 161 § 15.]

Effective dates—1988 c 161 § 1, 2, 3, 4, and 6: "Section 4 of this act shall take effect on June 30, 1989. Sections 1, 2, 3, and 6 of this act shall take effect on July 1, 1988." [1988 c 161 § 17.]

Effective date—1986 c 58 § 2, 3: See note following RCW 51.32.080.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Legislative intent—1975 1st ex.s. c 179: "The legislative intent of chapter 179, Laws of 1975 1st ex. sess. (2nd SSB No. 2241) was in part to offer surviving spouses of eligible workmen two options upon remarriage; such options to be available to any otherwise eligible surviving spouse regardless of the date of death of the injured workman. Accordingly this 1976 amendatory act is required to clarify that intent." [1975-'76 2nd ex.s. c 45 § 1.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

51.32.055 Determination of permanent disabilities.

(1) One purpose of this title is to restore the injured worker as near as possible to the condition of self-support as an able-bodied worker. Benefits for permanent disability shall be determined under the director's supervision only after the injured worker's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department. Either the worker, employer, or self-insurer may make a request or such inquiry may be initiated by the director on his or her own motion. Such determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the employer or self-insurer shall be forwarded to the director with such requests.

(3) A request for determination of permanent disability shall be examined by the department and an order shall issue in accordance with RCW 51.52.050.

(4) The department may require that the worker present himself or herself for a special medical examination by a physician, or physicians, selected by the department, and the department may require that the worker present himself or herself for a personal interview. In such event the costs of such examination or interview, including payment of any reasonable travel

expenses, shall be paid by the department or self-insurer as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of such medical bureau in a manner to be determined by the department.

(6) Where dispute arises from the handling of any claims prior to the condition of the injured worker becoming fixed, the worker, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In such cases the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

(7) (a) In the case of claims accepted by self-insurers after June 30, 1986, and before July 1, 1990, which involve only medical treatment and/or the payment of temporary disability compensation under RCW 51.32.090 and which at the time medical treatment is concluded do not involve permanent disability, if the claim is one with respect to which the department has not intervened under subsection (6) of this section, and the injured worker has returned to work with the self-insured employer of record, such claims may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) All determinations of permanent disability for claims accepted by self-insurers after June 30, 1986, and before July 1, 1990, shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(c) Upon closure of claims under (a) of this subsection the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold face type: "This order constitutes notification that your claim is being closed with medical benefits and temporary disability compensation only as provided, and with the condition you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits or the temporary disability compensation that has been provided, you may protest in writing to the department of labor and industries, self-insurance section, within sixty days of the date you received this order." In the event the department receives such a protest the self-insurer's closure order shall be held in abeyance. The department shall review the claim closure action and enter a determinative order as provided for in RCW 51.52.050.

(d) If within two years of claim closure the department determines that the self-insurer has made payment of benefits because of clerical error, mistake of identity, or innocent misrepresentation, or the department discovers a violation of the conditions of claim closure, the department may require the self-insurer to correct the

benefits paid or payable. This paragraph shall not limit in any way the application of RCW 51.32.240.

(8) In the case of claims accepted by self-insurers after June 30, 1990, which involve only medical treatment and which do not involve payment of temporary disability compensation under RCW 51.32.090 and which at the time medical treatment is concluded do not involve permanent disability, such claims may be closed by the self-insurers subject to reporting of claims to the department in a manner prescribed by department rules promulgated pursuant to chapter 34.05 RCW. Upon such closure the self-insurers shall enter a written order, communicated to the worker, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with medical benefits only, as provided. If for any reason you disagree with this closure, you may protest in writing to the Department of Labor and Industries, Olympia, within 60 days of the date you received this order. The department will then review your claim and enter a further determinative order." In the event the department receives such a protest it shall review the claim and enter a further determinative order as provided for in RCW 51.52.050. [1988 c 161 § 13; 1986 c 55 § 1; 1981 c 326 § 1; 1977 ex.s. c 350 § 43; 1971 ex.s. c 289 § 46.]

Effective date—Applicability—1986 c 55 § 1: "Section 1 of this act shall take effect July 1, 1986, and shall apply to claims accepted after June 30, 1986." [1986 c 55 § 4.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.060 Permanent total disability compensation—Personal attendant. (1) When the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the worker shall receive monthly during the period of such disability:

(a) If married at the time of injury, sixty-five percent of his or her wages but not less than two hundred fifteen dollars per month.

(b) If married with one child at the time of injury, sixty-seven percent of his or her wages but not less than two hundred fifty-two dollars per month.

(c) If married with two children at the time of injury, sixty-nine percent of his or her wages but not less than two hundred eighty-three dollars.

(d) If married with three children at the time of injury, seventy-one percent of his or her wages but not less than three hundred six dollars per month.

(e) If married with four children at the time of injury, seventy-three percent of his or her wages but not less than three hundred twenty-nine dollars per month.

(f) If married with five or more children at the time of injury, seventy-five percent of his or her wages but not less than three hundred fifty-two dollars per month.

(g) If unmarried at the time of the injury, sixty percent of his or her wages but not less than one hundred eighty-five dollars per month.

(h) If unmarried with one child at the time of injury, sixty-two percent of his or her wages but not less than two hundred twenty-two dollars per month.

(i) If unmarried with two children at the time of injury, sixty-four percent of his or her wages but not less than two hundred fifty-three dollars per month.

(j) If unmarried with three children at the time of injury, sixty-six percent of his or her wages but not less than two hundred seventy-six dollars per month.

(k) If unmarried with four children at the time of injury, sixty-eight percent of his or her wages but not less than two hundred ninety-nine dollars per month.

(1) If unmarried with five or more children at the time of injury, seventy percent of his or her wages but not less than three hundred twenty-two dollars per month.

(2) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workers, only that spouse having the higher wages of the two shall be entitled to claim their child or children for compensation purposes.

(3) In case of permanent total disability, if the character of the injury is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues, but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

(4) Should any further accident result in the permanent total disability of an injured worker, he or she shall receive the pension to which he or she would be entitled, notwithstanding the payment of a lump sum for his or her prior injury.

(5) In no event shall the monthly payments provided in this section exceed one hundred percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018, except that this limitation shall not apply to the payments provided for in subsection (3) of this section.

(6) In the case of new or reopened claims, if the supervisor of industrial insurance determines that, at the time of filing or reopening, the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section.

(7) The benefits provided by this section are subject to modification under RCW 51.32.067. [1988 c 161 § 1. Prior: 1986 c 59 § 1; 1986 c 58 § 5; 1983 c 3 § 159; 1977 ex.s. c 350 § 44; 1975 1st ex.s. c 224 § 9; 1973 c 147 § 1; 1972 ex.s. c 43 § 20; 1971 ex.s. c 289 § 8; 1965 ex.s. c 122 § 2; 1961 c 274 § 2; 1961 c 23 § 51.32.060; prior: 1957 c 70 § 31; 1951 c 115 § 2; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.067 Permanent total disability—Death benefit options—Election. (1) After a worker elects one

of the options in (a), (b), or (c) of this subsection, that option shall apply only if the worker dies during a period of permanent total disability from a cause unrelated to the injury, leaving a surviving spouse, child, children, or other dependent. If, after making an election under this subsection, a worker dies from a cause related to the injury during a period of permanent total disability, his or her beneficiaries shall receive benefits under RCW 51.32.050 (2) through (5).

(a) *Option I.* An injured worker selecting this option shall receive the benefits provided by RCW 51.32.060, with no benefits being paid to the worker's surviving spouse, children, or others.

(b) *Option II.* An injured worker selecting this option shall receive an actuarially reduced benefit which upon death shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(c) *Option III.* An injured worker selecting this option shall receive an actuarially reduced benefit and, upon death, one-half of the reduced benefit shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(2) The worker shall make the election in writing and the worker's spouse, if any, shall consent in writing as a prerequisite to the election of Option I.

(3) The department shall adopt such rules as may be necessary to implement this section. [1986 c 58 § 4.]

51.32.072 Additional payments for prior pensioners—Children—Remarriage—Attendant. Notwithstanding any other provision of law, every surviving spouse and every permanently totally disabled worker or temporarily totally disabled worker, if such worker was unmarried at the time of the worker's injury or was then married but the marriage was later terminated by judicial action, receiving a pension or compensation for temporary total disability under this title pursuant to compensation schedules in effect prior to July 1, 1971, shall after July 1, 1975, be paid fifty percent of the average monthly wage in the state as computed under RCW 51.08.018 per month and an amount equal to five percent of such average monthly wage per month to such totally disabled worker if married at the time of the worker's injury and the marriage was not later terminated by judicial action, and an additional two percent of such average monthly wage for each child of such totally disabled worker at the time of injury in the legal custody of such totally disabled worker or such surviving spouse up to a maximum of five such children. The monthly payments such surviving spouse or totally disabled worker are receiving pursuant to compensation schedules in effect prior to July 1, 1971 shall be deducted from the monthly payments above specified.

Where such a surviving spouse has remarried, or where any such child of such worker, whether living or deceased, is not in the legal custody of such worker or such surviving spouse there shall be paid for the benefit

of and on account of each such child a sum equal to two percent of such average monthly wage up to a maximum of five such children in addition to any payments theretofore paid under compensation schedules in effect prior to July 1, 1971 for the benefit of and on account of each such child. In the case of any child or children of a deceased worker not leaving a surviving spouse or where the surviving spouse has later died, there shall be paid for the benefit of and on account of each such child a sum equal to two percent of such average monthly wage up to a maximum of five such children in addition to any payments theretofore paid under such schedules for the benefit of and on account of each such child.

If the character of the injury or occupational disease is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of this title except for care granted at the discretion of the supervisor pursuant to RCW 51.36.010: *Provided*, That such payments shall not be considered compensation nor shall they be subject to any limitation upon total compensation payments.

No part of such additional payments shall be payable from the accident fund.

The director shall pay monthly from the supplemental pension fund such an amount as will, when added to the compensation theretofore paid under compensation schedules in effect prior to July 1, 1971, equal the amounts hereinabove specified.

In cases where money has been or shall be advanced to any such person from the pension reserve, the additional amount to be paid under this section shall be reduced by the amount of monthly pension which was or is predicated upon such advanced portion of the pension reserve. [1987 c 185 § 34; 1975 1st ex.s. c 224 § 12.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.073 Additional payments for prior pensioners—Premium liability of worker and employer for additional payments. (1) Except as provided in subsection (2) of this section, each employer shall retain from the earnings of each worker that amount as shall be fixed from time to time by the director, the basis for measuring said amount to be determined by the director. The money so retained shall be matched in an equal amount by each employer, and all such moneys shall be remitted to the department in such manner and at such intervals as the department directs and shall be placed in the supplemental pension fund: *Provided*, That the state apprenticeship council shall pay the entire amount into the supplemental pension fund for registered apprentices or trainees during their participation in supplemental and related instruction classes. The moneys so collected shall be used exclusively for the additional payments from the supplemental pension fund prescribed in this

title and for the amount of any increase payable under the provisions of RCW 51.32.075, as now or hereafter amended, and shall be no more than necessary to make such payments on a current basis. The department may require a self-insurer to make any additional payments which are payable from the supplemental pension fund and thereafter such self-insurer shall be reimbursed therefrom.

(2) None of the amount assessed for the supplemental pension fund under RCW 51.16.210 may be retained from the earnings of workers covered under RCW 51.16.210. [1989 c 385 § 4; 1980 c 14 § 9. Prior: 1977 ex.s. c 350 § 45; 1977 ex.s. c 323 § 15; 1977 ex.s. c 202 § 1; 1975-'76 2nd ex.s. c 19 § 1; prior: 1975 1st ex.s. c 286 § 1; 1975 1st ex.s. c 224 § 10; 1973 c 110 § 3; 1972 ex.s. c 43 § 24; 1971 ex.s. c 289 § 17.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.075 Adjustments in compensation or death benefits. The compensation or death benefits payable pursuant to the provisions of this chapter for temporary total disability, permanent total disability, or death arising out of injuries or occupational diseases shall be adjusted as follows:

(1) On July 1, 1982, there shall be an adjustment for those whose right to compensation was established on or after July 1, 1971, and before July 1, 1982. The adjustment shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1, 1982.

(2) In addition to the adjustment established by subsection (1) of this section, there shall be another adjustment on July 1, 1983, for those whose right to compensation was established on or after July 1, 1971, and before July 1983, which shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

(3) In addition to the adjustments under subsections (1) and (2) of this section, further adjustments shall be made beginning on July 1, 1984, and on each July 1st thereafter for those whose right to compensation was established on or after July 1, 1971. The adjustment shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly

wage in the state under RCW 51.08.018 on July 1st of the year in which the adjustment is being made. The department or self-insurer shall adjust the resulting compensation rate to the nearest whole cent, not to exceed the average monthly wage in the state as computed under RCW 51.08.018. [1988 c 161 § 7; 1983 c 203 § 1; 1982 1st ex.s. c 20 § 1; 1979 c 108 § 1; 1977 ex.s. c 202 § 2; 1975 1st ex.s. c 286 § 2.]

Effective date—1982 1st ex.s. c 20: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1982." [1982 1st ex.s. c 20 § 4.]

51.32.080 Permanent partial disability—Specified—Unspecified, rules authorized for classification thereof—Injury after permanent partial disability. (1) For the permanent partial disabilities here specifically described, the injured worker shall receive compensation as follows:

LOSS BY AMPUTATION

Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium)	\$54,000.00
Of leg at or above knee joint with functional stump	48,600.00
Of leg below knee joint	43,200.00
Of leg at ankle (Syme)	37,800.00
Of foot at mid-metatarsals	18,900.00
Of great toe with resection of metatarsal bone	11,340.00
Of great toe at metatarsophalangeal joint	6,804.00
Of great toe at interphalangeal joint	3,600.00
Of lesser toe (2nd to 5th) with resection of metatarsal bone	4,140.00
Of lesser toe at metatarsophalangeal joint	2,016.00
Of lesser toe at proximal interphalangeal joint	1,494.00
Of lesser toe at distal interphalangeal joint	378.00
Of arm at or above the deltoid insertion or by disarticulation at the shoulder	54,000.00
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon	51,300.00
Of arm at any point from below the elbow joint distal to the insertion of the biceps tendon to and including mid-metacarpal amputation of the hand	48,600.00
Of all fingers except the thumb at metacarpophalangeal joints	29,160.00
Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone	19,440.00
Of thumb at interphalangeal joint	9,720.00
Of index finger at metacarpophalangeal joint or with resection of metacarpal bone	12,150.00
Of index finger at proximal interphalangeal joint	9,720.00
Of index finger at distal interphalangeal joint	5,346.00

Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone	9,720.00
Of middle finger at proximal interphalangeal joint	7,776.00
Of middle finger at distal interphalangeal joint	4,374.00
Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone	4,860.00
Of ring finger at proximal interphalangeal joint	3,888.00
Of ring finger at distal interphalangeal joint	2,430.00
Of little finger at metacarpophalangeal joint or with resection of metacarpal bone	2,430.00
Of little finger at proximal interphalangeal joint	1,944.00
Of little finger at distal interphalangeal joint	972.00

MISCELLANEOUS

Loss of one eye by enucleation	21,600.00
Loss of central visual acuity in one eye	18,000.00
Complete loss of hearing in both ears .	43,200.00
Complete loss of hearing in one ear . .	7,200.00

(2) Compensation for amputation of a member or part thereof at a site other than those above specified, and for loss of central visual acuity and loss of hearing other than complete, shall be in proportion to that which such other amputation or partial loss of visual acuity or hearing most closely resembles and approximates. Compensation for any other permanent partial disability not involving amputation shall be in the proportion which the extent of such other disability, called unspecified disability, shall bear to that above specified, which most closely resembles and approximates in degree of disability such other disability, compensation for any other unspecified permanent partial disability shall be in an amount as measured and compared to total bodily impairment: *Provided*, That in order to reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities, the department shall enact rules having the force of law classifying such disabilities in the proportion which the department shall determine such disabilities reasonably bear to total bodily impairment. In enacting such rules, the department shall give consideration to, but need not necessarily adopt, any nationally recognized medical standards or guides for determining various bodily impairments. For purposes of calculating monetary benefits, the amount payable for total bodily impairment shall be deemed to be ninety thousand dollars: *Provided*, That the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of ninety thousand dollars: *Provided further*, That in case permanent partial disability compensation is followed by permanent total disability compensation, any portion of the permanent partial disability compensation which exceeds the amount that would have been paid the injured worker if permanent total disability compensation had been paid

in the first instance, shall be deducted from the pension reserve of such injured worker and his or her monthly compensation payments shall be reduced accordingly.

(3) Should a worker receive an injury to a member or part of his or her body already, from whatever cause, permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such worker, his or her compensation for such partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

(4) When the compensation provided for in subsections (1) and (2) exceeds three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, payment shall be made in monthly payments in accordance with the schedule of temporary total disability payments set forth in RCW 51.32.090 until such compensation is paid to the injured worker in full, except that the first monthly payment shall be in an amount equal to three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, and interest shall be paid at the rate of eight percent on the unpaid balance of such compensation commencing with the second monthly payment: *Provided*, That upon application of the injured worker or survivor the monthly payment may be converted, in whole or in part, into a lump sum payment, in which event the monthly payment shall cease in whole or in part. Such conversion may be made only upon written application of the injured worker or survivor to the department and shall rest in the discretion of the department depending upon the merits of each individual application: *Provided further*, That upon death of a worker all unpaid installments accrued shall be paid according to the payment schedule established prior to the death of the worker to the widow or widower, or if there is no widow or widower surviving, to the dependent children of such claimant, and if there are no such dependent children, then to such other dependents as defined by this title. [1988 c 161 § 6; 1986 c 58 § 2; 1982 1st ex.s. c 20 § 2; 1979 c 104 § 1; 1977 ex.s. c 350 § 46; 1972 ex.s. c 43 § 21; 1971 ex.s. c 289 § 10; 1965 ex.s. c 165 § 1; 1961 c 274 § 3; 1961 c 23 § 51.32.080. Prior: 1957 c 70 § 32; prior: 1951 c 115 § 4; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective dates—1988 c 161: See note following RCW 51.32.050.

Effective date—1986 c 58 §§ 2, 3: "Sections 2 and 3 of this act shall take effect on July 1, 1986." [1986 c 58 § 7.]

Effective date—1982 1st ex.s. c 20: See note following RCW 51.32.075.

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060

(1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable unless the loss of earning power shall exceed five percent.

(4) Whenever an employer requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the available work in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. If the worker is released by his or her physician for said work, and the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

Once the worker returns to work under the terms of this subsection, he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician.

In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: *Provided*, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured

worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages.

(7) In no event shall the monthly payments provided in this section exceed one hundred percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018.

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section. [1988 c 161 § 4. Prior: 1988 c 161 § 3; 1986 c 59 § 3; 1986 c 59 § 2; prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51-.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Expiration date—1986 c 59 § 2; Effective dates—1986 c 59 §§ 3, 5: "Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986." [1986 c 59 § 6.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

51.32.095 Vocational rehabilitation services—Benefits authorized—Priorities—Allowable costs—Performance criteria.

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (3) of this section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

(a) Return to the previous job with the same employer;

(b) Modification of the previous job with the same employer including transitional return to work;

(c) A new job with the same employer in keeping with any limitations or restrictions;

(d) Modification of a new job with the same employer including transitional return to work;

(e) Modification of the previous job with a new employer;

(f) A new job with a new employer or self-employment based upon transferable skills;

(g) Modification of a new job with a new employer;

(h) A new job with a new employer or self-employment involving on-the-job training;

(i) Short-term retraining and job placement.

(3) Costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation. Such expenses may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment: *Provided*, That such compensation or payment of retraining with job placement expenses may not be authorized for a period of more than fifty-two weeks: *Provided further*, That such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid. Said costs shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(4) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(5) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section.

(6) The benefits in this section shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(7) The benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes. [1988 c 161 § 9; 1985 c 339 § 2; 1983 c 70 § 2; 1982 c 63 § 11; 1980 c 14 § 10. Prior: 1977 ex.s. c 350 § 48; 1977 ex.s. c 323 § 16; 1972 ex.s. c 43 § 23; 1971 ex.s. c 289 § 12.]

Legislative finding—1985 c 339: "The legislature finds that the vocational rehabilitation program created by chapter 63, Laws of 1982, has failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased costs of industrial insurance for employers and employees alike. The legislature further finds that the administrative structure established within the industrial insurance division of the department of labor and industries to develop and oversee the provision of vocational rehabilitation services has not provided efficient delivery of vocational rehabilitation services. The legislature finds that restructuring the state's vocational rehabilitation program under the department of labor and industries is necessary." [1985 c 339 § 1.]

Severability—1985 c 339: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 339 § 6.]

Severability—1983 c 70: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 70 § 5.]

Effective dates—Implementation—1982 c 63: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1982]. All other sections of this act shall take effect on January 1, 1983. The director of the department of labor and industries is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective dates." [1982 c 63 § 26.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.097 Vocational rehabilitation services—Performance audit. (Effective until June 30, 1990.) On or before January 1st of each year, the office of financial management shall submit to the legislature a performance audit of the vocational rehabilitation activities under this chapter conducted by the industrial insurance division and self-insurers for the previous fiscal year. The performance audit shall include, but not be limited to, a statistical summary of all rehabilitation cases, an analysis of the cost-effectiveness of vocational rehabilitation services, including their effect on expenditures from the industrial insurance trust funds, and return-to-work data. The office of financial management may contract with a private firm to conduct the performance audit. [1985 c 339 § 3.]

Legislative finding—Severability—1985 c 339: See notes following RCW 51.32.095.

51.32.098 Vocational rehabilitation services—Applicability. Nothing in RCW 51.32.095 or in the repeal of chapter 51.41 RCW by section 5, chapter 339, Laws of 1985 shall be construed as prohibiting the completion of vocational rehabilitation plans approved under this title prior to May 16, 1985. Injured workers referred for vocational rehabilitation services under this title, but for whom vocational rehabilitation plans have not been approved by the department under this title before May

16, 1985, may only be provided vocational rehabilitation services, if applicable, by the department according to the provisions of RCW 51.32.095. [1985 c 339 § 4.]

Legislative finding—Severability—1985 c 339: See notes following RCW 51.32.095.

51.32.100 When preexisting disease delays or prevents recovery. If it is determined that an injured worker had, at the time of his or her injury, a preexisting disease and that such disease delays or prevents complete recovery from such injury, it shall be ascertained, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and the extent of permanent partial disability which the injury would have caused were it not for the disease, and compensation shall be awarded only therefor. [1977 ex.s. c 350 § 49; 1971 ex.s. c 289 § 44; 1961 c 23 § 51.32.100. Prior: 1957 c 70 § 34; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.110 Medical examination—Refusal to submit—Traveling expenses—Pay for time lost. Any worker entitled to receive any benefits or claiming such under this title shall, if requested by the department or self-insurer, submit himself or herself for medical examination, at a time and from time to time, at a place reasonably convenient for the worker and as may be provided by the rules of the department. If the worker refuses to submit to medical examination, or obstructs the same, or, if any injured worker shall persist in unsanitary or injurious practices which tend to imperil or retard his or her recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his or her recovery or refuse or obstruct evaluation or examination for the purpose of vocational rehabilitation or does not cooperate in reasonable efforts at such rehabilitation, the department or the self-insurer upon approval by the department, with notice to the worker may suspend any further action on any claim of such worker so long as such refusal, obstruction, noncooperation, or practice continues and reduce, suspend, or deny any compensation for such period: *Provided*, That the department or the self-insurer shall not suspend any further action on any claim of a worker or reduce, suspend, or deny any compensation if a worker has good cause for refusing to submit to or to obstruct any examination, evaluation, treatment or practice requested by the department or required under this section. If the worker necessarily incurs traveling expenses in attending for examination pursuant to the request of the department, such traveling expenses shall be repaid to him or her out of the accident fund upon proper voucher and audit or shall be repaid by the self-insurer, as the case may be.

If the medical examination required by this section causes the worker to be absent from his or her work

without pay he or she shall be paid for such time lost in accordance with the schedule of payments provided in RCW 51.32.090 as amended. [1980 c 14 § 11. Prior: 1977 ex.s. c 350 § 50; 1977 ex.s. c 323 § 17; 1971 ex.s. c 289 § 13; 1961 c 23 § 51.32.110; prior: 1917 c 28 § 18; 1915 c 188 § 5; 1911 c 74 § 13; RRS § 7688.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.112 Medical examination—Standards and criteria—Compensation guidelines and reporting criteria. (1) The department shall develop standards for the conduct of special medical examinations to determine permanent disabilities, including, but not limited to:

(a) The qualifications of persons conducting the examinations;

(b) The criteria for conducting the examinations, including guidelines for the appropriate treatment of injured workers during the examination; and

(c) The content of examination reports.

(2) The department shall investigate the amount of examination fees received by persons conducting special medical examinations to determine permanent disabilities, including total compensation received for examinations of department and self-insured claimants, and establish compensation guidelines and compensation reporting criteria.

(3) The department shall investigate the level of compliance of self-insurers with the requirement of full reporting of claims information to the department, particularly with respect to medical examinations, and develop effective enforcement procedures or recommendations for legislation if needed. [1988 c 114 § 2.]

Intent—1988 c 114: "It is the intent of the legislature that medical examinations for determining permanent disabilities be conducted fairly and objectively by qualified examiners and with respect for the dignity of the injured worker." [1988 c 114 § 1.]

51.32.114 Medical examination—Department to monitor quality and objectivity. The department shall examine the credentials of persons conducting special medical examinations and shall monitor the quality and objectivity of examinations and reports for the department and self-insured claimants. The department shall adopt rules to ensure that examinations are performed only by qualified persons meeting department standards. [1988 c 114 § 3.]

Intent—1988 c 114: See note following RCW 51.32.112.

51.32.116 Medical examination—Report to legislature. The department shall report periodically, no less than annually, to the committee on economic development and labor of the senate and the committee on commerce and labor of the house of representatives, or the appropriate successor committees, on the program established to fulfill the requirements of RCW 51.32.112 and 51.32.114. [1988 c 114 § 4.]

Intent—1988 c 114: See note following RCW 51.32.112.

51.32.120 Further accident after lump sum payment. Should a further accident occur to a worker who has been previously the recipient of a lump sum payment under this title, his or her future compensation shall be adjusted according to the other provisions of this chapter and with regard to the combined effect of his or her injuries and his or her past receipt of money under this title. [1977 ex.s. c 350 § 51; 1961 c 23 § 51.32.120. Prior: 1957 c 70 § 35; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.130 Lump sum for death or permanent total disability. In case of death or permanent total disability, the monthly payment provided may be converted, in whole or in part, into a lump sum payment, not in any case to exceed eight thousand five hundred dollars, equal or proportionate, as the case may be, to the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made only upon written application (in case of minor children the application may be by either parent) to the department and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and applicant. In the event any payment shall be due to an alien residing in a foreign country, the department may settle the same by making a lump sum payment in such amount as may be agreed to by such alien, not to exceed fifty percent of the value of the annuity then remaining.

Nothing herein shall preclude the department from making, and authority is hereby given it to make, on its own motion, lump sum payments equal or proportionate, as the case may be, to the value of the annuity then remaining, in full satisfaction of claims due to dependents. [1961 c 23 § 51.32.130. Prior: 1957 c 70 § 45; prior: 1941 c 209 § 2; 1929 c 132 § 3; 1927 c 310 § 6(i); 1917 c 29 § 22; 1911 c 74 § 7; Rem. Supp. 1941 § 7681.]

51.32.135 Closing of claim conclusive in pension cases—Consent of spouse may be required. In pension cases when a worker or beneficiary closes his or her claim by full conversion to a lump sum or in any other manner as provided in RCW 51.32.130 and 51.32.150, such action shall be conclusive and effective to bar any subsequent application or claim relative thereto by the worker or any beneficiary which would otherwise exist had such person not elected to close the claim: *Provided*, The director may require the spouse of such worker to consent in writing as a prerequisite to conversion and/or the closing of such claim. [1977 ex.s. c 350 § 52; 1973 1st ex.s. c 154 § 98; 1961 c 23 § 51.32.135. Prior: 1953 c 143 § 1.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

51.32.140 Nonresident alien beneficiary. Except as otherwise provided by treaty, whenever compensation is payable to a beneficiary who is an alien not residing in the United States, there shall be paid fifty percent of the compensation herein otherwise provided to such beneficiary. But if a nonresident alien beneficiary is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he shall receive no compensation. No payment shall be made to any beneficiary residing in any country with which the United States does not maintain diplomatic relations when such payment is due. [1971 ex.s. c 289 § 45; 1961 c 23 § 51.32.140. Prior: 1957 c 70 § 36; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.150 Lump sum to beneficiary outside state. If a beneficiary shall reside or move out of the state, the department may, with the written consent of the beneficiary, convert any monthly payments provided for such cases into a lump sum payment (not in any case to exceed the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, but in no case to exceed the sum provided in RCW 51.32.130 as now or hereafter amended). [1977 ex.s. c 323 § 18; 1961 c 23 § 51.32.150. Prior: 1959 c 308 § 5; 1957 c 70 § 37; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.160 Aggravation, diminution, or termination. If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: *Provided*, That the director may, upon application of the worker made at any time, provide proper and necessary medical and surgical services as authorized under RCW 51.36.010. "Closing order" as used in this section means an order based on factors which include medical recommendation, advice, or examination. Applications for benefits where the claim has been closed without medical recommendation, advice, or examination are not subject to the seven year limitation of this section. The preceding sentence shall not apply to any closing order issued prior to July 1, 1981. First closing orders issued between July 1, 1981, and July 1, 1985, shall, for the purposes of this section only, be deemed issued on July 1, 1985. The time limitation of this section shall be ten

years in claims involving loss of vision or function of the eyes. If an order denying an application to reopen filed on or after July 1, 1988, is not issued within ninety days of receipt of such application by the self-insured employer or the department, such application shall be deemed granted. However, for good cause, the department may extend the time for making the final determination on the application for an additional sixty days.

If a worker receiving a pension for total disability returns to gainful employment for wages, the director may suspend or terminate the rate of compensation established for the disability without producing medical evidence that shows that a diminution of the disability has occurred.

No act done or ordered to be done by the director, or the department prior to the signing and filing in the matter of a written order for such readjustment shall be grounds for such readjustment. [1988 c 161 § 11; 1986 c 59 § 4; 1973 1st ex.s. c 192 § 1; 1961 c 23 § 51.32.160. Prior: 1957 c 70 § 38; prior: 1951 c 115 § 5; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.180 Occupational diseases—Limitation. Every worker who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his or her family and dependents in case of death of the worker from such disease or infection, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a worker injured or killed in employment under this title, except as follows: (a) This section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937; and (b) for claims filed on or after July 1, 1988, the rate of compensation for occupational diseases shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim. [1988 c 161 § 5; 1977 ex.s. c 350 § 53; 1971 ex.s. c 289 § 49; 1961 c 23 § 51.32.180. Prior: 1959 c 308 § 19; prior: 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

Benefit increases—Application to certain retrospective rating agreements—1988 c 161: See notes following RCW 51.32.050.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.185 Occupational diseases—Respiratory disease presumption for fire fighters. (1) In the case of fire fighters as defined in RCW 41.26.030(4)(a), (b), and (c) who are covered under Title 51 RCW, there shall exist a prima facie presumption that respiratory disease is an occupational disease under RCW 51.08.140. This presumption of occupational disease may be rebutted by a preponderance of the evidence controverting the presumption. Controverting evidence may include, but is

not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

(2) The presumption established in subsection (1) of this section shall be extended to an applicable member following termination of service for a period of three calendar months for each year of requisite service, but may not extend more than sixty months following the last date of employment. [1987 c 515 § 2.]

Legislative findings—1987 c 515: "The legislature finds that the employment of fire fighters exposes them to smoke, fumes, and toxic or chemical substances. The legislature recognizes that fire fighters as a class have a higher rate of respiratory disease than the general public. The legislature therefore finds that respiratory disease should be presumed to be occupationally related for industrial insurance purposes for fire fighters." [1987 c 515 § 1.]

51.32.190 Self-insurers—Notice of denial of claim, reasons—Procedure—Director authorized to investigate and settle controversies, enact rules and regulations. (1) If the self-insurer denies a claim for compensation, written notice of such denial, clearly informing the claimant of the reasons therefor and that the director will rule on the matter shall be mailed or given to the claimant and the director within thirty days after the self-insurer has notice of the claim.

(2) Until such time as the department has entered an order in a disputed case acceptance of compensation by the claimant shall not be considered a binding determination of his or her rights under this title. Likewise the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments.

(3) Upon making the first payment of income benefits, and upon stopping or changing of such benefits except where a determination of the permanent disability has been made as elsewhere provided in this title, the self-insurer shall immediately notify the director in accordance with a form to be prescribed by the director that the payment of income benefits has begun or has been stopped or changed. Where temporary disability compensation is payable, the first payment thereof shall be made within fourteen days after notice of claim and shall continue at regular semimonthly or biweekly intervals.

(4) If, after the payment of compensation without an award, the self-insurer elects to controvert the right to compensation, the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments. The acceptance of compensation by the worker or his or her beneficiaries shall not be considered a binding determination of their rights under this title.

(5) The director (a) may, upon his or her own initiative at any time in a case in which payments are being made without an award, and (b) shall, upon receipt of information from any person claiming to be entitled to compensation, from the self-insurer, or otherwise that the right to compensation is controverted, or that payment of compensation has been opposed, stopped or changed, whether or not claim has been filed, promptly make such inquiry as circumstances require, cause such

medical examinations to be made, hold such hearings, require the submission of further information, make such orders, decisions or awards, and take such further action as he or she considers will properly determine the matter and protect the rights of all parties.

(6) The director, upon his or her own initiative, may make such inquiry as circumstances require or is necessary to protect the rights of all the parties and he or she may enact rules and regulations providing for procedures to ensure fair and prompt handling by self-insurers of the claims of workers and beneficiaries. [1982 1st ex.s. c 20 § 3; 1977 ex.s. c 350 § 54; 1972 ex.s. c 43 § 25; 1971 ex.s. c 289 § 47.]

Effective date—1982 1st ex.s. c 20: See note following RCW 51.32.075.

51.32.195 Self-insurers—Submittal of information to department. On any industrial injury claim where the self-insured employer or injured worker has requested a determination by the department, the self-insurer must submit all medical reports and any other specified information not previously submitted to the department. When the department requests information from a self-insurer by certified mail, the self-insurer shall submit all information in its possession concerning a claim within ten working days from the date of receipt of such certified notice. [1987 c 290 § 1.]

51.32.200 Self-insurers—Enforcement of compensation order against. (1) If a self-insurer fails, refuses, or neglects to comply with a compensation order which has become final and is not subject to review or appeal, the director or any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for the county in which the self-insurer may be served with process.

(2) The court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title. [1971 ex.s. c 289 § 48.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.210 Claims of injured workers to be acted upon promptly—Payment—Acceptance—Effect.

Claims of injured workers of employers who have secured the payment of compensation by insuring with the department shall be promptly acted upon by the department. Where temporary disability compensation is payable, the first payment thereof shall be mailed within fourteen days after receipt of the claim at the department's offices in Olympia and shall continue at regular semimonthly intervals. The payment of this or any other

benefits under this title, prior to the entry of an order by the department in accordance with RCW 51.52.050 as now or hereafter amended, shall be not considered a binding determination of the obligations of the department under this title. The acceptance of compensation by the worker or his or her beneficiaries prior to such order shall likewise not be considered a binding determination of their rights under this title. [1977 ex.s. c 350 § 55; 1972 ex.s. c 43 § 26.]

51.32.220 Reduction in compensation for temporary or permanent total disability—Limitations—Notice—Waiver. (1) For persons under the age of sixty-five receiving compensation for temporary or permanent total disability pursuant to the provisions of chapter 51-

32 RCW, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 USC 424a. However, such reduction shall not apply when the combined compensation provided pursuant to chapter 51.32 RCW and the federal old-age, survivors and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 USC 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors and disability insurance act: *Provided*, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: *Provided further*, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be

entitled to under this title or the federal old-age, survivors and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) The amendment in subsection (1) of this section by chapter 63, Laws of 1982 raising the age limit during which the reduction shall be made from age sixty-two to age sixty-five shall apply with respect to workers whose effective entitlement to total disability compensation begins after January 1, 1983. [1982 c 63 § 19; 1979 ex.s. c 231 § 1; 1979 ex.s. c 151 § 1; 1977 ex.s. c 323 § 19; 1975 1st ex.s. c 286 § 3.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Applicability—1979 ex.s. c 231: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after June 15, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 231 § 2.]

Severability—1979 ex.s. c 231: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 231 § 3.]

Applicability—1979 ex.s. c 151: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after May 10, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 151 § 3.]

Severability—1979 ex.s. c 151: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 151 § 4.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.225 Reduction in compensation for temporary or permanent total disability—Offset for social security retirement benefits. (1) For persons receiving compensation for temporary or permanent total disability under this title, the compensation shall be reduced by the department to allow an offset for social security retirement benefits payable under the federal social security, old age survivors, and disability insurance act, 42 U.S.C. This reduction shall not apply to any worker who is receiving permanent total disability benefits prior to July 1, 1986.

(2) Reductions for social security retirement benefits under this section shall comply with the procedures in RCW 51.32.220 (1) through (6), except those that relate to computation, and with any other procedures established by the department to administer this section.

(3) Any reduction in compensation made under *chapter 58, Laws of 1986, shall be made before the reduction established in this section. [1986 c 59 § 5.]

***Reviser's note:** Chapter 58, Laws of 1986 consists of the 1986 amendments to RCW 51.24.030, 51.32.050, 51.32.060, 51.32.080, and 51.36.010 and the enactment of RCW 51.32.067.

Effective date—1986 c 59 § 5: See note following RCW 51.32.090.

51.32.230 Recovery of overpayments under RCW 51.32.220—Limitation. Notwithstanding any other provisions of law, any overpayments previously recovered under the provisions of RCW 51.32.220 as now or hereafter amended shall be limited to six months' overpayments. Where greater recovery has already been made, the director, in his discretion, may make restitution in those cases where an extraordinary hardship has been created. [1979 ex.s. c 151 § 2.]

Applicability—Severability—1979 ex.s. c 151: See notes following RCW 51.32.220.

51.32.240 Payments made due to error, mistake, erroneous adjudication, fraud, etc. (1) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived. The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(3) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to

waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been induced by fraud the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the fraud was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within one year of the discovery of the fraud. [1986 c 54 § 1; 1975 1st ex.s. c 224 § 13.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.250 Payment of job modification costs. Modification of the injured worker's previous job or modification of a new job is recognized as a desirable method of returning the injured worker to gainful employment. In order to assist employers in meeting the costs of job modification, and to encourage employers to modify jobs to accommodate retaining or hiring workers with disabilities resulting from work-related injury, the supervisor or the supervisor's designee, in his or her discretion, may pay job modification costs in an amount not to exceed five thousand dollars per worker per job modification. This payment is intended to be a cooperative participation with the employer and funds shall be taken from the appropriate account within the second injury fund.

The benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. [1988 c 161 § 10; 1983 c 70 § 3; 1982 c 63 § 13.]

Severability—1983 c 70: See note following RCW 51.32.095.

Effective dates—**Implementation**—1982 c 63: See note following RCW 51.32.095.

51.32.260 Compensation for loss or damage to personal clothing, footwear or protective equipment. Workers otherwise entitled to compensation under this title may also claim compensation for loss of or damage to the worker's personal clothing, footwear or protective equipment resulting from the industrial accident or incurred in the course of emergency medical treatment for injuries. [1983 c 111 § 1.]

**Chapter 51.36
MEDICAL AID**

Sections

- 51.36.010 Extent and duration.
- 51.36.020 Transportation to place of treatment—Artificial substitutes and mechanical aids—Modifications to residences or motor vehicles.
- 51.36.030 First aid.
- 51.36.040 Benefits provided for injury during course of employment and during lunch period—"Jobsite" defined—When worker lunch hours not reported.

- 51.36.050 Rehabilitation center—Contracts with self-insurers and others.
- 51.36.060 Duties of attending physician—Medical information.
- 51.36.070 Medical examination—Reports—Costs.
- 51.36.080 Payment of fees and medical charges by department—Interest—Cost-effective payment methods—Audits.
- 51.36.085 Payment of fees and medical charges by self-insurers—Interest.
- 51.36.090 Review of billings—Investigation of unauthorized services.
- 51.36.100 Audits of health care providers authorized.
- 51.36.110 Audits of health care providers—Powers of department.
- 51.36.120 Confidential information.

51.36.010 Extent and duration. Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician of his or her own choice, if conveniently located, and proper and necessary hospital care and services during the period of his or her disability from such injury, but the same shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: *Provided*, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: *Provided, however*, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer

in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease. [1986 c 58 § 6; 1977 ex.s. c 350 § 56; 1975 1st ex.s. c 234 § 1; 1971 ex.s. c 289 § 50; 1965 ex.s. c 166 § 2; 1961 c 23 § 51.36.010. Prior: 1959 c 256 § 2; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.020 Transportation to place of treatment—Artificial substitutes and mechanical aids—Modifications to residences or motor vehicles. (1) When the injury to any worker is so serious as to require his or her being taken from the place of injury to a place of treatment, his or her employer shall, at the expense of the medical aid fund, or self-insurer, as the case may be, furnish transportation to the nearest place of proper treatment.

(2) Every worker whose injury results in the loss of one or more limbs or eyes shall be provided with proper artificial substitutes and every worker, who suffers an injury to an eye producing an error of refraction, shall be once provided proper and properly equipped lenses to correct such error of refraction and his or her disability rating shall be based upon the loss of sight before correction.

(3) Every worker whose accident results in damage to or destruction of an artificial limb, eye, or tooth, shall have same repaired or replaced.

(4) Every worker whose hearing aid or eyeglasses or lenses are damaged, destroyed, or lost as a result of an industrial accident shall have the same restored or replaced. The department or self-insurer shall be liable only for the cost of restoring damaged hearing aids or eyeglasses to their condition at the time of the accident.

(5) All mechanical appliances necessary in the treatment of an injured worker, such as braces, belts, casts, and crutches, shall be provided and all mechanical appliances required as permanent equipment after treatment has been completed shall continue to be provided or replaced without regard to the date of injury or date treatment was completed, notwithstanding any other provision of law.

(6) A worker, whose injury is of such short duration as to bring him or her within the time limit provisions of RCW 51.32.090, shall nevertheless receive during the omitted period medical, surgical, and hospital care and service and transportation under the provisions of this chapter.

(7) Whenever in the sole discretion of the supervisor it is reasonable and necessary to provide residence modifications necessary to meet the needs and requirements of the worker who has sustained catastrophic injury, the department or self-insurer may be ordered to pay an amount not to exceed the state's average annual wage for one year as determined under RCW 50.04.355, as now existing or hereafter amended, toward the cost of such modifications or construction. Such payment shall only be made for the construction or modification of a

residence in which the injured worker resides. Only one residence of any worker may be modified or constructed under this subsection, although the supervisor may order more than one payment for any one home, up to the maximum amount permitted by this section.

(8) Whenever in the sole discretion of the supervisor it is reasonable and necessary to modify a motor vehicle owned by a worker who has become an amputee or becomes paralyzed because of an industrial injury, the supervisor may order up to fifty percent of the state's average annual wage for one year, as determined under RCW 50.04.355, as now existing or hereafter amended, to be paid by the department or self-insurer toward the costs thereof.

(9) The benefits provided by subsections (7) and (8) of this section are available to any otherwise eligible worker regardless of the date of industrial injury. [1982 c 63 § 12; 1977 ex.s. c 350 § 57; 1975 1st ex.s. c 224 § 14; 1971 ex.s. c 289 § 51; 1965 ex.s. c 166 § 3; 1961 c 23 § 51.36.020. Prior: 1959 c 256 § 3; prior: 1951 c 236 § 6; 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.030 First aid. Every employer, who employs workers, shall keep as required by the department's rules a first aid kit or kits equipped as required by such rules with materials for first aid to his or her injured workers. Every employer who employs fifty or more workers, shall keep one first aid station equipped as required by the department's rules with materials for first aid to his or her injured workers, and shall cooperate with the department in training one or more employees in first aid to the injured. The maintenance of such first aid kits and stations shall be deemed to be a part of any safety and health standards established under Title 49 RCW. [1980 c 14 § 12. Prior: 1977 ex.s. c 350 § 58; 1977 ex.s. c 323 § 20; 1961 c 23 § 51.36.030; prior: 1959 c 256 § 4; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.36.040 Benefits provided for injury during course of employment and during lunch period—"Jobsite" defined—When worker lunch hours not reported. The benefits of Title 51 RCW shall be provided to each worker receiving an injury, as defined therein, during the course of his or her employment and also during his or her lunch period as established by the employer while on the jobsite. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business of work process in which the employer is then engaged: *Provided*, That if a worker by reason of

his or her employment leaves such jobsite under the direction, control or request of the employer and if such worker is injured during his or her lunch period while so away from the jobsite, the worker shall receive the benefits as provided herein: *And provided further*, That the employer need not consider the lunch period in worker hours for the purpose of reporting to the department unless the worker is actually paid for such period of time. [1977 ex.s. c 350 § 59; 1961 c 107 § 2.]

51.36.050 Rehabilitation center—Contracts with self-insurers and others. The department may operate and control a rehabilitation center and may contract with self-insurers, and any other persons who may be interested, for use of any such center on such terms as the director deems reasonable. [1979 ex.s. c 42 § 1; 1971 ex.s. c 289 § 52.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.36.060 Duties of attending physician—Medical information. Physicians examining or attending injured workers under this title shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-insurer upon the condition or treatment of any such worker, or upon any other matters concerning such workers in their care. All medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request, and no person shall incur any legal liability by reason of releasing such information. [1989 c 12 § 17; 1975 1st ex.s. c 224 § 15; 1971 ex.s. c 289 § 53.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.36.070 Medical examination—Reports—Costs. Whenever the director or the self-insurer deems it necessary in order to resolve any medical issue, a worker shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The director, in his or her discretion, may charge the cost of such examination or examinations to the self-insurer or to the medical aid fund as the case may be. The cost of said examination shall include payment to the worker of reasonable expenses connected therewith. [1977 ex.s. c 350 § 60; 1971 ex.s. c 289 § 54.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.36.080 Payment of fees and medical charges by department—Interest—Cost-effective payment methods—Audits. (1) All fees and medical charges

under this title shall conform to regulations promulgated by the director and shall be paid within sixty days of receipt by the department of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the department prior to final adjudication of claim allowance. The department shall pay interest at the rate of one percent per month, but at least one dollar per month, whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges.

Beginning in fiscal year 1987, interest payments under this subsection may be paid only from funds appropriated to the department for administrative purposes. A record of payments made under this subsection shall be submitted twice yearly to the commerce and labor committees of the senate and the house of representatives and to the ways and means committees of the senate and the house of representatives.

Nothing in this section may be construed to require the payment of interest on any billing, fee, or charge if the industrial insurance claim on which the billing, fee, or charge is predicated is ultimately rejected or the billing, fee, or charge is otherwise not allowable.

In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner without unduly restricting access to necessary care by persons entitled to the care. With respect to workers admitted as hospital inpatients on or after July 1, 1987, the director shall pay for inpatient hospital services on the basis of diagnosis-related groups, contracting for services, or other prudent, cost-effective payment method, which the director shall establish by rules adopted in accordance with chapter 34.05 RCW.

(2) The director may establish procedures for selectively or randomly auditing the accuracy of fees and medical billings submitted to the department under this title. [1987 c 470 § 1; 1985 c 368 § 2; 1985 c 338 § 1; 1971 ex.s. c 289 § 55.]

Effective date—1987 c 470 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987." [1987 c 470 § 4.]

Effective date—1985 c 368 § 2: "Section 2 of this act shall take effect July 1, 1987." [1985 c 368 § 7.]

Legislative findings—1985 c 368: "The legislature finds that:

(1) The governor's steering committee on the six-year state health care purchasing plan has estimated that health care expenditures by the department of labor and industries will rise from \$172.5 million in fiscal year 1985 to \$581.5 million in fiscal year 1991, an increase of two hundred thirty-seven percent in six years, while the number of persons receiving the care will rise only fifteen percent in the same period;

(2) The growing cost of health care for covered workers is a major cause of recent industrial insurance premium increases, adversely affecting both employers and employees;

(3) The department of labor and industries has not developed adequate means of controlling the costs of health care services to which covered workers are entitled by law;

(4) There is a need for all agencies of the state to act as prudent buyers in purchasing health care." [1985 c 368 § 1.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.36.085 Payment of fees and medical charges by self-insurers—Interest. All fees and medical charges under this title shall conform to regulations promulgated by the director and shall be paid within sixty days of receipt by the self-insured of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the self-insured prior to final adjudication of claim allowance. The self-insured shall pay interest at the rate of one percent per month, but at least one dollar per month, whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges. [1987 c 316 § 4.]

51.36.090 Review of billings—Investigation of unauthorized services. An employer may request review of billings for any medical and surgical services received by a worker by submitting written notice to the department. The department shall investigate the billings and determine whether the worker received services authorized under this title. Whenever such medical or surgical services are determined to be unauthorized, the department shall not charge the costs of such services to the employer's account. [1985 c 337 § 3.]

51.36.100 Audits of health care providers authorized. The legislature finds and declares it to be in the public interest of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the provision of medical, dental, vocational, and other health services to industrially injured workers pursuant to Title 51 RCW. In order to effectively accomplish such purpose and to assure that the industrially injured worker receives such services as are paid for by the state of Washington, the acceptance by the industrially injured worker of such services, and the request by a provider of services for reimbursement for providing such services, shall authorize the director of the department of labor and industries or the director's authorized representative to inspect and audit all records in connection with the provision of such services. [1986 c 200 § 1.]

51.36.110 Audits of health care providers—Powers of department. The director of the department of labor and industries or the director's authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical, dental, vocational, and other health services furnished to industrially injured workers pursuant to Title 51 RCW. In the conduct of such audits or investigations, the director or the director's authorized representatives may examine all records, or portions thereof, including patient records, for which services were rendered by a health services provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential: *Provided*, That no original patient records shall be removed from the premises of the health services provider, and that the disclosure of any records or information obtained under

authority of this section by the department of labor and industries is prohibited and constitutes a violation of RCW 42.22.040, unless such disclosure is directly connected to the official duties of the department: *And provided further*, That the disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationships between the provider and the patient: *And provided further*, That the director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW; and

(3) Terminate or suspend eligibility to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW. [1986 c 200 § 2.]

51.36.120 Confidential information. When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter 42.17 RCW. [1989 c 189 § 2.]

Chapter 51.44 FUNDS

Sections	
51.44.010	Accident fund.
51.44.020	Medical aid fund.
51.44.030	Reserve fund.
51.44.033	Supplemental pension fund.
51.44.040	Second injury fund.
51.44.050	Catastrophe injury account.
51.44.060	Charge to accident fund for the catastrophe injury account.
51.44.070	Transfer from accident fund, accounts to reserve fund—Annuity values—Self-insurer payments to fund—Filing of bond or assignment of account by self-insurer.
51.44.080	Reserve fund—Transfers from state fund—Surplus—Deficiency.
51.44.090	Reserve fund record and maintenance by state treasurer.
51.44.100	Investment of accident, medical aid, reserve funds.
51.44.110	Disbursements of funds.
51.44.120	Liability of state treasurer.
51.44.140	Self-insurer to make deposits into reserve fund—Accounts within fund—Surpluses and deficits.
51.44.150	Assessments upon self-insurers for administration costs.
51.44.160	Interfund loans between reserve and supplemental pension funds—Audit.

51.44.010 Accident fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "accident fund." [1961 c 23 § 51.44.010. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

51.44.020 Medical aid fund. There shall be, in the office of the state treasurer, a fund to be known and

designated as the "medical aid fund." [1961 c 23 § 51.44.020. Prior: 1923 c 136 § 8, part; 1919 c 129 § 1, part; 1917 c 29 § 4, part; RRS § 7713, part.]

51.44.030 Reserve fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "reserve fund." [1961 c 23 § 51.44.030. Prior: 1957 c 70 § 39; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.033 Supplemental pension fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "supplemental pension fund". The director shall be the administrator thereof. Said fund shall be used for the sole purpose of making the additional payments therefrom prescribed in this title. [1975 1st ex.s. c 224 § 16; 1971 ex.s. c 289 § 18.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.040 Second injury fund. (1) There shall be in the office of the state treasurer, a fund to be known and designated as the "second injury fund", which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.120 and 51.32.250, as now or hereafter amended. Said fund shall be administered by the director. The state treasurer shall be the custodian of the second injury fund and shall be authorized to disburse moneys from it only upon written order of the director.

(2) Payments to the second injury fund from the accident fund shall be made pursuant to rules and regulations promulgated by the director.

(3) Assessments for the second injury fund shall be imposed on self-insurers pursuant to rules and regulations promulgated by the director to ensure that self-insurers shall pay to such fund in the proportion that the payments made from such fund on account of claims made against self-insurers bears to the total sum of payments from such fund. [1982 c 63 § 14; 1977 ex.s. c 323 § 21; 1972 ex.s. c 43 § 27; 1961 c 23 § 51.44.040. Prior: 1959 c 308 § 17; 1947 c 183 § 1; 1945 c 219 § 2; Rem. Supp. 1947 § 7676-1b.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.44.050 Catastrophe injury account. There shall be a special account within the accident fund to be known as the "catastrophe injury account" which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.130. [1961 c 23 § 51.44.050. Prior: 1959 c 308 § 6; 1957 c 70 § 40; prior: 1947 c 247 § 1(4f), part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.44.060 Charge to accident fund for the catastrophe injury account. The charge to the accident fund to defray charges against the catastrophe injury account shall be made pursuant to rules and regulations promulgated by the director. [1972 ex.s. c 43 § 28; 1961 c 23 § 51.44.060. Prior: 1959 c 308 § 7; 1957 c 70 § 41; prior: 1947 c 247 § 1(4f), part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.44.070 Transfer from accident fund, accounts to reserve fund—Annuity values—Self-insurer payments to fund—Filing of bond or assignment of account by self-insurer. (1) For every case resulting in death or permanent total disability the department shall transfer on its books from the accident fund of the proper class and/or appropriate account to the "reserve fund" a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this title provided to be made for the case. Such annuity values shall be based upon rates of mortality, disability, remarriage, and interest as determined by the department, taking into account the experience of the reserve fund in such respects.

Similarly, a self-insurer in these circumstances shall pay into the reserve fund a sum of money computed in the same manner, and the disbursements therefrom shall be made as in other cases.

(2) As an alternative to payment procedures otherwise provided under law, in the event of death or permanent total disability to workers of self-insured employers, a self-insured employer may upon establishment of such obligation file with the department a bond, or an assignment of account from a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington, in an amount deemed by the department to be reasonably sufficient to insure payment of the pension benefits provided by law. The department shall adopt rules governing assignments of account. Such rules shall ensure that the funds are available if needed, even in the case of failure of the banking institution or of the employer's business.

The annuity value for every such case shall be determined by the department based upon the department's experience as to rates of mortality, disability, remarriage, and interest. The amount of the required bond or assignment of account may be reviewed and adjusted periodically by the department, based upon periodic re-determinations by the department as to the outstanding annuity value for the case.

Under such alternative, the department shall make the monthly payments from the pension reserve fund for the benefits provided for by RCW 51.32.050 and 51.32.060 to the self-insured beneficiary or beneficiaries and the department shall be reimbursed for all such payments from the particular self-insured employer through periodic charges not less than quarterly in a manner to be determined by the director.

Any self-insured employer electing this alternative method of providing for payment to the beneficiary or beneficiaries shall additionally pay to the department a

deposit equal to the first three months' payments otherwise required under RCW 51.32.050 and 51.32.060. Such deposit shall be placed in the reserve fund in accordance with RCW 51.44.140 and shall be returned to the respective self-insured employer when monthly payments are no longer required for such particular obligation.

If a self-insurer delays or refuses to reimburse the department beyond fifteen days after the reimbursement charges become due, there shall be a penalty paid by the self-insurer upon order of the director of an additional amount equal to twenty-five percent of the amount then due which shall be paid into the pension reserve fund. Such an order shall conform to the requirements of RCW 51.52.050. [1989 c 190 § 1; 1983 c 312 § 1; 1981 c 325 § 1; 1971 ex.s. c 289 § 56; 1961 c 274 § 5; 1961 c 23 § 51.44.070. Prior: 1959 c 308 § 8; 1957 c 70 § 42; prior: 1951 c 236 § 7; 1941 c 169 § 1; Rem. Supp. 1941 § 7705-2; prior: 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.080 Reserve fund—Transfers from state fund—Surplus—Deficiency. The department shall notify the state treasurer from time to time, of such transfers as a whole from the state fund to the reserve fund and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. As soon as possible after June 30th of each year the department shall expert the reserve fund to ascertain its standing as of June 30th of that year and the relation of its outstanding annuities at their then value to the cash on hand or at interest belonging to the fund. The department shall promptly report the result of the examination to the state treasurer in writing not later than September 30th following. If the report shows that there was on said June 30th, in the reserve fund in cash or at interest, a greater sum than the then annuity value of the outstanding pension obligations, the surplus shall be forthwith turned over to the state fund but, if the report shows the contrary condition of the reserve fund, the deficiency shall be forthwith made good out of the state fund. [1989 c 190 § 2; 1988 c 161 § 8; 1972 ex.s. c 43 § 29; 1971 ex.s. c 289 § 57; 1961 c 23 § 51.44.080. Prior: 1957 c 70 § 43; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.090 Reserve fund record and maintenance by state treasurer. The state treasurer shall keep accurate accounts of the reserve fund and the investment and earnings thereof, to the end that the total reserve fund shall at all times, as nearly as may be, be properly and fully invested and, to meet current demands for pension or lump sum payments, may, if necessary, make temporary loans to the reserve fund out of the accident fund,

repaying the same from the earnings of the reserve fund or from collections of its investments or, if necessary, sales of the same. [1972 ex.s. c 43 § 31; 1961 c 23 § 51.44.090. Prior: 1957 c 70 § 44; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.100 Investment of accident, medical aid, re-severance funds. Whenever, in the judgment of the state investment board, there shall be in the accident fund, medical aid fund, or in the reserve fund, funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board may invest and reinvest such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise.

The state investment board may give consideration to the investment of excess funds in federally insured student loans made to persons in vocational training or retraining or reeducation programs. The state investment board may make such investments by purchasing from savings and loan associations, commercial banks, mutual savings banks, credit unions and other institutions authorized to be lenders under the federally insured student loan act, organized under federal or state law and operating in this state loans made by such institutions to residents of the state of Washington particularly for the purpose of vocational training or reeducation: *Provided*, That the state investment board shall purchase only that portion of any loan which is guaranteed or insured by the United States of America, or by any agency or instrumentality of the United States of America: *Provided further*, That the state investment board is authorized to enter into contracts with such savings and loan associations, commercial banks, mutual savings banks, credit unions, and other institutions authorized to be lenders under the federally insured student loan act to service loans purchased pursuant to this section at an agreed upon contract price. [1981 c 3 § 41; 1973 1st ex.s. c 103 § 6; 1972 ex.s. c 92 § 2; 1965 ex.s. c 41 § 1; 1961 c 281 § 10; 1961 c 23 § 51.44.100. Prior: 1959 c 244 § 1; 1935 c 90 § 1; RRS § 7705-1.]

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

Severability—1973 1st ex.s. c 103: See note following RCW 2.10.080.

Legislative finding—Purpose—1972 ex.s. c 92: "The legislature finds that the accident fund, medical aid fund and reserve funds could be invested in such a manner as to promote vocational training and retraining or reeducation among the workers of this state. The legislature recognizes that federally insured student loans are already available to students at institutions of higher education. The legislature declares that the purpose of this 1972 amendatory act is to encourage the state finance committee to consider making some investment funds available for investment in federally insured student loans made to persons enrolled in vocational training and retraining or reeducation programs." [1972 ex.s. c 92 § 1.] This applies to the 1972 amendment to RCW 51.44.100.

Motor vehicle fund warrants for state highway acquisition: RCW 47.12.180 through 47.12.240.

Student loans: RCW 28B.10.280.

Uniform minor student capacity to borrow act: Chapter 26.30 RCW.

Vocational education: Chapter 28C.04 RCW.
 Vocational rehabilitation: Chapter 74.29 RCW.

51.44.110 Disbursements of funds. Disbursement out of the several funds shall be made only upon warrants drawn by the department. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant is drawn wherewith to pay the same, the employer on account of whose worker it was that the warrant was drawn shall pay the same, and he or she shall be credited upon his or her next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable and, if the amount of the credit shall exceed the amount of the contribution, he or she shall have a warrant upon the same fund for the excess and, if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. [1977 ex.s. c 350 § 68; 1973 c 106 § 30; 1961 c 23 § 51.44.110. Prior: 1911 c 74 § 26, part; RRS § 7705, part.]

51.44.120 Liability of state treasurer. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the several funds, but all of the provisions of law relating to state depositaries and to the deposit of state moneys therein shall apply to the several funds and securities. [1961 c 23 § 51.44.120. Prior: (i) 1911 c 74 § 26, part; RRS § 7705, part. (ii) 1917 c 28 § 14; RRS § 7723.]

51.44.140 Self-insurer to make deposits into reserve fund—Accounts within fund—Surpluses and deficits. Each self-insurer shall make such deposits, into the reserve fund, as the department shall require pursuant to RCW 51.44.070, as are necessary to guarantee the payments of the pensions established pursuant to RCW 51.32.050 and 51.32.060.

Each self-insurer shall have an account within the reserve fund. Each such account shall be credited with its proportionate share of interest or other earnings as determined in RCW 51.44.080.

Each such account in the reserve fund shall be expeted by the insurance commissioner as required in RCW 51.44.080. Any surpluses shall be forthwith returned to the respective self-insurers, and each deficit shall forthwith be made good to the reserve fund by the self-insurer. [1972 ex.s. c 43 § 30; 1971 ex.s. c 289 § 58.]

51.44.150 Assessments upon self-insurers for administration costs. The director shall impose and collect assessments each fiscal year upon all self-insurers in the amount of the estimated costs of administering their portion of this title during such fiscal year. The time and manner of imposing and collecting assessments due the department shall be set forth in regulations promulgated by the director in accordance with chapter 34.05 RCW. [1971 ex.s. c 289 § 59.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.160 Interfund loans between reserve and supplemental pension funds—Audit. The director is authorized to make periodic temporary interfund transfers between the reserve and supplemental pension funds as may be necessary to provide for payments from the supplemental pension fund as prescribed in this title. At least once annually, the director shall cause an audit to be made of all pension funds administered by the department to insure that proper crediting of funds has been made, and further to direct transfers between the funds for any interfund loans which may have been made in the preceding year and not fully reimbursed. [1975 1st ex.s. c 224 § 17; 1971 ex.s. c 289 § 60.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

**Chapter 51.48
 PENALTIES**

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51.48.025	Retaliation by employer prohibited—Investigation—Remedies.
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51.48.180	Emergency assessment and collection of taxes—Distraint and sale of property.
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- 51.48.220 Order of execution upon property—Procedure—Sale.
- 51.48.230 Order of execution upon property—Agents of department authorized to enforce.
- 51.48.240 Agents and employees of department not personally liable—Conditions.
- 51.48.250 Liability of persons willfully obtaining erroneous payments—Civil penalties.
- 51.48.260 Liability of persons unintentionally obtaining erroneous payments.
- 51.48.270 Criminal liability of persons making false statements or concealing information.
- 51.48.280 Criminal liability for offering, soliciting, or receiving kickback, bribe, or rebate—Exceptions.
- 51.48.290 Director may require written verification by health services providers—Penalties.

51.48.010 Employer's liability for penalties, injury or disease occurring prior to time payment of compensation secured. Every employer shall be liable for the penalties described in this title and may also be liable if an injury or occupational disease has been sustained by a worker prior to the time he or she has secured the payment of such compensation to a penalty in a sum not less than fifty percent nor more than one hundred percent of the cost for such injury or occupational disease. Any employer who has failed to secure payment of compensation for his or her workers covered under this title may also be liable to a maximum penalty in a sum of five hundred dollars or in a sum double the amount of premiums incurred prior to securing payment of compensation under this title, whichever is greater, for the benefit of the medical aid fund. [1985 c 347 § 2; 1982 c 63 § 20; 1977 ex.s. c 350 § 69; 1971 ex.s. c 289 § 61; 1961 c 23 § 51.48.010. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.48.015 Employer's failure to secure payment of compensation. Any employer who engages in work who has willfully failed to secure the payment of compensation under this title shall be guilty of a misdemeanor. Violation of this section is punishable, upon conviction, by a fine of not less than twenty-five dollars nor more than one hundred dollars. Each day such person engages as a subject employer in violation of this section constitutes a separate offense. Any fines paid pursuant to this section shall be paid directly by the court to the director for deposit in the medical aid fund. [1971 ex.s. c 289 § 62.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.48.017 Self-insurer delaying or refusing to pay benefits. If a self-insurer unreasonably delays or refuses to pay benefits as they become due there shall be paid by the self-insurer upon order of the director an additional amount equal to five hundred dollars or twenty-five percent of the amount then due, whichever is greater, which shall accrue for the benefit of the claimant and shall be paid to him with the benefits which may

be assessed under this title. The director shall issue an order determining whether there was an unreasonable delay or refusal to pay benefits within thirty days upon the request of the claimant. Such an order shall conform to the requirements of RCW 51.52.050. [1985 c 347 § 3; 1971 ex.s. c 289 § 66.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.48.020 Employer's misrepresentation—False information by person claiming benefits. (1) Any employer, who misrepresents to the department the amount of his or her payroll upon which the premium under this title is based, shall be liable to the state in ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department. If such misrepresentations are made knowingly, an employer shall also be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW.

(2) Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. [1987 c 221 § 1; 1977 ex.s. c 323 § 22; 1971 ex.s. c 289 § 63; 1961 c 23 § 51.48.020. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.48.025 Retaliation by employer prohibited—Investigation—Remedies. (1) No employer may discharge or in any manner discriminate against any employee because such employee has filed or communicated to the employer an intent to file a claim for compensation or exercises any rights provided under this title. However, nothing in this section prevents an employer from taking any action against a worker for other reasons including, but not limited to, the worker's failure to observe health or safety standards adopted by the employer, or the frequency or nature of the worker's job-related accidents.

(2) Any employee who believes that he or she has been discharged or otherwise discriminated against by an employer in violation of this section may file a complaint with the director alleging discrimination within ninety days of the date of the alleged violation. Upon receipt of such complaint, the director shall cause an investigation to be made as the director deems appropriate. Within ninety days of the receipt of a complaint filed under this section, the director shall notify the complainant of his or her determination. If upon such investigation, it is determined that this section has been violated, the director shall bring an action in the superior court of the county in which the violation is alleged to have occurred.

(3) If the director determines that this section has not been violated, the employee may institute the action on his or her own behalf.

(4) In any action brought under this section, the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and to order all appropriate relief including rehiring or reinstatement of the employee with back pay. [1985 c 347 § 8.]

51.48.030 Failure to keep records and make reports.

Every employer who fails to keep and preserve the records required by this title or fails to make the reports provided in this title shall be subject to a penalty determined by the director but not to exceed two hundred fifty dollars or two hundred percent of the quarterly tax for each such offense, whichever is greater. Any employer who fails to keep and preserve the records adequate to determine taxes due shall be forever barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department based on any period for which such records have not been kept and preserved. [1986 c 9 § 8; 1985 c 347 § 4; 1982 c 63 § 21; 1971 ex.s. c 289 § 64; 1961 c 23 § 51.48.030. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.040 Inspection of employer's records. The books, records and payrolls of the employer pertinent to the administration of this title shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the persons employed, and such other information as may be necessary for the department and its management under this title. Refusal on the part of the employer to submit his books, records and payrolls for such inspection to the department, or any assistant presenting written authority from the director, shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars for each offense and the individual who personally gives such refusal shall be guilty of a misdemeanor. Any employer who fails to allow adequate inspection in accordance with the requirements of this section is subject to having its certificate of coverage revoked by order of the department and is forever barred from questioning in any proceeding in front of the board of industrial insurance appeals or any court, the correctness of any assessment by the department based on any period for which such records have not been produced for inspection. [1986 c 9 § 9; 1985 c 347 § 5; 1961 c 23 § 51.48.040. Prior: 1911 c 74 § 15, part; RRS § 7690, part.]

51.48.050 Liability for illegal collections for medical aid. It shall be unlawful for any employer to directly or

indirectly demand or collect from any of his or her workers any sum of money whatsoever for or on account of medical, surgical, hospital, or other treatment or transportation of injured workers, other than as specified in RCW 51.16.140, and any employer who directly or indirectly violates the foregoing provisions of this section shall be liable to the state for the benefit of the medical aid fund in ten times the amount so demanded or collected, and such employer and every officer, agent, or servant of such employer knowingly participating therein shall also be guilty of a misdemeanor. [1980 c 14 § 13. Prior: 1977 ex.s. c 350 § 70; 1977 ex.s. c 323 § 23; 1961 c 23 § 51.48.050; prior: 1917 c 28 § 17; RRS § 7726.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.48.060 Physician, failure to report or comply with title—Penalty. Any physician who fails, neglects or refuses to file a report with the director, as required by this title, within five days of the date of treatment, showing the condition of the injured worker at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured worker, as required by this title, shall be subject to a civil penalty determined by the director but not to exceed two hundred fifty dollars. [1985 c 347 § 6; 1977 ex.s. c 350 § 71; 1971 ex.s. c 289 § 20; 1961 c 23 § 51.48.060. Prior: 1927 c 310 § 6(e), part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686(e), part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.070 Employer's responsibility for safeguard. If any worker is injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or is, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he or she is engaged when injured, or when a minor is injured when engaged in work not authorized by any required work permit issued for his or her employment or where no such permit has been issued, the employer shall, within ten days after the demand therefor by the department, pay into the supplemental pension fund in addition to all other payments required by law:

(1) In case any consequent payment is for any permanent partial disability or temporary disability, a sum equal to fifty percent of the amount so paid.

(2) In case any consequent payment is payable in monthly payments or otherwise for permanent total disability or death, a sum equal to fifty percent of the lump value of such monthly payment, estimated in accordance with the rule stated in RCW 51.32.130.

The foregoing provisions shall not apply to the employer if the absence of such guard or protection is due to the removal thereof by the injured worker himself or herself or with his or her knowledge by any of his or her

fellow workers, unless such removal is by order or direction of the employer or superintendent or foreman of the employer, or anyone placed by the employer in control or direction of such worker. If the removal of such guard or protection is by the worker himself or herself or with his or her consent by any of his or her fellow workers, unless by order or direction of the employer or the superintendent or foreman of the employer, or anyone placed by the employer in control or direction of such worker, the schedule of compensation provided in chapter 51.32 RCW shall be reduced ten percent for the individual case of such worker. [1980 c 14 § 14. Prior: 1977 ex.s. c 350 § 72; 1977 ex.s. c 323 § 24; 1961 c 23 § 51.48.070; prior: 1911 c 74 § 9; RRS § 7683.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.48.080 Violation of rules. Every person, firm or corporation who violates or fails to obey, observe or comply with any rule of the department promulgated under authority of this title, shall be subject to a penalty of not to exceed five hundred dollars. [1985 c 347 § 7; 1961 c 23 § 51.48.080. Prior: 1915 c 188 § 8; RRS § 7704.]

51.48.090 Collection of penalties. Civil penalties to the state under this title shall be collected by civil action in the name of the state and paid into the accident fund unless a different fund is designated. [1961 c 23 § 51.48.090. Prior: (i) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part. (ii) 1911 c 74 § 15, part; RRS § 7690, part. (iii) 1917 c 28 § 17, part; RRS § 7726, part.]

51.48.100 Waiver of penalties—Penalty-free periods. (1) The director may waive the whole or any part of any penalty charged under this title.

(2) Until June 30, 1986: (a) The director may, at his or her discretion, declare a penalty-free period of no more than three months only for employers who have never previously registered under RCW 51.16.110 for eligible employees under Title 51 RCW; and (b) such employers may qualify once for penalty-free status upon payment of up to one year's past due premium in full and satisfaction of the requirements of RCW 51.16.110. Such employers shall be subject to all penalties for any subsequent failure to comply with the requirements of this title. [1985 c 227 § 1; 1961 c 23 § 51.48.100. Prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part.]

Effective date—1985 c 227: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 227 § 2.]

51.48.103 Penalties for engaging in business without certificate of coverage. (1) It is unlawful:

(a) For any employer to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title;

(b) For the president, vice-president, secretary, treasurer, or other officer of any company to cause or permit

the company to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title.

Any person violating any of the provisions of this subsection is guilty of a gross misdemeanor punishable under RCW 9A.20.021.

(2) It is unlawful:

(a) For any employer to engage in business subject to this title after the employer's certificate of coverage has been revoked by order of the department;

(b) For the president, vice-president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business subject to this title after revocation of a certificate of coverage.

Any person violating any of the provisions of this subsection is guilty of a class C felony punishable under RCW 9A.20.021. [1986 c 9 § 12.]

51.48.105 Penalties for failure to apply for coverage of employees—Not applicable, when. The penalties provided under this title for failure to apply for coverage for employees as required by the provisions of Title 51 RCW, the worker's compensation law, shall not be applicable prior to March 1, 1972, as to any employer whose work first became subject to this title on or after January 1, 1972. [1977 ex.s. c 350 § 73; 1972 ex.s. c 78 § 1.]

51.48.110 Decedent having no beneficiaries—Payment into supplemental pension fund. Where death results from the injury or occupational disease and the deceased leaves no beneficiaries, a self-insurer shall pay into the supplemental pension fund the sum of ten thousand dollars. [1986 c 56 § 1; 1971 ex.s. c 289 § 65.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.120 Notice of assessment for default in payments by employer—Issuance—Service—Contents. If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by certified mail to the employer's last known address, accompanied by an affidavit of service by mailing, or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries. [1986 c 9 § 10; 1985 c 315 § 6; 1972 ex.s. c 43 § 32.]

51.48.131 Notice of assessment for default in payments by employer—Appeal. A notice of assessment becomes final thirty days from the date the notice of assessment was served upon the employer unless: (1) A

written request for reconsideration is filed with the department of labor and industries, or (2) an appeal is filed with the board of industrial insurance appeals and sent to the director of labor and industries by mail or delivered in person. The appeal shall not be denied solely on the basis that it was not filed with both the board and the director if it was filed with either the board or the director. The appeal shall set forth with particularity the reason for the employer's appeal and the amounts, if any, that the employer admits are due.

The department, within thirty days after receiving a notice of appeal, may modify, reverse, or change any notice of assessment, or may hold any such notice of assessment in abeyance pending further investigation, and the board shall thereupon deny the appeal, without prejudice to the employer's right to appeal from any subsequent determinative notice of assessment issued by the department.

The burden of proof rests upon the employer in an appeal to prove that the taxes and penalties assessed upon the employer in the notice of assessment are incorrect. The department shall promptly transmit its original record, or a legible copy thereof, produced by mechanical, photographic, or electronic means, in such matter to the board. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.05.510 through 34.05.598, and the department has the same right of review from the board's decisions as do employers. [1989 c 175 § 120; 1987 c 316 § 3; 1985 c 315 § 7.]

Effective date—1989 c 175: See note following RCW 34.05.010.

51.48.140 Notice of assessment for default in payments by employer—When amount becomes final—Warrant—Execution—Garnishment—Fees. If a notice of appeal is not served on the director and the board of industrial insurance appeals pursuant to RCW 51.48.131 within thirty days from the date of service of the notice of assessment, or if a final decision and order of the board of industrial insurance appeals in favor of the department is not appealed to superior court in the manner specified in RCW 34.05.510 through 34.05.598, or if a final decision of any court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision and order of the board of industrial insurance appeals or final decision of the court shall be deemed final and the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the notice of assessment. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such employer mentioned in the warrant, the amount of the taxes and penalties due thereon, and the date when such warrant was filed. The aggregate amount of such warrant as

docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the employer within three days of filing with the clerk. [1989 c 175 § 121; 1985 c 315 § 8; 1972 ex.s. c 43 § 34.]

Effective date—1989 c 175: See note following RCW 34.05.010.

51.48.150 Notice of assessment for default in payments by employer—Notice to withhold and deliver property due employer. The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's duly

authorized representative upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [1987 c 442 § 1119; 1986 c 9 § 11; 1972 ex.s. c 43 § 35.]

51.48.160 Revocation of certificate of coverage for failure to pay warrants or taxes. If any warrant issued under this title is not paid within thirty days after it has been filed with the clerk of the superior court, or if any employer is delinquent, for three consecutive reporting periods, in the transmission to the department of taxes due, the department may, by order issued under its official seal, revoke the certificate of coverage of the employer against whom the warrant was issued; and if the order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the employer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of coverage be issued to the employer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the department have been entered, and until the taxpayer has deposited with the department such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the department may require, but the amount of the security shall not be greater than one-half the estimated average annual taxes of the employer. [1986 c 9 § 13.]

51.48.170 Emergency assessment and collection of taxes. If the director or the director's designee has reason to believe that an employer is insolvent or about to cease business, leave the state, or remove or dissipate assets out of which taxes or penalties might be satisfied, and the collection of any taxes accrued will be jeopardized by delaying collection, the director or the director's designee may make an immediate assessment thereof and may proceed to enforce collection immediately under the terms of RCW 51.48.180 and 51.48.190, but interest and penalties shall not begin to accrue upon

any taxes until the date when such taxes would normally have become delinquent. [1986 c 9 § 14.]

51.48.180 Emergency assessment and collection of taxes—Distraint and sale of property. If the amount of taxes, interest, or penalties assessed by the director or the director's designee by order and notice of assessment pursuant to RCW 51.48.170 is not paid within ten days after the service or mailing of the order and notice of assessment, the director or the director's designee may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of the delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [1986 c 9 § 15.]

51.48.190 Emergency assessment and collection of taxes—Distraint and sale of property—Conduct of sale. The director or the director's designee, upon making a distraint pursuant to RCW 51.48.170 and 51.48.180, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to the owner, and shall specify the time and place when the property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than twenty days from the date of posting of such notices. The sale may be adjourned from time to time at the discretion of the director or the director's designee, but not for a time to exceed in all sixty days. No sale shall take place if an appeal is pending. The sale shall be conducted by the director or the director's designee who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the director or the director's designee may declare such property to be purchased by the department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the director or the director's designee at public or private sale, and the amount realized shall be placed in the state of Washington industrial insurance fund.

In all cases of sale, as aforesaid, the director or the director's designee shall issue a bill of sale or a deed to the purchaser and the bill of sale or deed shall be prima facie evidence of the right of the director or the director's designee to make such sale and conclusive evidence of the regularity of the proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the director or the director's designee in satisfaction of the delinquent account, and out of any

sum received in excess of the amount of delinquent taxes, interest, and penalties the industrial insurance fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the director or the director's designee shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the director or the director's designee by any other taxing authority of the state or its political subdivisions. [1986 c 9 § 16.]

51.48.200 Search and seizure of property to satisfy tax warrant or assessment—Issuance and execution of search warrant. (1) When there is probable cause to believe that there is property within this state not otherwise exempt from process or execution in the possession or control of any employer against whom a tax warrant issued under RCW 51.48.140 has been filed which remains unsatisfied, or an assessment issued pursuant to RCW 51.48.170, any judge of the superior court or district court in the county in which such property is located may, upon the request of the sheriff or agent of the department authorized to collect taxes, issue a warrant directed to the officers commanding the search for and seizure of the property described in the request for warrant.

(2) The procedure for the issuance, and execution and return of the warrant authorized by this section and for return of any property seized shall be the criminal rules of the superior court and the district court.

(3) The sheriff or agent of the department shall levy execution upon property seized under this section as provided in RCW 51.48.220 and 51.48.230.

(4) This section does not require the application for or issuance of any warrant not otherwise required by law. [1986 c 9 § 17.]

51.48.210 Delinquent taxes—Penalties. If payment of any tax due is not received by the department by the due date, there shall be assessed a penalty of five percent of the amount of the tax for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the tax for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the tax for the third month or part thereof of delinquency. No penalty so added may be less than ten dollars. If a warrant is issued by the department for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than five dollars nor greater than one hundred dollars. In addition, delinquent taxes shall bear interest at the rate of one percent of the delinquent amount per month or fraction thereof from and after the due date until payment, increases, and penalties are received by the department. [1987 c 111 § 8; 1986 c 9 § 18.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

51.48.220 Order of execution upon property—Procedure—Sale. The department may issue an order of execution, pursuant to a filed warrant, under its official seal directed to the sheriff of the county in which the warrant has been filed, commanding the sheriff to levy upon and sell the real and/or personal property of the taxpayer found within the county, or so much thereof as may be necessary, for the payment of the amount of the warrant, plus the cost of executing the warrant, and return the warrant to the department and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgments of the superior court.

The sheriff shall be entitled to fees as provided by law for services in levying execution on a superior court judgment and the clerk shall be entitled to a filing fee as provided by law, which shall be added to the amount of the warrant.

The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final amount due is received, together with interest, penalties, and costs, the judgment docket shall show the claim for taxes to be satisfied and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer or to any lien holder entitled thereto. If the return on the warrant shows that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of the warrant. [1986 c 9 § 21.]

51.48.230 Order of execution upon property—Agents of department authorized to enforce. In the discretion of the department, an order of execution of like terms, force, and effect may be issued and directed to any agent of the department authorized to collect taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall not be entitled to any fee or compensation in excess of the actual expenses paid in the performance of such duty, which shall be added to the amount of the warrant. [1986 c 9 § 22.]

51.48.240 Agents and employees of department not personally liable—Conditions. When recovery is had in any suit or proceeding against an officer, agent, or employee of the department for any act done by that person or for the recovery of any money exacted by or paid to that person and by that person paid over to the department, in the performance of the person's official duty, and the court certifies that there was probable cause for the act done by such officer, agent, or employee, or that he or she acted under the direction of the department or an officer thereof, no execution shall issue against such officer, agent, or employee, but the amount so recovered shall, upon final judgment, be paid by the department as an expense of operation. [1986 c 9 § 23.]

51.48.250 Liability of persons wilfully obtaining erroneous payments—Civil penalties. (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an industrially injured recipient of health service, shall, on behalf of himself or others, obtain or attempt to obtain payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A wilful false statement;
- (b) Wilful misrepresentation, or by concealment of any material facts; or
- (c) Other fraudulent scheme or device, including, but not limited to:
 - (i) Billing for services, drugs, supplies, or equipment that were not furnished, of lower quality, or a substitution or misrepresentation of items billed; or
 - (ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person, firm, corporation, partnership, association, agency, institution, or other legal entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess payments received, plus interest on the amount of the excess benefits or payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The director of the department of labor and industries may assess civil penalties in an amount not to exceed the greater of one thousand dollars or three times the amount of such excess benefits or payments: *Provided*, That these civil penalties shall not apply to any acts or omissions occurring prior to April 1, 1986.

(3) A criminal action need not be brought against a person, firm, corporation, partnership, association, agency, institution, or other legal entity for that person or entity to be civilly liable under this section.

(4) Civil penalties shall be deposited in the general fund upon their receipt. [1986 c 200 § 4.]

51.48.260 Liability of persons unintentionally obtaining erroneous payments. Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an industrially injured recipient of health services, that, without intent to violate this chapter, obtains payments under Title 51 RCW to which such person or entity is not entitled, shall be liable for: (1) Any excess payments received; and (2) interest on the amount of excess payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. [1986 c 200 § 3.]

51.48.270 Criminal liability of persons making false statements or concealing information. Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an injured worker or beneficiary, that:

(1) Knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under this title; or

(2) At any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment; or

(3) Having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he or she has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized;

shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1987 c 470 § 2; 1986 c 200 § 5.]

51.48.280 Criminal liability for offering, soliciting, or receiving kickback, bribe, or rebate—Exceptions. (1) Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, that solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(a) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter; or

(b) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter;

shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(2) Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, that offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(a) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter; or

(b) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter;

shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(3) Subsections (1) and (2) of this section shall not apply to:

(a) A discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter; and

(b) Any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(4) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [1986 c 200 § 6.]

51.48.290 Director may require written verification by health services providers—Penalties. The director of the department of labor and industries may by rule require that any application, statement, or form filled out by any health services provider under this title shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or misleading information may be prosecuted and punished under chapter 9A.72 RCW. [1986 c 200 § 7.]

**Chapter 51.52
APPEALS**

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51.52.010 Board of industrial insurance appeals. There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor, with the advice and consent of the senate, as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairperson of said board. The second member shall be a representative of the majority of workers engaged in employment under this title and selected from a list of not less than three names submitted to the governor by an organization, state-wide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized state-wide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his or her successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his or her predecessor. All appointments to the board shall be made in conformity with the foregoing plan. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized. [1981 c 338 § 10; 1977 ex.s. c 350 § 74; 1975-'76 2nd ex.s. c 34 § 151; 1971 ex.s. c 289 § 68; 1965 ex.s. c 165 § 3; 1961 c 307 § 8; 1961 c 23 § 51.52.010. Prior: 1951 c 225 § 1; prior: 1949 c 219 § 2; Rem. Supp. 1949 § 10837-1.]

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

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.020 Board—Rule-making power. The board may make rules and regulations concerning its functions and procedure, which shall have the force and effect of law until altered, repealed, or set aside by the board: *Provided*, That the board may not delegate to any other person its duties of interpreting the testimony and making the final decision and order on appeal cases. All rules and regulations adopted by the board shall be printed and copies thereof shall be readily available to the public. [1961 c 23 § 51.52.020. Prior: 1951 c 225 § 2; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

51.52.030 Board—Expenses. The board may incur such expenses as are reasonably necessary to carry out its duties hereunder, which expenses shall be paid, one-half from the accident fund and one-half from the medical aid fund upon vouchers approved by the board. [1961 c 23 § 51.52.030. Prior: 1951 c 225 § 3; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

51.52.040 Board—Removal of member. Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit the original of such written charges to the chief justice of the supreme court and a copy thereof to the member accused. The chief justice shall thereupon designate a special tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review. [1961 c 23 § 51.52.040. Prior: 1951 c 225 § 4; prior: 1949 c 219 § 4; Rem. Supp. 1949 § 10837-3.]

51.52.050 Copy of departmental action to be served—Demand for repayment by service provider—Reconsideration or appeal of departmental action. Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, which shall be addressed to such person at his or her last known address as shown by the records of the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia: *Provided*, That a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final

within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal: *Provided*, That in an appeal from an order of the department that alleges fraud, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter. [1987 c 151 § 1; 1986 c 200 § 10; 1985 c 315 § 9; 1982 c 109 § 4; 1977 ex.s. c 350 § 75; 1975 1st ex.s. c 58 § 1; 1961 c 23 § 51.52.050. Prior: 1957 c 70 § 55; 1951 c 225 § 5; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1947 c 247 § 1, part; 1911 c 74 § 20, part; Rem. Supp. 1947 § 7676e, part. (iii) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (iv) 1923 c 136 § 7, part; 1921 c 182 § 10, part; 1917 c 29 § 3, part; RRS § 7712, part. (v) 1917 c 29 § 11; RRS § 7720. (vi) 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

51.52.060 Notice of appeal—Time—Cross-appeal—Department may modify, reverse, etc.—Denial of appeal without prejudice. Any worker, beneficiary, employer, or other person aggrieved by an order, decision, or award of the department must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the day on which such copy of such order, decision, or award was communicated to such person, a notice of appeal to the board: *Provided*, That a health services provider or other person aggrieved by a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within twenty days from the day on which such copy of such order or decision was communicated to the health services provider upon whom the department order or decision was served, a notice of appeal to the board. Within ten days of the date on which an appeal has been granted by the board, the board shall notify the other interested parties thereto of the receipt thereof and shall forward a copy of said notice of appeal to such other interested parties. Within

twenty days of the receipt of such notice of the board, the worker or the employer may file with the board a cross-appeal from the order of the department from which the original appeal was taken: *Provided*, That nothing contained in this section shall be deemed to change, alter or modify the practice or procedure of the department for the payment of awards pending appeal: *And provided*, That failure to file notice of appeal with both the board and the department shall not be ground for denying the appeal if the notice of appeal is filed with either the board or the department: *And provided*, That, if within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department shall direct the submission of further evidence or the investigation of any further fact, the time for filing such notice of appeal shall not commence to run until such person shall have been advised in writing of the final decision of the department in the matter: *Provided, further*, That in the event the department shall direct the submission of further evidence or the investigation of any further fact, as above provided, the department shall render a final order, decision, or award within ninety days from the date such further submission of evidence or investigation of further fact is ordered which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days: *Provided, further*, That the department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may modify, reverse or change any order, decision, or award, or may hold any such order, decision, or award in abeyance for a period of ninety days which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days pending further investigation in light of the allegations of the notice of appeal, and the board shall thereupon deny the appeal, without prejudice to the appellant's right to appeal from any subsequent determinative order issued by the department. [1986 c 200 § 11; 1977 ex.s. c 350 § 76; 1975 1st ex.s. c 58 § 2; 1963 c 148 § 1; 1961 c 274 § 8; 1961 c 23 § 51.52.060. Prior: 1957 c 70 § 56; 1951 c 225 § 6; prior: 1949 c 219 §§ 1, part, 6, part; 1947 c 246 § 1, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 §§ 2, part, 6, part; 1927 c 310 §§ 4, part, 8, part; 1923 c 136 § 2, part; 1919 c 134 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 §§ 5, part, 20, part; Rem Supp. 1949 §§ 7679, part, 7697, part.]

51.52.070 Contents of notice—Transmittal of record. The notice of appeal to the board shall set forth in full detail the grounds upon which the person appealing considers such order, decision, or award is unjust or unlawful, and shall include every issue to be considered by the board, and it must contain a detailed statement of facts upon which such worker, beneficiary, employer, or other person relies in support thereof. The worker, beneficiary, employer, or other person shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in such notice of appeal or

appearing in the records of the department. The department shall promptly transmit its original record, or a legible copy thereof produced by mechanical, photographic, or electronic means, in such matter to the board. [1977 ex.s. c 350 § 77; 1975 1st ex.s. c 224 § 18; 1975 1st ex.s. c 58 § 3; 1961 c 23 § 51.52.070. Prior: 1957 c 70 § 57; 1951 c 225 § 7; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.52.080 Appeal to board denied, when. If the notice of appeal raises no issue or issues of fact and the board finds that the department properly and lawfully decided all matters raised by such appeal it may, without further hearing, deny the same and confirm the department's decision or award, or if the department's record sustains the contention of the person appealing to the board, it may, without further hearing, allow the relief asked in such appeal; otherwise, it shall grant the appeal. [1971 ex.s. c 289 § 69; 1963 c 148 § 2; 1961 c 23 § 51.52.080. Prior: 1957 c 70 § 58; 1951 c 225 § 8; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.090 Appeal to board deemed granted, when. If the appeal is not denied within thirty days after the notice is filed with the board, the appeal shall be deemed to have been granted: *Provided*, That the board may extend the time within which it may act upon such appeal, not exceeding thirty days. [1971 ex.s. c 289 § 70; 1961 c 23 § 51.52.090. Prior: 1957 c 70 § 59; 1951 c 225 § 9; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.095 Conference for disposal of matters involved in appeal—Mediation of disputes. (1) The board, upon request of the worker, beneficiary, or employer, or upon its own motion, may direct all parties interested in an appeal, together with their attorneys, if any, to appear before it, a member of the board, or an authorized industrial appeals judge, for a conference for the purpose of determining the feasibility of settlement, the simplification of issues of law and fact, the necessity of amendments to the notice of appeal or other pleadings, the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, the limitation of the number of expert witnesses, and such other matters as may aid in the disposition of the appeal. Such conference may be held prior to the hearing, or it may be held during the hearing, at the discretion of the board member or industrial appeals judge conducting the same, in which case the hearing will be recessed for such

conference. Following the conference, the board member or industrial appeals judge conducting the same, shall state on the record the results of such conference, and the parties present or their representatives shall state their concurrence on the record. Such agreement as stated on the record shall control the subsequent course of the proceedings, unless modified at a subsequent hearing to prevent manifest injustice. If agreement concerning final disposition of the appeal is reached by the parties present at the conference, or by the employer and worker or beneficiary, the board may enter a final decision and order in accordance therewith, providing the board finds such agreement is in conformity with the law and the facts.

(2) In order to carry out subsection (1) of this section, the board shall develop expertise to mediate disputes informally. Where possible, industrial appeals judges with a demonstrated history of successfully resolving disputes or who have received training in dispute resolution techniques shall be appointed to perform mediation functions. No industrial appeals judge who mediates in a particular appeal may, without the consent of the parties, participate in writing the proposed decision and order in the appeal: *Provided*, That this shall not prevent an industrial appeals judge from issuing a proposed decision and order responsive to a motion for summary disposition or similar motion. This section shall not operate to prevent the board from developing additional methods and procedures to encourage resolution of disputes by agreement or otherwise making efforts to reduce adjudication time. [1986 c 10 § 1; 1985 c 209 § 2; 1982 c 109 § 7; 1977 ex.s. c 350 § 78; 1963 c 148 § 3; 1963 c 6 § 1; 1961 c 23 § 51.52.095. Prior: 1951 c 225 § 10.]

51.52.100 Proceedings before board—Contempt. Hearings shall be held in the county of the residence of the worker or beneficiary, or in the county where the injury occurred, at a place designated by the board. Such hearing shall be de novo and summary, but no witness' testimony shall be received unless he or she shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard, or unless his or her testimony shall have been taken by deposition according to the statutes and rules relating to superior courts of this state. The department shall be entitled to appear in all proceedings before the board and introduce testimony in support of its order. The board shall cause all oral testimony to be stenographically reported and thereafter transcribed, and when transcribed, the same, with all depositions, shall be filed in, and remain a part of, the record on the appeal. Such hearings on appeal to the board may be conducted by one or more of its members, or a duly authorized industrial appeals judge, and depositions may be taken by a person duly commissioned for the purpose by the board.

Members of the board, its duly authorized industrial appeals judges, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the

attendance and testimony of, witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his or her office.

If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the board or any member or duly authorized industrial appeals judge may certify the facts to the superior court having jurisdiction in the place in which said board or member or industrial appeals judge is sitting; the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the proceedings, or in the presence, of the court. [1982 c 109 § 8; 1977 ex.s. c 350 § 79; 1963 c 148 § 4; 1961 c 23 § 51.52.100. Prior: 1957 c 70 § 60; 1951 c 225 § 11; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

51.52.102 Hearing the appeal—Dismissal for failure to present evidence—Evidence—Continuances. At the time and place fixed for hearing each party shall present all his evidence with respect to the issues raised in the notice of appeal, and if any party fails so to do, the board may determine the issues upon such evidence as may be presented to it at said hearing, or if an appealing party who has the burden of going forward with the evidence fails to present any evidence, the board may dismiss the appeal: *Provided*, That for good cause shown in the record to prevent hardship, the board may grant continuances upon application of any party, but such continuances, when granted, shall be to a time and place certain within the county where the initial hearing was held unless it shall appear that a continuance elsewhere is required in justice to interested parties: *And provided further*, That the board may continue hearings on its own motion to secure in an impartial manner such evidence, in addition to that presented by the parties, as the board, in its opinion, deems necessary to decide the appeal fairly and equitably, but such additional evidence shall be received subject to any objection as to its admissibility, and, if admitted in evidence all parties shall be given full opportunity for cross-examination and to present rebuttal evidence. [1963 c 148 § 5; 1961 c 23 § 51.52.102. Prior: 1951 c 225 § 12.]

51.52.104 Industrial appeals judge—Recommended decision and order—Petition for review—Finality of order not subject to petition for review. After all evidence has been presented at hearings conducted by an industrial appeals judge, who shall be an active member of the Washington state bar association, the industrial appeals judge shall enter a proposed or recommended decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The industrial appeals judge shall file the signed original of the proposed decision and order with the board, and copies thereof shall be mailed by the board to each party to the appeal and to each party's attorney or representative of record. Within twenty days, or such further time as the board may allow on written application of a party, filed within said twenty days from the date of communication of the proposed decision and order to the parties or their attorneys or representatives of record, any party may file with the board a written petition for review of the same. Filing of a petition for review is perfected by mailing or personally delivering the petition to the board's offices in Olympia. Such petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein.

In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. [1985 c 314 § 1; 1982 c 109 § 5; 1971 ex.s. c 289 § 22; 1963 c 148 § 6.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.52.106 Review of decision and order by board. After the filing of a petition or petitions for review as provided for in RCW 51.52.104, the proposed decision and order of the industrial appeals judge, petition or petitions for review and, in its discretion, the record or any part thereof, may be considered by the board and on agreement of at least two of the regular members thereof, the board may, within twenty days after the receipt of such petition or petitions, decline to review the proposed decision and order and thereupon deny the petition or petitions. In such event all parties shall forthwith be notified in writing of said denial: *Provided*, That if a petition for review is not denied within said twenty days it shall be deemed to have been granted. If the petition for review is granted, the proposed decision and order, the petition or petitions for review and the record or any part thereof deemed necessary shall be considered by a panel of at least two of the members of the board,

on which not more than one industry and one labor member serve. The chairman may be a member of any panel. The decision and order of any such panel shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. The board shall, in all cases, render a final decision and order within one hundred and eighty days from the date a petition for review is filed. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal and to his attorney of record. [1982 c 109 § 9; 1975 1st ex.s. c 58 § 4; 1971 ex.s. c 289 § 23; 1965 ex.s. c 165 § 4; 1963 c 148 § 7; 1961 c 23 § 51.52.106. Prior: 1951 c 225 § 13.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.52.110 Court appeal—Taking the appeal. Within thirty days after a decision of the board to deny the petition or petitions for review upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the final decision and order of the board upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the appeal is denied as herein provided, such worker, beneficiary, employer or other person aggrieved by the decision and order of the board may appeal to the superior court. If such worker, beneficiary, employer, or other person fails to file with the superior court its appeal as provided in this section within said thirty days, the decision of the board to deny the petition or petitions for review or the final decision and order of the board shall become final.

In cases involving injured workers, an appeal to the superior court shall be to the superior court of the county of residence of the worker or beneficiary, as shown by the department's records, or to the superior court of the county wherein the injury occurred or where neither the county of residence nor the county wherein the injury occurred are in the state of Washington then the appeal may be directed to the superior court for Thurston county. In all other cases the appeal shall be to the superior court of Thurston county. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board. If the case is one involving a self-insurer, a copy of the notice of appeal shall also be served by mail, or personally, on such self-insurer. The department shall, in all cases not involving a self-insurer, within twenty days after the receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. If the case is one involving a self-insurer, such self-insurer shall, within twenty days after receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed to be at issue. In such cases the department may appear and take part in any proceedings. The board shall serve upon the

appealing party, the director, the self-insurer if the case involves a self-insurer, and any other party appearing at the board's proceeding, and file with the clerk of the court before trial, a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order, which shall become the record in such case. No bond shall be required on appeals to the superior court or on review by the supreme court or the court of appeals, except that an appeal by the employer from a decision and order of the board under RCW 51.48.070, shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay: *Provided, however,* That whenever the board has made any decision and order reversing an order of the supervisor of industrial insurance on questions of law or mandatory administrative actions of the director, the department shall have the right of appeal to the superior court. [1988 c 202 § 49; 1982 c 109 § 6; 1977 ex.s. c 350 § 80; 1973 c 40 § 1. Prior: 1972 ex.s. c 50 § 1; 1972 ex.s. c 43 § 36; 1971 ex.s. c 289 § 24; 1971 c 81 § 122; 1961 c 23 § 51.52.110; prior: 1957 c 70 § 61; 1951 c 225 § 14; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Rules of court: Cf. Title 8 RAP, RAP 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

51.52.112 Court appeal—Payment of taxes, penalties, and interest required. All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest unless the court determines that there would be an undue hardship to the employer. In the event an employer prevails in a court action, the employer shall be allowed interest on all taxes, penalties, and interest paid by the employer but determined by a final order of the court to not be due, from the date such taxes, penalties, and interest were paid. Interest shall be at the rate allowed by law as prejudgment interest. [1986 c 9 § 19.]

51.52.113 Collection of tax or penalty may not be enjoined. No restraining order or injunction may be granted or issued by any court to restrain or enjoin the collection of any tax or penalty or any part thereof, except upon the ground that the assessment thereof was in violation of the Constitution of the United States or that of the state. [1986 c 9 § 20.]

51.52.115 Court appeal—Procedure at trial—Burden of proof. Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or

included in the record filed by the board in the superior court as provided in RCW 51.52.110: *Provided,* That in cases of alleged irregularities in procedure before the board, not shown in said record, testimony thereon may be taken in the superior court. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. In all court proceedings under or pursuant to this title the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the department with an order directing it to proceed in accordance with the findings of the court: *Provided,* That any award shall be in accordance with the schedule of compensation set forth in this title. In appeals to the superior court hereunder, either party shall be entitled to a trial by jury upon demand, and the jury's verdict shall have the same force and effect as in actions at law. Where the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court. [1961 c 23 § 51.52.115. Prior: 1957 c 70 § 62; 1951 c 225 § 15; prior: (i) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (ii) 1949 c 219 § 6; 1939 c 184 § 1; Rem. Supp. 1949 § 7697–2.]

51.52.120 Attorney's fee before department or board—Unlawful attorney's fees. (1) It shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director for services performed by an attorney for such worker or beneficiary, prior to the notice of appeal to the board if written application therefor is made by the attorney, worker, or beneficiary.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by said director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be

served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board. Any person who violates any provision of this section shall be guilty of a misdemeanor. [1982 c 63 § 22; 1977 ex.s. c 350 § 81; 1965 ex.s. c 63 § 1; 1961 c 23 § 51.52.120. Prior: 1951 c 225 § 16; prior: 1947 c 246 § 3; Rem. Supp. 1947 § 7679-3.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.52.130 Attorney and witness fees in court appeal.

If, on appeal to the court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the court, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If the decision and order of the board is reversed or modified and if the accident fund is affected by the litigation then the attorney's fee fixed by the court for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, if the decision and order of the board is reversed or modified resulting in additional benefits by the litigation that would be paid from the accident fund if the employer were not self-insured, then the attorney fees fixed by the court for services before the court, only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer. [1982 c 63 § 23; 1977 ex.s. c 350 § 82; 1961 c 23 § 51.52.130. Prior: 1957 c 70 § 63; 1951 c 225 § 17; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.52.132 Unlawful attorney's fees. Where the department, the board or the court, pursuant to RCW 51.52.120 or 51.52.130 fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee in excess of that fixed by the department, board or the court. Any person who violates any provision of this section shall be guilty of a misdemeanor. [1965 ex.s. c 63 § 2; 1961 c 23 § 51.52.132. Prior: 1951 c 225 § 18.]

(1989 Ed.)

51.52.135 Worker or beneficiary entitled to interest on award—Rate. (1) When a worker or beneficiary prevails in an appeal by the employer to the board or in an appeal by the employer to the court from the decision and order of the board, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(2) When a worker or beneficiary prevails in an appeal by the worker or beneficiary to the board or the court regarding a claim for temporary total disability, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(3) The interest provided for in subsections (1) and (2) of this section shall accrue from the date of the department's order granting the award or denying payment of the award. The interest shall be paid by the party having the obligation to pay the award. The amount of interest to be paid shall be fixed by the board or court, as the case may be. [1983 c 301 § 1.]

51.52.140 Rules of practice—Duties of attorney general—Supreme court appeal. Except as otherwise provided in this chapter, the practice in civil cases shall apply to appeals prescribed in this chapter. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal advisor of the department and the board. [1961 c 23 § 51.52.140. Prior: 1957 c 70 § 64; 1951 c 225 § 19; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Rules of court: *Method of appellate review superseded by RAP 2.1, 2.2.*

51.52.150 Costs on appeals. All expenses and costs incurred by the department for board and court appeals, including fees for medical and other witnesses, court reporter costs and attorney's fees, and all costs taxed against the department, shall be paid one-half out of the medical aid fund and one-half out of the accident fund. [1961 c 23 § 51.52.150. Prior: 1951 c 225 § 20; prior: 1931 c 116 § 1; RRS § 7697-1.]

51.52.160 Publication and indexing of significant decisions. The board shall publish and index its significant decisions and make them available to the public at reasonable cost. [1985 c 209 § 1.]

Chapter 51.98 CONSTRUCTION

Sections	
51.98.010	Continuation of existing law.
51.98.020	Title, chapter, section headings not part of law.
51.98.030	Invalidity of part of title not to affect remainder.
51.98.040	Repeals and saving.
51.98.050	Emergency—1961 c 23.
51.98.060	Effective dates—1971 ex.s. c 289.

51.98.070 Severability—1971 ex.s. c 289.

51.98.080 Severability—1972 ex.s. c 43.

Construction—1947 c 246: "The increased benefits and compensation authorized by this act shall not be applicable to a case of death, or injury or aggravation thereof, occurring prior to the effective date of this act." [1947 c 246 § 2.]

Construction—1923 c 136: "For all cases of injuries to workmen which occurred and for all claims or actions pending or causes of action existing before this act shall go into effect, Sections 7673 to 7796 of Remington's Compiled Statutes of Washington shall continue in force as they were prior to and they shall be unaffected by the passage of this amendatory act." [1923 c 136 § 20.] The internal references refer to the entire industrial insurance act as it existed in 1923.

Construction—1919 c 131: "For all cases of injuries to workmen which occurred before this act shall be into effect Sections 6604-3, 6604-5, 6604-6, and 6604-10 shall continue in force as they were prior to and they shall be unaffected by the passage of this amendatory act. The amendatory provisions of sections 2, 4, 5, and 6 of this act shall apply only to injuries occurring after they shall go into effect." [1919 c 131 § 9.] The internal references to prior compilations refer to such sections as amended in the 1919 act by sections 2, 4, 5, and 6 as repeated in the last sentence of the above quotation. Such sections are scattered throughout chapters 51.16, 51.20, 51.32 and 51.48 RCW.

51.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 23 § 51.98.010.]

51.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 23 § 51.98.020.]

51.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected: *Provided*, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090. [1961 c 23 § 51.98.030.]

51.98.040 Repeals and saving. See 1961 c 23 § 51.98.040.

51.98.050 Emergency—1961 c 23. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 23 § 51.98.050.]

51.98.060 Effective dates—1971 ex.s. c 289. The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1971: *Provided*, That RCW 51.08.070 as amended by section 1 of this 1971 amendatory act, RCW 51.12.010 as amended in section 2 of this 1971 amendatory act, RCW 51.12.020 as amended in section 3 of this 1971 amendatory act and RCW 51.16.110 as amended in section 4 of this 1971 amendatory act shall take effect

and become operative without any further action of the legislature on January 1, 1972. [1971 ex.s. c 289 § 90.]

51.98.070 Severability—1971 ex.s. c 289. If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected: *Provided*, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090. [1971 ex.s. c 289 § 91.]

51.98.080 Severability—1972 ex.s. c 43. If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1972 ex.s. c 43 § 38.]

Title 52

FIRE PROTECTION DISTRICTS

Chapters

- 52.02** Formation.
- 52.04** Annexation.
- 52.06** Merger.
- 52.08** Withdrawal.
- 52.10** Dissolution.
- 52.12** Powers—Burning permits.
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- 52.16** Finances.
- 52.18** Service charges.
- 52.20** Local improvement districts.
- 52.22** Special proceedings.
- 52.30** Miscellaneous provisions.

Annexation of district territory to cities and towns: Chapter 35.13 RCW.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

Fire department vehicles; lighting, plates: RCW 46.37.184 through 46.37.188.

Fire fighting equipment, standardization: Chapter 70.75 RCW.

Firefighters' relief and pensions: Chapters 41.16, 41.18, and 41.24 RCW.

Forest protection: Chapter 76.04 RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Metropolitan municipal corporations: Chapter 35.58 RCW.

Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Retirement—Law enforcement officers' and fire fighters' retirement system: Chapter 41.26 RCW.

State fire protection: Chapter 48.48 RCW.

Trade centers—Annual service fee—Distribution to fire districts: RCW 53.29.030.

Chapter 52.02 FORMATION

Sections

- 52.02.001 Actions subject to review by boundary review board.
- 52.02.020 Districts authorized.
- 52.02.030 Petition—Certification.
- 52.02.035 Petition—Notice of sufficiency.
- 52.02.040 Petition—Public hearing.
- 52.02.050 Public hearing—Notice—Publication and posting.
- 52.02.060 Hearing—Inclusion and exclusion of land.
- 52.02.070 Action on petition—Resolution—Election—District name when located in more than one county.
- 52.02.080 Election.
- 52.02.110 Declaration of election results—Resolution.
- 52.02.140 Appeal.
- 52.02.150 Organization conclusive.

52.02.001 Actions subject to review by boundary review board. Actions taken under chapter 52.02 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 41.]

52.02.020 Districts authorized. Fire protection districts for the provision of fire prevention services, fire suppression services, emergency medical services, and for the protection of life and property in areas outside of cities and towns, except where the cities and towns have been annexed into a fire protection district, are authorized to be established as provided in this title. [1984 c 230 § 1; 1979 ex.s. c 179 § 5; 1959 c 237 § 1; 1947 c 254 § 1; 1945 c 162 § 1; 1943 c 121 § 1; 1941 c 70 § 1; 1939 c 34 § 1; Rem. Supp. 5654–101. Formerly RCW 52.04.020.]

Construction—Severability—1939 c 34: "The provisions of this act and proceedings thereunder shall be liberally construed with a view to effect their objects. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional." [1939 c 34 § 51.]

Validating—Saving—1939 c 34: "Any petition heretofore drawn, signed and filed with the county auditor in compliance with the provisions of section 1 to section 6, inclusive, of the Laws of 1933, Extraordinary Session, shall be valid and the various steps required by this act for the creation of a fire-protection district may be continued, if the further steps to be taken are begun within ninety (90) days after the taking effect of this act [March 1, 1939], and it shall not be necessary to prepare, sign and file with the county auditor a new petition, and any district so created shall not be invalid by reason of the failure to draw, sign and file a new petition under the provisions of this act." [1939 c 34 § 49.]

52.02.030 Petition—Certification. (1) For the purpose of the formation of a fire protection district, a petition designating the boundaries of the proposed district, by metes and bounds, or by describing the lands to be included in the proposed district by United States townships, ranges and legal subdivisions, signed by not less than fifteen percent of the qualified registered electors who reside within the boundaries of the proposed district, and setting forth the object for the creation of the proposed district and alleging that the establishment of the proposed district will be conducive to the public safety, welfare, and convenience, and will be a benefit to the property included in the proposed district, shall be filed with the county auditor of the county in which all, or the largest portion of, the proposed district is located, accompanied by an obligation signed by two or more petitioners, agreeing to pay the cost of the publication of the notice required by this title. The organization of any fire protection district previously formed is hereby approved and confirmed as a legally organized fire protection district in the state of Washington.

(2) The county auditor shall, within thirty days from the date of filing the petition, examine the signatures and certify to the sufficiency or insufficiency of the signatures. If the proposed fire protection district is located in more than one county, the auditor of the county in which the largest portion of the proposed fire protection district is located shall be the lead auditor and shall transmit a copy of the petition to the auditor or auditors of the other county or counties within which the proposed fire protection district is located. Each of these other auditors shall certify to the lead auditor both the total number of registered voters residing in that portion of the proposed fire protection district that is located in the county and the number of valid signatures of such voters who have signed the petition. The lead auditor shall certify the sufficiency or insufficiency of the signatures. The books and records of the auditor shall be prima facie evidence of the truth of the certificate. No person having signed the petition is allowed to withdraw his or her name after the filing of the petition with the county auditor.

(3) If the petition is found to contain a sufficient number of signatures of registered electors residing within the proposed district, the county auditor shall transmit the petition, together with the auditor's certificate of sufficiency, to the county legislative authority or authorities of the county or counties in which the proposed fire protection district is located. [1989 c 63 § 1; 1984 c 230 § 2; 1963 ex.s. c 13 § 1; 1947 c 254 § 2; 1939 c 34 § 2; Rem. Supp. 1947 § 5654-102. Prior: 1933 c 60 § 2. Formerly RCW 52.04.030.]

52.02.035 Petition—Notice of sufficiency. The county auditor who certifies the sufficiency of the petition shall notify the person or persons who submitted the petition of its sufficiency or insufficiency within five days of when the determination of sufficiency or insufficiency is made. Notice shall be by certified mail and additionally may be made by telephone. If a boundary review board exists in the county or counties in which the proposed fire protection district is located and the petition has been certified as being sufficient, the petitioners shall file notice of the proposed incorporation with the boundary review board or boards. [1989 c 63 § 2.]

52.02.040 Petition—Public hearing. (1) A public hearing on the petition shall be held by the county legislative authority of the county in which the proposed fire protection district is located if: (a) No boundary review board exists in the county; (b) jurisdiction by the boundary review board over the proposal has not been invoked; or (c) the boundary review board fails to take action on the proposal over which its jurisdiction has been invoked within the time period that the board must act or a proposal is deemed to have been approved. If such a public hearing is held by the county legislative authority, the hearing shall be held not less than twenty nor more than forty days from the date of receipt of the petition with the certificate of sufficiency from the

county auditor if there is no boundary review board in the county, or not more than one hundred days from when the notice of the proposal was submitted to the boundary review board if the jurisdiction of the boundary review board was not invoked, or not less than forty days after the date that the boundary review board that has had its jurisdiction invoked over the proposal must act if the proposal is deemed to have been approved. The hearing by the county legislative authority may be completed at the scheduled time or may be adjourned from time to time as may be necessary for a determination of the petition, but such adjournment or adjournments shall not extend the time for considering the petition more than twenty days from the date of the initial hearing on the petition.

(2) If the proposed fire protection district is located in more than one county, a public hearing shall be held in each of the counties by the county legislative authority or boundary review board. Joint public hearings may be held by two or more county legislative authorities, or two or more boundary review boards, on the proposal. [1989 c 63 § 3; 1984 c 230 § 3; 1939 c 34 § 3; RRS § 5654-103. Prior: 1933 c 60 § 2. Formerly RCW 52.04.040.]

52.02.050 Public hearing—Notice—Publication and posting. Notice of the public hearing by the county legislative authority on such a proposal shall be published for three consecutive weeks in the official paper of the county prior to the date set for the hearing and shall be posted for not less than fifteen days prior to the date of the hearing in each of three public places within the boundaries of the proposed district. The notices shall contain the time, date, and place of the public hearing. [1989 c 63 § 4; 1984 c 230 § 4; 1939 c 34 § 4; RRS § 5654-104. Prior: 1933 c 60 § 2. Formerly RCW 52.04.050.]

52.02.060 Hearing—Inclusion and exclusion of land. At the time and place of the hearing on the petition or at any adjournment thereof, the county legislative authority shall consider the petition and shall receive evidence as it deems material in favor of or opposed to the formation of the district or to the inclusion or exclusion of any lands. No lands outside of the boundaries of the proposed district as described in the petition may be included within the district without a written petition describing the land, executed by all persons having an interest of record in the lands, and filed with the proceedings on the petition. No land within the boundaries described in the petition, except that land which the county legislative authority finds will receive no benefits from the proposed district, may be excluded from the district. [1984 c 230 § 5; 1947 c 254 § 3; 1939 c 34 § 5; Rem. Supp. 1947 § 5654-105. Prior: 1933 c 60 § 3. Formerly RCW 52.04.060.]

52.02.070 Action on petition—Resolution—Election—District name when located in more than one county. The county legislative authority has the authority to consider the petition and, if it finds that the

lands or any portion of the lands described in the petition, and any lands added thereto by petition of those interested, will be benefited and that the formation of the district will be conducive to the public safety, welfare, and convenience, it shall make a finding by resolution; otherwise it shall deny the petition. The county legislative authority shall consider only those areas located within the county when considering the petition. If the county legislative authority approves the petition, it shall designate the name and number of the district, fix the boundaries of the district that are located within the county, and direct that an election be held within the proposed district for the purpose of determining whether the district shall be organized under this title and for the purpose of the election of its first fire commissioners.

Where a proposed fire protection district is located in more than a single county, the fire protection district shall be identified by the name of each county in which the proposed fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts. An election on a proposed fire protection district that is located in more than one county shall not be held unless the proposed district has been approved by the county legislative authorities, or boundary review boards, of each county within which the proposed district is located. [1989 c 63 § 5; 1984 c 230 § 6; 1939 c 34 § 6; RRS § 5654-106. Prior: 1933 c 60 § 3. Formerly RCW 52.04.070.]

52.02.080 Election. The election on the formation of the district and to elect the initial fire commissioners shall be conducted by the election officials of the county or counties in which the proposed district is located in accordance with the general election laws of the state. This election shall be held at the next general election date, as specified under RCW 29.13.020, that occurs forty-five or more days after the date of the action by the boundary review board, or county legislative authority or authorities, approving the proposal. [1989 c 63 § 6; 1984 c 230 § 7; 1939 c 34 § 7; RRS § 5654-107. Formerly RCW 52.04.080.]

Elections: Title 29 RCW.

52.02.110 Declaration of election results—Resolution. If three-fifths of all the votes cast at the election were cast in favor of the ballot proposition to create the proposed fire protection district, the county legislative authority of the county in which all, or the largest portion of, the proposed district is located shall by resolution declare the territory organized as a fire protection district under the name designated and shall declare the candidate for each fire commissioner position who receives the highest number of votes for that position to be an initial fire commissioner of the district. [1989 c 63 § 7; 1984 c 230 § 10; 1941 c 70 § 2; 1939 c 34 § 10; Rem. Supp. 1941 § 5654-110. Formerly RCW 52.04.110.]

52.02.140 Appeal. Any person or entity having a substantial interest and feeling aggrieved by any finding,

determination, or resolution of the county legislative authority in the proceedings for the organization of a fire protection district under this title, may appeal within five days after the action of the county legislative authority to the superior court of the county, in the same manner as provided by law for appeals from the orders and determinations of the county legislative authority. [1984 c 230 § 13; 1939 c 34 § 13; RRS § 5654-113. Formerly RCW 52.04.140.]

Appeal from board's action: RCW 36.32.330.

52.02.150 Organization conclusive. After the expiration of five days from the approval of the resolution of the county legislative authority declaring the district to be organized, and the filing of the certified copies of the resolution of the county legislative authority with the county auditor and the county assessor, the creation of the district is complete and its legal existence cannot thereafter be questioned by any person by reason of a defect in the proceedings for the organization of the district. [1984 c 230 § 14; 1939 c 34 § 14; RRS § 5654-114. Formerly RCW 52.04.150.]

Chapter 52.04 ANNEXATION

Sections	
52.04.001	Actions subject to review by boundary review board.
52.04.011	Annexation of territory by election method—Procedure—Indebtedness—Election dispensed with, when.
52.04.021	Annexation by petition method—Alternative to election method.
52.04.031	Annexation by petition method—Petition—Signers—Content.
52.04.041	Annexation by petition method—Hearing—Notice.
52.04.051	Annexation by petition method—Resolution providing for annexation.
52.04.056	Withdrawal or reannexation of areas.
52.04.061	Annexation of contiguous city or town—Procedure.
52.04.071	Annexation of contiguous city or town—Election.
52.04.081	Annexation of contiguous city or town—Annual tax levies—Limitations.
52.04.091	Additional territory annexed by city to be part of district.
52.04.101	Withdrawal by annexed city or town—Election.
52.04.111	Annexation of city or town—Transfer of employees.
52.04.121	Annexation of city or town—Transfer of employees—Rights and benefits.
52.04.131	Annexation of city or town—Transfer of employees—Notice—Time limitation.
52.04.141	Annexation of contiguous territory not in same county.
52.04.151	Annexation of territory not in same county—District name.

52.04.001 Actions subject to review by boundary review board. Actions taken under chapter 52.04 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 42.]

52.04.011 Annexation of territory by election method—Procedure—Indebtedness—Election dispensed with, when. (1) A territory contiguous to a fire protection district and not within the boundaries of a

city, town, or other fire protection district may be annexed to the fire protection district by petition of fifteen percent of the qualified registered electors residing within the territory proposed to be annexed. Such contiguous territory may be located in a county or counties other than the county or counties within which the fire protection district is located. The petition shall be filed with the fire commissioners of the fire protection district and if the fire commissioners concur in the petition they shall file the petition with the county auditor of the county within which the territory is located. If this territory is located in more than one county, the original petition shall be filed with the auditor of the county within which the largest portion of the territory is located, who shall be designated as the lead auditor, and a copy shall be filed with the auditor of each other county within which such territory is located. Within thirty days after the date of the filing of the petition the auditor shall examine the signatures on the petition and certify to the sufficiency or insufficiency of the signatures. If this territory is located in more than one county, the auditor of each other county who receives a copy of the petition shall examine the signatures and certify to the lead auditor the number of valid signatures and the number of registered voters residing in that portion of the territory that is located within the county. The lead auditor shall certify the sufficiency or insufficiency of the signatures.

After the county auditor has certified the sufficiency of the petition, the county legislative authority or authorities, or the boundary review board or boards, of the county or counties in which such territory is located shall consider the proposal under the same basis that a proposed incorporation of a fire protection district is considered, with the same authority to act on the proposal as in a proposed incorporation, as provided under chapter 52.02 RCW. If the proposed annexation is approved by the county legislative authority or boundary review board, the board of fire commissioners shall adopt a resolution requesting the county auditor to call a special election, as specified under RCW 29.13.020, at which the ballot proposition is to be submitted. No annexation shall occur when the territory proposed to be annexed is located in more than one county unless the county legislative authority or boundary review board of each county approves the proposed annexation.

(2) The county legislative authority or authorities of the county or counties within which such territory is located have the authority and duty to determine on an equitable basis, the amount of any obligation which the territory to be annexed to the district shall assume to place the property owners of the existing district on a fair and equitable relationship with the property owners of the territory to be annexed as a result of the benefits of annexing to a district previously supported by the property owners of the existing district. If a boundary review board has had its jurisdiction invoked on the proposal and approves the proposal, the county legislative authority of the county within which such territory is located may exercise the authority granted in this subsection and require such an assumption of indebtedness. This obligation may be paid to the district in yearly

benefit charge installments to be fixed by the county legislative authority. This benefit charge shall be collected with the annual tax levies against the property in the annexed territory until fully paid. The amount of the obligation and the plan of payment established by the county legislative authority shall be described in general terms in the notice of election for annexation and shall be described in the ballot proposition on the proposed annexation that is presented to the voters for their approval or rejection. Such benefit charge shall be limited to an amount not to exceed a total of fifty cents per thousand dollars of assessed valuation: *Provided, however,* That the special election on the proposed annexation shall be held only within the boundaries of the territory proposed to be annexed to the fire protection district.

(3) On the entry of the order of the county legislative authority incorporating the territory into the existing fire protection district, the territory shall become subject to the indebtedness, bonded or otherwise, of the existing district. If the petition is signed by sixty percent of the qualified registered electors residing within the territory proposed to be annexed, and if the board of fire commissioners concur, an election in the territory and a hearing on the petition shall be dispensed with and the county legislative authority shall enter its order incorporating the territory into the existing fire protection district. [1989 c 63 § 8; 1984 c 230 § 22; 1973 1st ex.s. c 195 § 49; 1965 ex.s. c 18 § 1; 1959 c 237 § 3; 1947 c 254 § 5; 1945 c 162 § 2; 1941 c 70 § 3; Rem. Supp. 1947 § 5654-116a. Formerly RCW 52.08.060.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

52.04.021 Annexation by petition method—Alternative to election method. The method of annexation provided for in RCW 52.04.031, 52.04.041, and 52.04.051 shall be an alternate method to that specified in RCW 52.04.011. [1984 c 230 § 23; 1965 c 59 § 1. Formerly RCW 52.08.065.]

52.04.031 Annexation by petition method—Petition—Signers—Content. A petition for annexation of an area contiguous to a fire district shall be in writing, addressed to and filed with the board of fire commissioners of the district to which annexation is desired. Such contiguous territory may be located in a county or counties other than the county or counties within which the fire protection district is located. It must be signed by the owners, according to the records of the county auditor or auditors, of not less than sixty percent of the area of land included in the annexation petition, shall set forth a legal description of the property and shall be accompanied by a plat which outlines the boundaries of the property to be annexed. The petition shall state the financial obligation, if any, to be assumed by the area to be annexed. [1989 c 63 § 9; 1984 c 230 § 24; 1965 c 59 § 2. Formerly RCW 52.08.066.]

52.04.041 Annexation by petition method—Hearing—Notice. If the petition for annexation filed with

the board of commissioners complies with the requirements of law, the board may accept the petition, fix a date for public hearing, and publish notice of the hearing in a newspaper of general circulation in the area proposed to be annexed and also post the notice in three public places within the area proposed for annexation. The notice shall specify the time and place of the hearing and invite interested persons to attend. The expense of publication of the notice shall be paid by the district. [1984 c 230 § 25; 1965 c 59 § 3. Formerly RCW 52.08.067.]

52.04.051 Annexation by petition method—Resolution providing for annexation. After the hearing, the board of fire commissioners shall determine by resolution whether the area shall be annexed. It may annex all or any portion of the proposed area but may not include in the annexation property not described in the petition. The proposed annexation shall be subject to action by the county legislative authority, as provided under RCW 52.04.011, to the same extent as if the annexation were done under the election method of annexation. If the area proposed to be annexed under this procedure is reduced, the annexation shall occur only if the owners of not less than sixty percent of the remaining area have signed the petition. After adoption of the resolution a copy shall be filed with the county legislative authority or authorities within which the territory is located. [1989 c 63 § 10; 1984 c 230 § 26; 1965 c 59 § 4. Formerly RCW 52.08.068.]

52.04.056 Withdrawal or reannexation of areas. (1) As provided in this section, a fire protection district may withdraw areas from its boundaries, or reannex areas into the fire protection district that previously had been withdrawn from the fire protection district under this section.

(2) The withdrawal of an area shall be authorized upon: (a) Adoption of a resolution by the board of fire commissioners requesting the withdrawal and finding that, in the opinion of the board, inclusion of this area within the fire protection district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority or authorities of the county or counties within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The authority of an area to be withdrawn from a fire protection district as provided under this section is in addition, and not subject, to the provisions of RCW 52.04.101.

The withdrawal of an area from the boundaries of a fire protection district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the fire protection district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a fire protection district under this section may be reannexed into the fire protection district upon: (a) Adoption of a resolution by the board of fire commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority or authorities of the county or counties within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority or authorities, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in *RCW 29.13.020 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [1989 c 63 § 11; 1987 c 138 § 3.]

***Reviser's note:** As enacted by 1987 c 138 § 3, this section contained an apparently erroneous reference to RCW 29.13.030, a section repealed in 1965. Pursuant to RCW 1.08.015, this reference has been changed to RCW 29.13.020, a later enactment of the section repealed.

52.04.061 Annexation of contiguous city or town—Procedure. A city or town lying contiguous to a fire protection district may be annexed to such district if at the time of the initiation of annexation the population of the city or town is 100,000 or less. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated. [1985 c 313 § 1; 1979 ex.s. c 179 § 1. Formerly RCW 52.04.170.]

52.04.071 Annexation of contiguous city or town—Election. The county legislative authority or authorities shall by resolution call a special election to be held in the city or town and in the fire protection district at the next date provided in RCW 29.13.010 but not less than forty-five days from the date of the declaration of the finding, and shall cause notice of the election to be given as provided for in RCW 29.27.080.

The election on the annexation of the city or town into the fire protection district shall be conducted by the auditor of the county or counties in which the city or town and the fire protection district are located in accordance with the general election laws of the state. The results thereof shall be canvassed by the canvassing board of the county or counties. No person is entitled to vote at the election unless he or she is a qualified elector in the city or town or unless he or she is a qualified elector within the boundaries of the fire protection district. The ballot proposition shall be in substantially the following form:

"Shall the city or town of _____ be annexed to and be a part of _____ fire protection district?

YES _____
NO _____"

If a majority of the persons voting on the proposition in the city or town and a majority of the persons voting on the proposition in the fire protection district vote in favor thereof, the city or town shall be annexed and shall be a part of the fire protection district. [1984 c 230 § 16; 1979 ex.s. c 179 § 2. Formerly RCW 52.04.180.]

Elections: Title 29 RCW.

52.04.081 Annexation of contiguous city or town—Annual tax levies—Limitations. The annual tax levies authorized by chapter 52.16 RCW shall be imposed throughout the fire protection district, including any city or town annexed thereto. Any city or town annexed to a fire protection district is entitled to levy up to three dollars and sixty cents per thousand dollars of assessed valuation less any regular levy made by the fire protection district or by a library district under RCW 27.12.390 in the incorporated area: *Provided*, That the limitations upon regular property taxes imposed by chapter 84.55 RCW apply. [1984 c 230 § 17; 1979 ex.s. c 179 § 4. Formerly RCW 52.04.190.]

52.04.091 Additional territory annexed by city to be part of district. When any city, code city, or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, thereafter, any territory annexed by the city shall also be annexed and be a part of the fire protection district. [1989 c 76 § 1.]

52.04.101 Withdrawal by annexed city or town—Election. The legislative body of such a city or town which has annexed to such a fire protection district, may, by resolution, present to the voters of such city or town a proposition to withdraw from said fire protection district at any general election held at least three years following the annexation to the fire protection district. If

the voters approve such a proposition to withdraw from said fire protection district, the city or town shall have a vested right in the capital assets of the district proportionate to the taxes levied within the corporate boundaries of the city or town and utilized by the fire district to acquire such assets. [1979 ex.s. c 179 § 3. Formerly RCW 52.04.200.]

52.04.111 Annexation of city or town—Transfer of employees. When any city, code city or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, any employee of the fire department of such city, code city or town who (1) was at the time of annexation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire protection district (2) will, as a direct consequence of annexation, be separated from the employ of the city, code city or town, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer his employment to the fire protection district as provided in this section and RCW 52.04.121 and 52.04.131.

For purposes of this section and RCW 52.04.121 and 52.04.131, employee means an individual whose employment with a city, code city or town has been terminated because the city, code city or town was annexed by a fire protection district for purposes of fire protection. [1986 c 254 § 10.]

52.04.121 Annexation of city or town—Transfer of employees—Rights and benefits. (1) An eligible employee may transfer into the fire protection district civil service system, if any, or if none, then may request transfer of employment under this section by filing a written request with the board of fire commissioners of the fire protection district and by giving written notice to the legislative authority of the city, code city or town. Upon receipt of such request by the board of fire commissioners the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the fire protection district in the position filled, (b) be eligible for promotion after completion of the probationary period as completed, (c) receive a salary at least equal to that of other new employees of the fire protection district in the position filled, and (d) in all other matters, such as retirement, vacation, and sick leave, have all the rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district from the beginning of employment with the city, code city or town fire department: *Provided*, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The city, code city or town shall, upon receipt of such notice, transmit to the board of fire commissioners a record of the employee's service with the city, code city or town which shall be

credited to such employee as a part of the period of employment in the fire protection district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the fire protection district as the district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.04.111 and 52.04.131 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the fire protection district when appropriate positions become available: *Provided*, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. [1986 c 254 § 11.]

52.04.131 Annexation of city or town—Transfer of employees—Notice—Time limitation. When a city, code city or town is annexed to a fire protection district and as a result any employee is laid off who is eligible to transfer to the fire protection district pursuant to this section and RCW 52.04.111 and 52.04.121, the city, code city or town shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the fire protection district. [1986 c 254 § 12.]

52.04.141 Annexation of contiguous territory not in same county. Any attempted annexation in 1987 and thereafter by a fire protection district of contiguous territory, that is located in a county other than the county in which the fire protection district was located, is validated where the annexation would have occurred if the territory had been located in the same county as the fire protection district. The effective date of such annexations occurring in 1987 shall be February 1, 1988, for purposes of establishing the boundaries of taxing districts for purposes of imposing property taxes as provided in RCW 84.09.030.

Any reference to a county official of the county in which a fire protection district is located or proposed to be located shall be deemed to refer to the appropriate county official of each county in which the fire protection district is located or proposed to be located. [1988 c 274 § 12.]

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

52.04.151 Annexation of territory not in same county—District name. Any fire protection district located in a single county that annexes territory in another county shall be identified by the name of each county in

which the fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts. [1989 c 63 § 12.]

**Chapter 52.06
MERGER**

Sections

- 52.06.001 Actions subject to review by boundary review board.
- 52.06.010 Merger of districts authorized—Review.
- 52.06.020 Petition—Contents.
- 52.06.030 Action on petition—Special election.
- 52.06.050 Vote required—Status after favorable vote.
- 52.06.060 Merger by petition.
- 52.06.070 Obligations of merged districts.
- 52.06.080 Delivery of property and funds.
- 52.06.085 Board membership upon merger of districts—Subsequent boards.
- 52.06.090 Merger of part of district with adjacent district.
- 52.06.100 Merger of part of district with adjacent district—When election unnecessary.
- 52.06.110 Transfer of employees.
- 52.06.120 Transfer of employees—Rights and benefits.
- 52.06.130 Transfer of employees—Notice—Time limitation.
- 52.06.140 Merger of districts located in different counties—District name.

52.06.001 Actions subject to review by boundary review board. Actions taken under chapter 52.06 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 43.]

52.06.010 Merger of districts authorized—Review. A fire protection district may merge with another adjacent fire protection district, on such terms and conditions as they agree upon, in the manner provided in this title. The fire protection districts may be located in different counties. The district desiring to merge with another district, or the district from which it is proposed that a portion of the district be merged with another district, shall be called the "merging district." The district into which the merger is to be made shall be called the "merger district." The merger of any districts under chapter 52.06 RCW is subject to potential review by the boundary review board or boards of the county in which the merging district, or the portion of the merging district that is proposed to be merged with another district, is located. [1989 c 63 § 13; 1984 c 230 § 57; 1947 c 254 § 12; Rem. Supp. 1947 § 5654-151a. Formerly RCW 52.24.010.]

52.06.020 Petition—Contents. To effect such a merger, a petition to merge shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition on their own initiative, and they shall file a petition when it is signed by fifteen percent of the qualified electors resident in the merging district and presented to the board of commissioners. The petition shall state the reasons for the merger, state the terms and conditions under which the merger is proposed, and request the merger. [1984 c 230 § 58; 1947 c

254 § 13; Rem. Supp. 1947 § 5654–151b. Formerly RCW 52.24.020.]

52.06.030 Action on petition—Special election.

The board of the merger district may, by resolution, reject or approve the petition as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution to the merging district.

If the petition is approved as presented or as modified, the board of the merging district shall send an elector–signed petition, if there is one, to the auditor or auditors of the county or counties in which the merging district is located, who shall within thirty days examine the signatures and certify to the sufficiency or insufficiency of the signatures. If the merging district is located in more than one county, the auditor of the county within which the largest portion of the merging district is located shall be the lead auditor. Each other auditor shall certify to the lead auditor the number of valid signatures and the number of registered voters of the merging district who reside in the county. The lead auditor shall certify as to the sufficiency or insufficiency of the signatures. No signatures may be withdrawn from the petition after the filing. A certificate of sufficiency shall be provided to the board of the merging district, which shall adopt a resolution requesting the county auditor or auditors to call a special election, as provided in RCW 29.13.020, for the purpose of presenting the question of merging the districts to the voters of the merging district.

If there is no elector–signed petition, the merging district board shall adopt a resolution requesting the county auditor or auditors to call a special election in the merging district, as specified under RCW 29.13.020, for the purpose of presenting the question of the merger to the electors. [1989 c 63 § 14; 1984 c 230 § 59; 1947 c 254 § 14; Rem. Supp. 1947 § 5654–151c. Formerly RCW 52.24.030.]

52.06.050 Vote required—Status after favorable vote. The board of the merging district shall notify the board of the merger district of the results of the election. If three–fifths of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1947 c 254 § 16; Rem. Supp. 1947 § 5654–151e. Formerly RCW 52.24.050.]

52.06.060 Merger by petition. If three–fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary and the auditor, or lead auditor if the merging district is located in more than a single county,

shall return the petition, together with a certificate of sufficiency to the board of the merging district. The boards of the respective districts shall then adopt resolutions declaring the districts merged in the same manner and to the same effect as if the merger had been authorized by an election. [1989 c 63 § 15; 1984 c 230 § 61; 1947 c 254 § 17; Rem. Supp. 1947 § 5654–151f. Formerly RCW 52.24.060.]

52.06.070 Obligations of merged districts. None of the obligations of the merged districts or of a local improvement district located in the merged districts may be affected by the merger and dissolution, and all land liable to be assessed to pay any of the indebtedness shall remain liable to the same extent as if the districts had not been merged and any assessments previously levied against the land shall remain unimpaired and shall be collected in the same manner as if the districts had not merged. The commissioners of the merged district shall have all the powers of the two districts to levy, assess, and cause to be collected all assessments against any land in both districts that may be necessary to pay for the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the merger: *Provided*, That the board of the merged district may, with the consent of the creditors of the districts merged, cancel any or all assessments previously levied, in accordance with the terms and conditions of the merger, so that the lands in the respective districts bear their fair and proportionate share of the indebtedness. [1984 c 230 § 62; 1947 c 254 § 18; Rem. Supp. 1947 § 5654–151g. Formerly RCW 52.24.070.]

52.06.080 Delivery of property and funds. The commissioners of the merging district shall, upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments previously levied. [1984 c 230 § 63; 1947 c 254 § 19; Rem. Supp. 1947 § 5654–151h. Formerly RCW 52.24.080.]

52.06.085 Board membership upon merger of districts—Subsequent boards. Whenever two or more fire protection districts merge, the board of fire commissioners of the merged fire protection district shall consist of all of the original fire commissioners. At the next three elections for fire commissioners the number of fire commissioners for the merged district shall be reduced as follows, notwithstanding the number of fire commissioners whose terms expire:

In the first election after the merger, only one position shall be filled, whether the new fire protection district be a three member district or a five member district pursuant to RCW 52.14.020.

In each of the two subsequent elections, one position shall be filled if the new fire protection district is a three member district and two positions shall be filled if the

new fire protection district is a five member district pursuant to RCW 52.14.020.

Thereafter, the fire commissioners shall be elected in the same manner as prescribed for such fire protection districts of the state. [1985 c 7 § 118; 1977 ex.s. c 121 § 1; 1971 c 55 § 1. Formerly RCW 52.24.085.]

52.06.090 Merger of part of district with adjacent district. A part of one district may be transferred and merged with an adjacent district if the area can be better served by the merged district. To effect such a merger; a petition, signed by a majority of the commissioners of the merging district or signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district, if signed by electors, or with the commissioners of the merger district if signed by commissioners of the merging district. If the commissioners of the merging district approve the petition, the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district approve the petition, an election shall be called in the area to be merged.

In the event that either board of fire district commissioners does not approve the petition, the petition may be approved by the boundary review board of the county or the county legislative authority of the county in which the area to be merged is situated, and may approve the merger if it decides the area can be better served by a merger. If the part of the merging district that is proposed to merge with the merger district is located in more than one county, the approval must be by the boundary review board or county legislative authority of each county. If there is an affirmative decision, an election shall be called in the area to be merged.

A majority of the votes cast is necessary to approve the transfer. [1989 c 63 § 16; 1984 c 230 § 64; 1965 ex.s. c 18 § 2; 1963 c 42 § 1; 1953 c 176 § 5. Formerly RCW 52.24.090.]

52.06.100 Merger of part of district with adjacent district—When election unnecessary. If three-fifths of the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor or lead auditor shall return the petition, together with a certificate of sufficiency, to the board of the merger district. The board of the merger district shall then adopt a resolution declaring the portion of the district merged in the same manner and to the same effect as if the same had been authorized by an election. [1989 c 63 § 17; 1984 c 230 § 65; 1953 c 176 § 6. Formerly RCW 52.24.100.]

52.06.110 Transfer of employees. When any portion of a fire protection district merges with another fire protection district, any employee of the merging district who (1) was at the time of merger employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the merger district (2) will, as a direct consequence of the merger, be

separated from the employ of the merging district, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the merger district as provided in this section and RCW 52.06.120 and 52.06.130.

For purposes of this section and RCW 52.06.120 and 52.06.130, employee means an individual whose employment with a fire protection district has been terminated because the fire protection district merged with another fire protection district for purposes of fire protection. [1986 c 254 § 13.]

52.06.120 Transfer of employees—Rights and benefits. (1) An eligible employee may transfer into the merger district by filing a written request with the board of fire commissioners of the merger district and by giving written notice to the board of fire commissioners of the merging district. Upon receipt of such request by the board of the merger district the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the merger district in the position filled, (b) be eligible for promotion after completion of the probationary period as completed, (c) receive a salary at least equal to that of other new employees of the merger district in the position filled, and (d) in all other matters, such as retirement, vacation, and sick leave, have, all the rights, benefits, and privileges to which he or she would have been entitled to as an employee of the merger district from the beginning of employment with the merging district: *Provided*, That for purposes of layoffs by the merger fire agency, only the time of service accrued with the merger agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the merging and merger fire agencies and the merging and merger fire agencies. The board of the merging district shall, upon receipt of such notice, transmit to the board of the merger district a record of the employee's service with the merging district which shall be credited to such employee as a part of the period of employment in the merger district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the merger district as the merger district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.06.110 and 52.06.130 shall head the list for employment in order of their seniority, to the end that they shall be the first to be re-employed in the merger district when appropriate positions become available: *Provided*, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the

merging and merged fire agencies and the merging and merged fire agencies. [1986 c 254 § 14.]

52.06.130 Transfer of employees—Notice—Time limitation. If, as a result of merging of districts any employee is laid off who is eligible to transfer to the merger district under this section and RCW 52.06.110 and 52.06.120, the merging district shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the merger district. [1986 c 254 § 15.]

52.06.140 Merger of districts located in different counties—District name. A merger fire protection district located in a single county, that merged with a merging fire protection district located in another county or counties, shall be identified by the name of each county in which the fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts. [1989 c 63 § 18.]

Chapter 52.08 WITHDRAWAL

Sections

52.08.001	Actions subject to review by boundary review board.
52.08.011	Withdrawal authorized.
52.08.021	Withdrawal by incorporation of part of district.
52.08.025	City may not be included within district—Withdrawal of city.
52.08.031	Contracts with third class cities, towns, for public facilities and services—Joint purchasing.
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52.08.035	City withdrawn to determine fire and emergency medical protection methods—Contracts—Joint operations—Sale, lease, etc., of property.
52.08.041	Taxes and assessments unaffected.
52.08.051	Commissioners residing in territory withdrawn—Vacancy created.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

52.08.001 Actions subject to review by boundary review board. Actions taken under chapter 52.08 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 44.]

52.08.011 Withdrawal authorized. Territory within a fire protection district may be withdrawn from the district in the same manner provided by law for withdrawal of territory from water districts, as provided by chapter 57.28 RCW. [1984 c 230 § 54; 1955 c 111 § 1. Formerly RCW 52.22.010.]

Withdrawal or reannexation of areas: RCW 52.04.056.

52.08.021 Withdrawal by incorporation of part of district. The incorporation of any previously unincorporated land lying within a fire protection district shall operate to automatically withdraw such lands from the fire protection district. [1959 c 237 § 5; 1955 c 111 § 2. Formerly RCW 52.22.020.]

52.08.025 City may not be included within district—Withdrawal of city. Effective January 1, 1960, every city or town, or portion thereof, which is situated within the boundaries of a fire protection district shall become automatically removed from such fire protection district, and no fire protection district shall thereafter include any city or town, or portion thereof, within its boundaries except as provided for in RCW 52.02.020, 52.04.061, 52.04.071, 52.04.081, and 52.04.101.

However, if the area which incorporates or is annexed includes all of a fire protection district, the fire protection district, for purposes of imposing regular property taxes, shall continue in existence until the first day of January in the year in which the initial property tax collections of the newly incorporated city or town will be made or until the first day of January in the year the annexing city or town will collect its property taxes imposed on the newly annexed area. The members of the city or town council or commission shall act as the board of commissioners to impose, receive, and expend these property taxes. [1986 c 234 § 35; 1985 c 7 § 119; 1979 ex.s. c 179 § 6; 1959 c 237 § 6. Formerly RCW 52.22.030.]

52.08.031 Contracts with third class cities, towns, for public facilities and services—Joint purchasing. See RCW 35.24.274 and 35.24.275.

52.08.032 Levy for emergency medical care and services. See RCW 84.52.069.

52.08.035 City withdrawn to determine fire and emergency medical protection methods—Contracts—Joint operations—Sale, lease, etc., of property. A city or town encompassing territory withdrawn under chapter 52.08 RCW shall determine the most effective and feasible fire protection and emergency medical protection for the withdrawn territory, or any part thereof, and the legislative authority of the city or town and the commissioners of the fire protection district may, without limitation of any other powers provided by law:

(1) Enter into contracts to the same extent as fire protection districts and cities and towns may enter into contracts under authority of RCW 52.12.031(3), and

(2) Sell, purchase, rent, lease, or exchange property of every nature. [1984 c 230 § 55; 1959 c 237 § 8. Formerly RCW 52.22.040.]

52.08.041 Taxes and assessments unaffected. The provisions of RCW 57.28.110 shall apply to territory withdrawn from a fire protection district under the provision of chapter 52.08 RCW. [1985 c 7 § 120; 1959 c 237 § 7. Formerly RCW 52.22.050.]

52.08.051 Commissioners residing in territory withdrawn—Vacancy created. Fire protection district commissioners residing in territory withdrawn from a fire protection district shall be replaced in the manner provided for the filling of vacancies in RCW 52.14.050.

[1984 c 230 § 56; 1959 c 237 § 9. Formerly RCW 52.22.060.]

**Chapter 52.10
DISSOLUTION**

Sections

- 52.10.001 Actions subject to review by boundary review board.
- 52.10.010 Dissolution—Election method.
- 52.10.020 Disincorporation of district located in class A or AA county and inactive for five years.

52.10.001 Actions subject to review by boundary review board. Actions taken under chapter 52.10 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 45.]

52.10.010 Dissolution—Election method. Fire protection districts may be dissolved by a majority vote of the registered electors of the district at an election conducted by the election officials of the county or counties in which the district is located in accordance with the general election laws of the state. The proceedings for dissolution may be initiated by the adoption of a resolution by the board of commissioners of the district calling for the dissolution. The dissolution of the district shall not cancel outstanding obligations of the district or of a local improvement district within the district, and the county legislative authority or authorities of the county or counties in which the district was located may make annual levies against the lands within the district until the obligations of the districts are paid. When the obligations are fully paid, all moneys in district funds and all collections of unpaid district taxes shall be transferred to the expense fund of the county. Where the fire protection district that was dissolved was located in more than one county, the amount of money transferred to the expense fund of each county shall be in direct proportion to the amount of assessed valuation of the fire protection district that was located in each county at the time of its dissolution. [1989 c 63 § 19; 1984 c 230 § 15; 1939 c 34 § 46; RRS § 5654-146. Formerly RCW 52.04.155.]

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

52.10.020 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

**Chapter 52.12
POWERS—BURNING PERMITS**

Sections

- 52.12.011 Status.
- 52.12.021 General powers.
- 52.12.031 Specific powers—Acquisition or lease of property or equipment—Contracts—Association of districts—Group life insurance—Building inspections—Fire investigations.
- 52.12.041 Eminent domain.
- 52.12.051 Condemnation proceedings.

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- 52.12.061 Contracts, promissory notes, deeds of trust, and mortgages for purchase of property—Limit on indebtedness—Election, when.
- 52.12.071 Liability insurance for officials and employees.
- 52.12.101 Burning permits authorized—Resolution.
- 52.12.102 Burning permits—Resolution to be published and posted.
- 52.12.103 Burning permits—Issuance—Contents.
- 52.12.104 Burning permits—Duties of permittee.
- 52.12.105 Burning permits—Penalty.
- 52.12.106 Burning permits—Penalty.
- 52.12.108 Burning permits—Liability for fire suppression costs.
- 52.12.111 Use of equipment and personnel beyond district boundaries—Governmental function.
- 52.12.121 Use of equipment and personnel outside district—Duty of fire fighter deemed duty for district—Benefits not impaired.
- 52.12.125 Reimbursement for fire suppression costs on state lands—Limitations.
- 52.12.131 Emergency medical services—Establishment and collection of charges.
- 52.12.140 Hazardous materials response teams.

Association of fire commissioners to furnish information to legislature and governor: RCW 44.04.170.

52.12.011 Status. Fire protection districts created under this title are political subdivisions of the state and shall be held to be municipal corporations within the laws and Constitution of the state of Washington. A fire protection district shall constitute a body corporate and possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by law. [1984 c 230 § 18; 1967 c 164 § 5; 1939 c 34 § 15; RRS § 5654-115. Formerly RCW 52.08.010.]

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

52.12.021 General powers. Fire protection districts have full authority to carry out their purposes and to that end may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property, or any interest therein, to enter into and to perform any and all necessary contracts, to appoint and employ the necessary officers, agents, and employees, to sue and be sued, to exercise the right of eminent domain, to levy and enforce the collection of assessments and special taxes in the manner and subject to the limitations provided in this title against the lands within the district for district revenues, and to do any and all lawful acts required and expedient to carry out the purpose of this title. [1984 c 230 § 19; 1939 c 34 § 16; RRS § 5654-116. Formerly RCW 52.08.020.]

52.12.031 Specific powers—Acquisition or lease of property or equipment—Contracts—Association of districts—Group life insurance—Building inspections—Fire investigations. Any fire protection district organized under this title may:

(1) Lease, acquire, own, maintain, operate, and provide fire and emergency medical apparatus and all other necessary or proper facilities, machinery, and equipment for the prevention and suppression of fires, the providing

of emergency medical services and the protection of life and property;

(2) Lease, acquire, own, maintain, and operate real property, improvements, and fixtures for housing, repairing, and maintaining the apparatus, facilities, machinery, and equipment described in subsection (1) of this section;

(3) Contract with any governmental entity or private person or entity to consolidate, provide, or cooperate for fire prevention protection, fire suppression, and emergency medical purposes. In so contracting, the district or governmental entity is deemed for all purposes to be acting within its governmental capacity. This contracting authority includes the furnishing of fire prevention, fire suppression, emergency medical services, facilities, and equipment to or by the district, governmental entity, or private person or entity;

(4) Encourage uniformity and coordination of fire protection district operations. The fire commissioners of fire protection districts may form an association to secure information of value in suppressing and preventing fires and other district purposes, to hold and attend meetings, and to promote more economical and efficient operation of the associated fire protection districts. The commissioners of fire protection districts in the association shall adopt articles of association or articles of incorporation for a nonprofit corporation, select a chairman, secretary, and other officers as they may determine, and may employ and discharge agents and employees as the officers deem convenient to carry out the purposes of the association. The expenses of the association may be paid from funds paid into the association by fire protection districts: *Provided*, That the aggregate contributions made to the association by a district in a calendar year shall not exceed two and one-half cents per thousand dollars of assessed valuation;

(5) Enter into contracts to provide group life insurance for the benefit of the personnel of the fire districts;

(6) Perform building and property inspections that the district deems necessary to provide fire prevention services and pre-fire planning within the district and any area that the district serves by contract in accordance with RCW 19.27.110: *Provided*, That codes used by the district for building and property inspections shall be limited to the applicable codes adopted by the state, county, city, or town that has jurisdiction over the area in which the property is located. A copy of inspection reports prepared by the district shall be furnished by the district to the appropriate state, county, city, or town that has jurisdiction over the area in which the property is located: *Provided*, That nothing in this subsection shall be construed to grant code enforcement authority to a district. This subsection shall not be construed as imposing liability on any governmental jurisdiction;

(7) Determine the origin and cause of fires occurring within the district and any area the district serves by contract. In exercising the authority conferred by this subsection, the fire protection district and its authorized representatives shall comply with the provisions of RCW 48.48.060;

(8) Perform acts consistent with this title and not otherwise prohibited by law. [1986 c 311 § 1; 1984 c 238 § 1; 1973 1st ex.s. c 195 § 48; 1963 c 101 § 1; 1959 c 237 § 2; 1947 c 254 § 6; 1941 c 70 § 4; 1939 c 34 § 20; Rem. Supp. 1947 § 5654-120. Formerly RCW 52.08.030.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Use of city fire apparatus beyond city limits: RCW 35.84.040.

52.12.041 Eminent domain. The taking and damaging of property or property rights by a fire protection district to carry out the purposes of its organization are declared to be for a public use. A district organized under this title may exercise the power of eminent domain to acquire property or property rights either inside or outside the district, for the use of the district. A district exercising the power of eminent domain shall proceed in the name of the district in the manner provided by law for the appropriation of real property or of real property rights by private corporations. [1984 c 230 § 20; 1939 c 34 § 18; RRS § 5654-118. Formerly RCW 52.08.040.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); chapter 8.20 RCW.

52.12.051 Condemnation proceedings. A fire protection district may unite in a single action, proceedings to condemn property which is held by separate owners. Two or more condemnation suits instituted separately may also, in the discretion of the court, upon a motion of an interested party, be consolidated into a single action. In these cases, the jury shall render separate verdicts for each tract of land in different ownership. A finding of the jury or decree of the court as to damages shall not in any manner be construed to abridge or destroy the right of the district to levy and collect taxes for district purposes against the uncondemned land situated within the district. The title acquired by a fire protection district in condemnation proceedings shall be the fee simple title or a lesser estate as designated in the decree of appropriation. [1984 c 230 § 21; 1939 c 34 § 19; RRS § 5654-119. Formerly RCW 52.08.050.]

52.12.061 Contracts, promissory notes, deeds of trust, and mortgages for purchase of property—Limit on indebtedness—Election, when. Fire protection districts may execute executory conditional sales contracts, installment promissory notes secured by a deed of trust, or mortgages with a governmental entity or a private party for the purchase or sale of any real or personal property, or property rights: *Provided*, That the purchase price specified in a contract or promissory note to purchase property does not result in a total indebtedness in excess of three-eighths of one percent of the value of the taxable property in the fire protection district: *Provided further*, That if a proposed purchase contract or promissory note would result in a total indebtedness in excess of that amount, a proposition to determine whether that contract or promissory note may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are

submitted to the voters: *And provided further*, That a fire protection district may jointly execute contracts, promissory notes, deeds of trust, or mortgages authorized by this section with any governmental entity.

The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1984 c 230 § 27; 1970 ex.s. c 42 § 29; 1965 c 21 § 1. Formerly RCW 52.08.080.]

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

52.12.071 Liability insurance for officials and employees. The board of commissioners of each fire district may purchase liability insurance with limits it deems reasonable for the purpose of protecting its officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1984 c 230 § 28; 1973 c 125 § 3. Formerly RCW 52.08.090.]

52.12.101 Burning permits authorized—Resolution. In any district in which the commissioners have adopted and published a resolution assuming the authority of issuing burning permits, a person, firm, or corporation shall not start, permit, or cause to be started or permitted an open fire on any land within a fire protection district, without a written permit issued by the district under terms and conditions as the district establishes by resolution. A fire district shall not assume authority to issue a burning permit for a fire on any forest or cut over land, except as otherwise provided by law. A fire district shall have the authority to revoke a permit issued by the district for the protection of life or property or to prevent or abate the nuisances caused by such burning. [1987 c 21 § 1; 1984 c 229 § 1; 1947 c 254 § 20; Rem. Supp. 1947 § 5654–151i. Formerly RCW 52.28.010.]

52.12.102 Burning permits—Resolution to be published and posted. The commissioners of a district may adopt a resolution authorizing the district to issue fire permits and establishing the terms and conditions under which the permit shall be issued. Notice of the resolution shall be published once a week for three consecutive weeks in a newspaper published in the county and of general circulation in the district and post it in three public places in the district. The affidavit of publication by the publisher and of the clerk of the district of the posting shall be filed in the records of the district. Ten days after the posting and the last publication, the resolution shall take effect. [1984 c 229 § 2; 1947 c 254 § 21; Rem. Supp. 1947 § 5654–151j. Formerly RCW 52.28.020.]

52.12.103 Burning permits—Issuance—Contents. Burning permits may be issued upon request, by the persons authorized by the commissioners when the issuing officer deems it appropriate. The permit shall designate the premises and the exact location where the fire may be started and permitted, the nature of the

material to be burned, the time limit of the permit, and may contain any special requirements and conditions pertaining to the fire and the control of the fire as the issuing officer deems appropriate. [1984 c 229 § 3; 1947 c 254 § 22; Rem. Supp. 1947 § 5654–151k. Formerly RCW 52.28.030.]

52.12.104 Burning permits—Duties of permittee. The permittee shall comply with the terms and conditions of the permit, and shall maintain a responsible person in charge of the fire at all times who shall maintain the fire under control, not permit it to spread to other property or structures, and extinguish the fire when the authorized burning is completed or when directed by district personnel. The possession of a permit shall not relieve the permittee from liability for damages resulting from the fire for which the permittee may otherwise be liable. [1984 c 229 § 4; 1947 c 254 § 23; Rem. Supp. 1947 § 5654–151l. Formerly RCW 52.28.040.]

Crimes relating to fires: Chapter 9A.48 RCW.

Liability for fire damage: RCW 4.24.040, 4.24.050, 4.24.060, 76.04.495, 76.04.750.

52.12.105 Burning permits—Penalty. The violation of or failure to comply with any provision of this chapter pertaining to fire permits, or of any term or condition of the permit, is a misdemeanor. [1947 c 254 § 24; Rem. Supp. 1947 § 5654–151m. Formerly RCW 52.28.050.]

52.12.106 Burning permits—Penalty. The violation of or failure to comply with any provision of this chapter pertaining to fire permits, or of any term or condition of the permit, is a misdemeanor. [1984 c 229 § 5.]

52.12.108 Burning permits—Liability for fire suppression costs. If a person starts a fire without a permit or if a permit holder fails to comply with any provision of this chapter pertaining to fire permits, or of any term or condition of the permit, and as a result of that failure the district is required to suppress a fire, the person or permit holder is liable to the district to reimburse it for the costs of the fire suppression services. [1984 c 229 § 6.]

52.12.111 Use of equipment and personnel beyond district boundaries—Governmental function. A fire protection district may permit, under conditions prescribed by the fire commissioners of the district, the use of its equipment and personnel beyond the boundaries of the district. Any use made of the equipment or personnel under this section shall be deemed an exercise of a governmental function of the district. [1984 c 230 § 77; 1980 c 43 § 1; 1969 c 88 § 2. Formerly RCW 52.36.025.]

52.12.121 Use of equipment and personnel outside district—Duty of fire fighter deemed duty for district—Benefits not impaired. If a fire fighter engages

in any duty outside the boundaries of the district the duty shall be considered as part of the duty as fire fighter for the district, and a fire fighter who is injured while engaged in duties outside the boundaries of the district shall be entitled to the same benefits that the fire fighter or the fire fighter's dependents would be entitled to receive if the injury occurred within the district. [1984 c 230 § 78; 1969 c 88 § 3. Formerly RCW 52.36.027.]

52.12.125 Reimbursement for fire suppression costs on state lands—Limitations. Fire protection districts in proximity to land protected by a state agency are encouraged to enter into mutually beneficial contracts covering reciprocal response arrangements. In the absence of such a contractual agreement, a fire protection district that takes immediate action on such land outside of its jurisdictional boundaries, if such immediate response could prevent the spread of the fire onto lands protected by the district, shall be reimbursed by the state agency for its reasonable fire suppression costs that are incurred until the responsible agency takes charge, but in no event shall the costs exceed a twenty-four hour period. A fire protection district suppressing a fire on such lands shall as soon as practicable notify the responsible agency. The state agency shall not be responsible to pay such reimbursement if it is not so notified.

Reasonable efforts shall be taken to protect evidence of the fire's origin. The state agency shall not be responsible to pay such reimbursement if reasonable efforts are not taken to protect such evidence.

Requests for reimbursement shall be submitted within thirty days of the complete suppression of the fire. Reasonable costs submitted for reimbursement include all salaries and expenses of personnel, equipment, and supplies and shall take into consideration the amount of compensation, if any, paid by the fire protection district to its fire fighters. [1986 c 311 § 2.]

52.12.131 Emergency medical services—Establishment and collection of charges. Any fire protection district which provides emergency medical services, may by resolution establish and collect reasonable charges for these services in order to reimburse the district for its costs of providing emergency medical services. [1984 c 230 § 81; 1975 c 64 § 1. Formerly RCW 52.36.090.]

52.12.140 Hazardous materials response teams. Fire protection districts may cooperate and participate with counties, cities, or towns in providing hazardous materials response teams under the county, city, or town emergency management plan provided for in RCW 38.52.070. The participation and cooperation shall be pursuant to an agreement or contract entered into under chapter 39.34 RCW. [1986 c 278 § 49.]

Severability—1986 c 278: See note following RCW 36.01.010.

Chapter 52.14 COMMISSIONERS

Sections	
52.14.010	Number—Qualifications—Insurance—Compensation—Service as volunteer fireman—Waiver of compensation—Terms of first commissioners.
52.14.015	Increase from three to five commissioners—Election.
52.14.020	Number in district having full-time, fully-paid personnel—Terms of first appointees.
52.14.030	Election precincts.
52.14.050	Vacancies—Procedure for filling—Grounds for declaring office vacant.
52.14.060	Terms of first elected commissioners.
52.14.070	Oath of office.
52.14.080	Chairman—Secretary—Duties and oath.
52.14.090	Office—Meetings.
52.14.100	Meetings—Powers and duties of board.
52.14.110	Purchases and public works—Competitive bids required—Exceptions.
52.14.120	Purchases and public works—Competitive bidding procedures.

52.14.010 Number—Qualifications—Insurance—Compensation—Service as volunteer fireman—Waiver of compensation—Terms of first commissioners. The affairs of the district shall be managed by a board of fire commissioners composed of three resident electors of the district except as provided in RCW 52.14.015 and 52.14.020. Each member shall each receive fifty dollars per day or portion thereof, not to exceed four thousand eight hundred dollars per year, for attendance at board meetings and for performance of other services in behalf of the district.

In addition, they shall receive necessary expenses incurred in attending meetings of the board or when otherwise engaged in district business, and shall be entitled to receive the same insurance available to all firemen of the district: *Provided*, That the premiums for such insurance, except liability insurance, shall be paid by the individual commissioners who elect to receive it.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which said compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The board shall fix the compensation to be paid the secretary and all other agents and employees of the district. The board may, by resolution adopted by unanimous vote, authorize any of its members to serve as volunteer firemen without compensation. A commissioner actually serving as a volunteer fireman may enjoy the rights and benefits of a volunteer fireman. The first commissioners shall take office immediately when qualified in accordance with RCW 29.01.135 and shall serve until after the next general election for the selection of commissioners and until their successors have been elected and have qualified and have assumed office in accordance with RCW 29.04.170. [1985 c 330 § 2; 1980 c 27 § 1; 1979 ex.s. c 126 § 31; 1973 c 86 § 1; 1971 ex.s.

c 242 § 2; 1969 ex.s. c 67 § 1; 1967 c 51 § 1; 1965 c 112 § 1; 1959 c 237 § 4; 1957 c 238 § 1; 1945 c 162 § 3; 1939 c 34 § 22; Rem. Supp. 1945 § 5654-122. Formerly RCW 52.12.010.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).
Terms of first elected commissioners: RCW 52.14.060.

52.14.015 Increase from three to five commissioners—Election. In the event a three member board of commissioners of any fire protection district determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, or in the event the board is presented with a petition signed by fifteen percent of the qualified electors resident within the district calling for such an increase in the number of commissioners of the district, the board shall submit a resolution to the county legislative authority or authorities of the county or counties in which the district is located requesting that an election be held. Upon receipt of the resolution, the legislative authority or authorities of the county or counties shall call a special election to be held within the fire protection district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of _____ county fire protection district no. _____ be increased from three members to five members?

Yes _____
No _____

If the fire protection district is located in more than a single county, this proposition shall indicate the name of the district.

If the proposition receives a majority approval at the election, the board of commissioners of the fire protection district shall be increased to five members. The two additional members shall be appointed in the same manner as provided in RCW 52.14.020. [1989 c 63 § 20; 1984 c 230 § 85.]

52.14.020 Number in district having full-time, fully-paid personnel—Terms of first appointees. In a fire protection district maintaining a fire department consisting wholly of personnel employed on a full-time, fully-paid basis, there shall be five fire commissioners. The two positions created on boards of fire commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general fire district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general fire district election after the appointment, at which two commissioners shall be elected for six-year terms. [1984 c 230 § 29; 1971 ex.s. c 242 § 3. Formerly RCW 52.12.015.]

52.14.030 Election precincts. The polling places for district elections shall be those of the county voting precincts which include any of the territory within the fire protection districts. District elections may be located

outside the boundaries of the district and shall not be held to be irregular or void on that account. [1984 c 230 § 31; 1939 c 34 § 24; RRS § 5654-124. Formerly RCW 52.12.030.]

52.14.050 Vacancies—Procedure for filling—Grounds for declaring office vacant. In the event of a vacancy occurring in the office of fire commissioner, the vacancy shall, within sixty days, be filled by appointment of a resident elector of the district by a vote of the remaining fire commissioners. If the board of commissioners fails to fill the vacancy within the sixty-day period, the county legislative authority of the county in which all, or the largest portion, of the district is located shall make the appointment. If the number of vacancies is such that there is not a majority of the full number of commissioners in office as fixed by law, the county legislative authority of the county in which all, or the largest portion, of the district is located shall appoint someone to fill each vacancy, within thirty days of each vacancy, that is sufficient to create a majority as prescribed by law.

An appointee shall serve ad interim until a successor has been elected and qualified at the next general election as provided in chapter 29.21 RCW. A person who is so elected shall take office immediately after he or she is qualified and shall serve for the remainder of the unexpired term.

If a fire commissioner is absent from the district for three consecutive regularly scheduled meetings unless by permission of the board, the office shall be declared vacant by the board of commissioners and the vacancy shall be filled as provided for in this section. However, such an action shall not be taken unless the commissioner is notified by mail after two consecutive unexcused absences that the position will be declared vacant if the commissioner is absent without being excused from the next regularly scheduled meeting. Vacancies additionally shall occur as provided in chapter 42.12 RCW. [1989 c 63 § 21; 1984 c 238 § 2; 1977 c 64 § 1; 1974 ex.s. c 17 § 1; 1971 ex.s. c 153 § 1; 1939 c 34 § 26; RRS § 5654-126. Formerly RCW 52.12.050.]

52.14.060 Terms of first elected commissioners. The initial three members of the board of fire commissioners shall be elected at the same election as when the ballot proposition is submitted to the voters authorizing the creation of the fire protection district. If the district is not authorized to be created, the election of the initial fire commissioners shall be null and void. If the district is authorized to be created, the initial fire commissioners shall take office immediately when qualified. Candidates shall file for each of the three separate fire commissioner positions. Elections shall be held as provided in chapter 29.21 RCW, with the county auditor opening up a special filing period as provided in RCW 29.21.360 and 29.21.370, as if there were a vacancy. The candidate for each position who receives the greatest number of votes shall be elected to that position. If the election is held in an odd-numbered year, the winning candidate receiving the highest number of votes shall hold office for a term

of six years, the winning candidate receiving the next highest number of votes shall hold office for a term of four years, and the candidate receiving the next highest number of votes shall serve for a term of two years. If the election were held in an even-numbered year, the winning candidate receiving the greatest number of votes shall hold office for a term of five years, the winning candidate receiving the next highest number of votes shall hold office for a term of three years, and the winning candidate receiving the next highest number of votes shall hold office for a term of one year. The terms of office of the initially elected fire commissioners shall be calculated from the first day of January in the year following their election. [1989 c 63 § 22; 1984 c 230 § 33; 1979 ex.s. c 126 § 33; 1939 c 34 § 27; RRS § 5654-127. Formerly RCW 52.12.060.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).
Terms of first commissioners: RCW 52.14.010.

52.14.070 Oath of office. Before beginning the duties of office, each fire commissioner shall take and subscribe the official oath for the faithful discharge of the duties of office as required by RCW 29.01.135, which oath shall be filed in the office of the auditor of the county in which all, or the largest portion of, the district is located. [1989 c 63 § 23; 1986 c 167 § 22; 1984 c 230 § 34; 1939 c 34 § 29; RRS § 5654-129. Formerly RCW 52.12.070.]

Severability—1986 c 167: See note following RCW 29.01.055.

52.14.080 Chairman—Secretary—Duties and oath. The fire commissioners shall elect a chairman from their number and shall appoint a secretary of the district, who may or may not be a member of the board, for such term as they shall by resolution determine. The secretary, if a member of the board, shall not receive additional compensation for serving as secretary.

The secretary of the district shall keep a record of the proceedings of the board, shall perform other duties as prescribed by the board or by law, and shall take and subscribe an official oath similar to that of the fire commissioners which oath shall be filed in the same office as that of the commissioners. [1984 c 230 § 35; 1965 c 112 § 2; 1939 c 34 § 30; RRS § 5654-130. Formerly RCW 52.12.080.]

52.14.090 Office—Meetings. (1) The office of the fire commissioners and principal place of business of the district shall be at some place within the county in which the district is situated, to be designated by the board of fire commissioners.

(2) The board shall hold regular monthly meetings at a place and date as it determines by resolution, and may adjourn its meetings as required for the proper transaction of business. Special meetings of the board shall be called at any time under the provisions of RCW 42.30-.080. [1984 c 230 § 36; 1947 c 254 § 8; 1939 c 34 § 31; Rem. Supp. 1947 § 5654-131. Formerly RCW 52.12.090.]

52.14.100 Meetings—Powers and duties of board.

All meetings of the board of fire commissioners shall be conducted in accordance with chapter 42.30 RCW and a majority constitutes a quorum for the transaction of business. All records of the board shall be open to inspection in accordance with the provisions of RCW 42-.17.250 through 42.17.340. The board has the power and duty to adopt a seal of the district, to manage and conduct the business affairs of the district, to make and execute all necessary contracts, to employ any necessary services, and to adopt reasonable rules to govern the district and to perform its functions, and generally to perform all such acts as may be necessary to carry out the objects of the creation of the district. [1984 c 230 § 37; 1939 c 34 § 32; RRS § 5654-132. Formerly RCW 52.12.100.]

Open public meetings: Chapters 42.30, 42.32 RCW.

52.14.110 Purchases and public works—Competitive bids required—Exceptions. Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

(1) Emergency purchases if the sealed bidding procedure would prevent or hinder the emergency from being addressed appropriately. The term emergency means an occurrence that creates an immediate threat to life or property;

(2) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of ten thousand dollars: *Provided*, That whenever the estimated cost is from forty-five hundred dollars up to ten thousand dollars, the commissioners shall require quotations from at least three different sources to be obtained in writing or by telephone, and recorded for public perusal to assure establishment of a competitive price for such purchase;

(3) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of two thousand five hundred dollars, which includes the costs of labor, material, and equipment;

(4) Purchases which are clearly and legitimately limited to a single source of supply, or services, in which instances the purchase price may be best established by direct negotiation: *Provided*, That this subsection shall not apply to purchases or contracts relating to public works as defined in chapter 39.04 RCW; and

(5) Purchases of insurance and bonds. [1984 c 238 § 3.]

52.14.120 Purchases and public works—Competitive bidding procedures. (1) Notice of the call for bids shall be given by posting notice in three public places in the district and by publication once each week for two consecutive weeks. The posting and first publication shall be at least two weeks before the date fixed for opening of the bids, and the publication shall be in a newspaper of general circulation within the district. If

no bid is received on the first call, the commissioners may readvertise and make a second call, or may enter into a contract without a further call.

(2) A public work involving three or more specialty contractors requires that the district retain the services of a general contractor as defined in RCW 18.27.010. [1984 c 238 § 4.]

**Chapter 52.16
FINANCES**

Sections

- 52.16.010 County treasurer as financial agent.
- 52.16.020 Funds.
- 52.16.030 Budget for each fund.
- 52.16.040 Tax levies—Assessment roll—Collection.
- 52.16.050 Disbursal of funds—Monthly reports.
- 52.16.061 General obligation bonds—Issuance—Limitations.
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- 52.16.080 Bonds may be issued for capital purposes—Excess property tax levies.
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- 52.16.160 Tax levy by district where no township has been formed or where township disorganized and no longer making a levy.
- 52.16.170 Taxation and assessment of lands lying both within a fire protection district and forest protection assessment area.

52.16.010 County treasurer as financial agent. It is the duty of the county treasurer of the county in which all, or the largest portion of, any fire protection district created under this title is located to receive and disburse district revenues, to collect taxes and assessments authorized and levied under this title, and to credit district revenues to the proper fund. However, where a fire protection district is located in more than one county, the county treasurer of each other county in which the district is located shall collect the fire protection district's taxes and assessments that are imposed on property located within the county and transfer these funds to the county treasurer of the county in which the largest portion of the district is located. [1989 c 63 § 24; 1984 c 230 § 38; 1939 c 34 § 33; RRS § 5654-133.]

52.16.020 Funds. In each county in which a fire protection district is situated, there shall be in the county treasurer's office of each district the following funds: (1) Expense fund; (2) reserve fund; (3) local improvement district No. _____ fund; (4) general obligation bond fund; and (5) such other funds as the board of commissioners of the district may establish. Taxes levied for administrative, operative, and maintenance purposes and for the purchase of fire fighting and emergency medical equipment and apparatus and for the purchase of real property, when collected, and proceeds from the sale of general obligation bonds shall be placed by the county treasurer in the proper fund. Taxes levied for the payment of general obligation bonds and interest thereon, when collected, shall be placed by the county

treasurer in the general obligation bond fund. The board of fire commissioners may include in its annual budget items of possible outlay to be provided for and held in reserve for any district purpose, and taxes shall be levied therefor. Such taxes, when collected, shall be placed by the county treasurer in the reserve fund. The reserve fund, or any part of it, may be transferred by the county treasurer to other funds of the district at any time by order of the board of fire commissioners. Special assessments levied against the lands in any improvement district within the district, when collected, shall be placed by the county treasurer in the local improvement district fund for the local improvement district. [1984 c 230 § 39; 1983 c 167 § 120; 1959 c 221 § 1; 1955 c 134 § 1; 1953 c 176 § 2; 1951 2nd ex.s. c 24 § 1; 1949 c 22 § 1; 1947 c 254 § 9; 1939 c 34 § 34; Rem. Supp. 1949 § 5654-134.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

52.16.030 Budget for each fund. Annually after the county board or boards of equalization of the county or counties in which the district is located have equalized the assessments for general tax purposes in that year, the secretary of the district shall prepare and certify a budget of the requirements of each district fund, and deliver it to the county legislative authority or authorities of the county or counties in which the district is located in ample time for the tax levies to be made for district purposes. [1989 c 63 § 25; 1984 c 230 § 40; 1939 c 34 § 35; RRS § 5654-135.]

52.16.040 Tax levies—Assessment roll—Collection. At the time of making general tax levies in each year the county legislative authority or authorities of the county or counties in which a fire protection district is located shall make the required levies for district purposes against the real and personal property in the district in accordance with the equalized valuations of the property for general tax purposes and as a part of the general taxes. The tax levies shall be a part of the general tax roll and shall be collected as a part of the general taxes against the property in the district. [1989 c 63 § 26; 1984 c 230 § 41; 1939 c 34 § 36; RRS § 5654-136.]

Levy of taxes: Chapter 84.52 RCW.

52.16.050 Disbursal of funds—Monthly reports. The county treasurer shall pay out money received for the account of the district on warrants issued by the county auditor against the proper funds of the district. The warrants shall be issued on vouchers approved and signed by a majority of the district board and by the district secretary. The county treasurer may also pay general obligation bonds and the accrued interest thereon in accordance with their terms from the general obligation bond fund when interest or principal payments become due. The county treasurer shall report in writing monthly to the secretary of the district the amount of money held by the county in each fund and the amounts of receipts and disbursements for each fund

during the preceding month. [1984 c 230 § 42; 1983 c 167 § 121; 1939 c 34 § 37; RRS § 5654-137.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

52.16.061 General obligation bonds—Issuance—Limitations. The board of fire commissioners of the district shall have authority to contract indebtedness and to refund same for any general district purpose, including expenses of maintenance, operation and administration, and the acquisition of firefighting facilities, and evidence the same by the issuance and sale of general obligation bonds of the district payable at such time or times not longer than six years from the issuing date of the bonds. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. Such bonds shall not exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one percent of the value of the taxable property within the fire protection district, as the term "value of the taxable property" is defined in RCW 39.36.015. [1984 c 186 § 39; 1983 c 167 § 122; 1970 ex.s. c 56 § 66; 1969 ex.s. c 232 § 89; 1955 c 134 § 2; 1953 c 176 § 3.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

52.16.070 Obligations shall not exceed taxes, revenues, and cash balances—Exceptions. Except as authorized by the issuance and sale of general obligation bonds, the creation of local improvements districts, and the issuance of local improvement bonds and warrants of the fire protection district, the board of fire commissioners may not incur expenses or other financial obligations payable in any year in excess of the aggregate amount of taxes levied for that year, revenues derived from all other sources, and the cash balances on hand in the expense and reserve funds of the district on the first day of that year. In the event that there are any unpaid warrants drawn on any district funds for expenses and obligations incurred and outstanding at the end of any calendar year, the warrants may be paid from taxes collected in the subsequent year or years and from other income. [1984 c 230 § 43; 1983 c 167 § 123; 1975 1st ex.s. c 130 § 1; 1972 ex.s. c 16 § 1; 1959 c 221 § 2; 1955 c 134 § 3; 1951 2nd ex.s. c 24 § 10; 1947 c 254 § 11; 1943 c 106 § 1; 1941 c 70 § 5; 1939 c 34 § 39; Rem. Supp. 1947 § 5654-139.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Construction—1975 1st ex.s. c 130: "If any section, clause, or other provision of this 1975 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of such 1975 amendatory act, or the application of such section, clause, or provision to other persons or circumstances, shall not be affected. The rule of strict construction shall have no application to this 1975 amendatory act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this 1975 amendatory act is intended. When this 1975 amendatory act comes in conflict with any

provision, limitation, or restriction in any other law, this 1975 amendatory act shall govern and control." [1975 1st ex.s. c 130 § 6.]

52.16.080 Bonds may be issued for capital purposes—Excess property tax levies. Fire protection districts additionally are authorized to incur general indebtedness for capital purposes and to issue general obligation bonds not to exceed an amount, together with any outstanding general obligation indebtedness, equal to three-fourths of one percent of the value of the taxable property within such district, as the term "value of the taxable property" is defined in RCW 39.36.015, and to provide for the retirement thereof by excess property tax levies, when the voters of the district have approved a proposition authorizing such indebtedness and levies by an affirmative vote of three-fifths of those voting on the proposition at such election, at which election the total number of persons voting shall constitute not less than forty percent of the voters in the fire protection district who voted at the last preceding general state election. The maximum term of such bonds may not exceed twenty years. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. Such elections shall be held as provided in RCW 39.36.050. [1984 c 186 § 40; 1973 1st ex.s. c 195 § 50; 1970 ex.s. c 42 § 30; 1953 c 176 § 4; 1951 2nd ex.s. c 24 § 3.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

52.16.130 General levy authorized—Limit—Excess levy at special election. To carry out the purposes for which fire protection districts are created, the board of fire commissioners of a district may levy each year, in addition to the levy or levies provided in RCW 52.16.080 for the payment of the principal and interest of any outstanding general obligation bonds, an ad valorem tax on all taxable property located in the district not to exceed fifty cents per thousand dollars of assessed value: *Provided*, That in no case may the total general levy for all purposes, except the levy for the retirement of general obligation bonds, exceed one dollar per thousand dollars of assessed value. Levies in excess of one dollar per thousand dollars of assessed value or in excess of the aggregate dollar rate limitations or both may be made for any district purpose when so authorized at a special election under RCW 84.52.052. Any such tax when levied shall be certified to the proper county officials for the collection of the tax as for other general taxes. The taxes when collected shall be placed in the appropriate district fund or funds as provided by law, and shall be paid out on warrants of the auditor of the county in which all, or the largest portion of, the district is located, upon authorization of the board of fire commissioners of the district. [1989 c 63 § 27; 1985 c 7 § 121; 1984 c 230 § 44; 1983 c 167 § 126; 1973 1st ex.s. c 195 § 52; 1971 ex.s. c 105 § 1; 1963 ex.s. c 13 § 2; 1951 2nd ex.s. c 24 § 8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

52.16.140 General levy may exceed limit—When. Notwithstanding the limitation of dollar rates contained in RCW 52.16.130, the board of fire commissioners of any district may levy, in addition to any levy for the payment of the principal and interest of outstanding general obligation bonds, an ad valorem tax on all property located in the district of not to exceed fifty cents per thousand dollars of assessed value and which will not cause the combined levies to exceed the constitutional or statutory limitations, and the additional levy, or any portion of the levy, may also be made when dollar rates of other taxing units are released by agreement with the other taxing units from their authorized levies. [1984 c 230 § 45; 1983 c 167 § 127; 1973 1st ex.s. c 195 § 53; 1951 2nd ex.s. c 24 § 9.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.
Levy of taxes: Chapter 84.52 RCW.

52.16.150 Donations and bequests to district. A fire protection district may accept and receive in behalf of the district any money or property donated, devised, or bequeathed to the district, and may carry out the terms of the donation, devise, or bequest, if within the powers granted by law to fire protection districts. In the absence of such terms, a fire protection district may expend or use the money or property for district purposes as determined by the board. [1984 c 230 § 46; 1951 2nd ex.s. c 24 § 11.]

52.16.160 Tax levy by district where no township has been formed or where township disorganized and no longer making a levy. Notwithstanding the limitation of dollar rates contained in RCW 52.16.130, and in addition to any levy for the payment of the principal and interest of any outstanding general obligation bonds and in addition to any levy authorized by RCW 52.16.130, 52.16.140 or any other statute, if in any county where a township has never been formed or where there are one or more townships in existence making annual tax levies and such township or townships are disorganized as a result of a county-wide disorganization procedure prescribed by statute and is no longer making any tax levy, or any township or townships for any other reason no longer makes any tax levy, the board of fire commissioners of any fire protection district within such county, which fire protection district has at least one full time, paid employee, is hereby authorized to levy each year an ad valorem tax on all taxable property within such district of not to exceed fifty cents per thousand dollars of assessed value, which levy may be made only if it will not affect dollar rates which other taxing districts may lawfully claim nor cause the combined levies to exceed the constitutional and/or statutory limitations. [1985 c 112 § 1; 1983 c 167 § 128; 1973 1st ex.s. c 195 § 54; 1969 ex.s. c 243 § 2; 1961 c 53 § 9.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1969 ex.s. c 243: See note following RCW 45.82.010.

County-wide disorganization of townships: Chapter 45.80 RCW.

52.16.170 Taxation and assessment of lands lying both within a fire protection district and forest protection assessment area. In the event that lands lie within both a fire protection district and a forest protection assessment area they shall be taxed and assessed as follows:

(1) If the lands are wholly unimproved, they shall be subject to forest protection assessments but not to fire protection district levies;

(2) If the lands are wholly improved, they shall be subject to fire protection district levies but not to forest protection assessments;

(3) If the lands are partly improved and partly unimproved they shall be subject both to fire protection district levies and to forest protection assessments: *Provided*, That upon request, accompanied by appropriate legal descriptions, the county assessor shall segregate any unimproved portions which each consist of twenty or more acres, and thereafter the unimproved portion or portions shall be subject only to forest protection assessments. [1984 c 230 § 47; 1963 ex.s. c 13 § 3.]

Forest protection assessments: RCW 76.04.610.

Chapter 52.18 SERVICE CHARGES

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52.18.010 Service charges authorized—Exceptions—Amounts—Limitations. The board of fire commissioners of a fire protection district may by resolution, for fire protection district purposes authorized by law, fix and impose a service charge on personal property and improvements to real property which are located within the fire protection district on the date specified and which have or will receive the benefits provided by the fire protection district, to be paid by the owners of the properties: *Provided*, That a service charge shall not apply to personal property and improvements

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

A service charge imposed shall be reasonably proportioned to the measurable benefits to property resulting from the services afforded by the district. It is acceptable to apportion the service charge to the values of the properties as found by the county assessor or assessors modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the service charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly maintained fire protection equipment, the level of fire prevention services provided to the properties, or the need of the properties for specialized services, may be specified in the resolution and shall be subject to contest on the ground of unreasonable or capricious action or action in excess of the measurable benefits to the property resulting from services afforded by the district: *Provided*, That a service charge authorized by this chapter shall not be applicable to the personal property or improvements to real property of any individual, corporation, partnership, firm, organization, or association maintaining a fire department and whose fire protection and training system has been accepted by a fire insurance underwriter maintaining a fire protection engineering and inspection service authorized by the state insurance commissioner to do business in this state, but such property may be protected by the fire protection district under a contractual agreement. [1989 c 63 § 28; 1987 c 325 § 1; 1985 c 7 § 122; 1974 ex.s. c 126 § 1.]

52.18.020 Personal property, improvements to real property—Defined. The term "personal property" for the purposes of this chapter shall include every form of tangible personal property, including but not limited to,

all goods, chattels, stock in trade, estates, or crops: *Provided*, That all personal property not assessed and subjected to ad valorem taxation by the county assessor under Title 84 RCW, and all property subject to RCW 52.30.020 and chapter 54.28 RCW, or all property that is subject to a contract for services with a fire protection district, shall be exempt from the service charge imposed under this chapter: *Provided further*, That the term "personal property" shall not include any personal property used for farming, field crops, farm equipment, livestock, or other tangible personal property, not ordinarily housed or stored within a building structure: *And provided further*, That the term "improvements to real property" shall not include permanent growing crops, field improvements installed for the purpose of aiding the growth of permanent crops, or other field improvements normally not subject to damage by fire. [1987 c 325 § 2; 1985 c 7 § 123; 1974 ex.s. c 126 § 2.]

52.18.030 Resolution establishing service charges—Contents—Listing—Collection. The resolution establishing service charges as specified in RCW 52.18.010 shall specify, by legal geographical areas or other specific designations, the charge to apply to each property by location, type, or other designation, or other information that is necessary to the proper computation of the service charge to be charged to each property owner subject to the resolution. The county assessor of each county in which the district is located shall determine and identify the personal properties and improvements to real property which are subject to a service charge in each fire protection district and shall furnish and deliver to the county treasurer of that county a listing of the properties with information describing the location, legal description, and address of the person to whom the statement of service charges is to be mailed, the name of the owner, and the value of the property and improvements, together with the service charge to apply to each. These service charges shall be certified to the county treasurer for collection in the same manner that is used for the collection of fire protection charges for forest lands protected by the department of natural resources under RCW 76.04.610 and the same penalties and provisions for collection shall apply. [1989 c 63 § 29; 1987 c 325 § 3; 1986 c 100 § 53; 1974 ex.s. c 126 § 3.]

52.18.040 Reimbursement of county for administration and collection expenses. Each fire protection district shall contract, prior to the effective date of a resolution imposing a service charge, for the administration and collection of the service charge by each county treasurer, who shall deduct a percent, as provided by contract to reimburse the county for expenses incurred by the county assessor and county treasurer in the administration of the resolution and this chapter. The county treasurer shall make distributions each year, as the charges are collected, in the amount of the service charges imposed on behalf of each district, less the deduction provided for in the contract. [1989 c 63 § 30; 1987 c 325 § 4; 1974 ex.s. c 126 § 4.]

If the petition procedure is followed, the petition shall set forth generally the necessity for the creation of a local improvement district, outline the plan of fire or emergency medical protection to be accomplished, and the means by which the cost shall be financed. Upon receipt of a petition, the board of fire commissioners of the district shall at its next regular meeting review the petition. The owners of the lands as shown on the general tax roll in the county treasurer's office, last equalized, shall be used to determine the ownership of the lands to be included in the local improvement district. If the petition is sufficient, the district board shall consider the petition and determine whether the proposed local improvement appears feasible and of special benefit to the lands concerned.

If the board of fire commissioners desire[s] to initiate the formation of a local improvement district by resolution, it shall adopt a resolution declaring its intention to order the proposed improvement, set forth the nature and territorial extent of the proposed improvement, designate the number of the proposed district, describe the boundaries, state the estimated costs and expenses of the improvement and the proportionate amount of the costs which will be borne by the property within the proposed district, and fix a date, time, and place for a public hearing on the formation of the proposed district. [1984 c 230 § 48; 1975 1st ex.s. c 130 § 2; 1961 c 161 § 1; 1939 c 34 § 40; RRS § 5654-140.]

Severability—Construction—1975 1st ex.s. c 130: See note following RCW 52.16.070.

52.20.020 Dismissal, approval of petition or resolution of intention—Notice of hearing. If the petition is found insufficient or if the district board determines that a local improvement district is not feasible or is of no special benefit to the lands concerned, it shall dismiss the petition. If the district board approves the petition or adopts a resolution of intention to order an improvement, it shall fix a date, hour, and place for hearing the matter and shall (1) mail notice of the hearing at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of each lot, tract, or parcel of land within the proposed local improvement district as shown on the tax rolls of the county treasurer at the address shown thereon, and (2) publish notice of the hearing in a newspaper of general circulation in the county, for three consecutive weeks prior to the day of the hearing. The cost of publication shall be paid by the fire protection district. The notices shall describe the boundaries of the proposed local improvement district and the plan of fire or emergency medical protection proposed, or may refer to the resolution of intention describing the nature and territorial extent of the proposed improvement. The notices shall state the means by which the cost shall be financed, shall state the date, hour, and place of the hearing on the petition and shall be signed by the secretary of the fire protection district. In addition, the notice given each owner or reputed owner by mail shall state the estimated cost and expense of the improvement to be borne by the particular lot, tract, or

parcel. [1984 c 230 § 49; 1975 1st ex.s. c 130 § 3; 1961 c 161 § 2; 1939 c 34 § 41; RRS § 5654-141.]

Severability—Construction—1975 1st ex.s. c 130: See note following RCW 52.16.070.

52.20.022 Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 7.]

52.20.025 Hearing and subsequent proceedings to be in accordance with laws applicable to cities and towns—Definitions. The hearing and all subsequent proceedings in connection with the local improvement, including but not limited to the levying, collection, and enforcement of local improvement assessments, and the authorization, issuance, and payment of local improvement bonds and warrants shall be in accordance with the provisions of law applicable to cities and towns set forth in chapters 35.43, 35.44, 35.45, 35.49, 35.50, and 35.53 RCW. Fire protection districts may exercise the powers set forth in those chapters: *Provided*, That no local improvement guaranty fund may be created: *Provided further*, That for the purposes of RCW 52.16.070, 52.20.010, 52.20.020, and 52.20.025, with respect to the powers granted and the duties imposed in chapters 35.43, 35.44, 35.45, 35.50, and 35.53 RCW:

(1) The words "city or town" mean fire protection district.

(2) The secretary of a fire protection district shall perform the duties of the "clerk" or "city or town clerk."

(3) The board of fire commissioners of a fire protection district shall perform the duties of the "council" or "city or town council" or "legislative authority of a city or town."

(4) The board of fire commissioners of a fire protection district shall perform the duties of the "mayor."

(5) The word "ordinance" means a resolution of the board of fire commissioners of a fire protection district.

(6) The treasurer or treasurers of the county or counties in which a fire protection district is located shall perform the duties of the "treasurer" or "city or town treasurer." [1989 c 63 § 32; 1984 c 230 § 50; 1975 1st ex.s. c 130 § 4; 1961 c 161 § 3.]

Severability—Construction—1975 1st ex.s. c 130: See note following RCW 52.16.070.

52.20.027 Lands subject to forest fire protection assessments exempt—Separation of forest-type lands for tax and assessment purposes. RCW 52.20.010, 52.20.020, and 52.20.025 shall not apply to any tracts or parcels of wholly forest-type lands within the district which are required to pay forest fire protection assessments, as required by RCW 76.04.610; however, both the tax levy or special assessments of the district and the forest fire

protection assessment shall apply to the forest land portion of any tract or parcel which is in the district containing a combination of both forest-type lands and nonforest-type lands or improvements: *Provided*, That an owner has the right to have forest-type lands of more than twenty acres in extent separated from land bearing improvements and from nonforest-type lands for taxation and assessment purposes upon furnishing to the assessor a written request containing the proper legal description. [1986 c 100 § 54; 1984 c 230 § 51; 1961 c 161 § 5.]

52.20.060 Coupon or registered warrants—Payment—Interest—Registration. (1) The district board may also, if in accordance with the adopted method of financing the local improvement district, issue and sell at par and accrued interest coupon or registered warrants payable within three years from the date thereof exclusively from the local improvement fund of the district. The coupon or registered warrants shall bear semiannual interest and shall be in such form as the board determines and shall state on their face that they are payable exclusively from the local improvement fund of the district. Interest shall be payable on the first day of January and of July. Such warrants may be registered as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1984 c 230 § 52; 1983 c 167 § 129; 1970 ex.s. c 56 § 68; 1969 ex.s. c 232 § 90; 1939 c 34 § 45; RRS § 5654-145.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

52.20.070 Contracts not general district obligations. A fire protection district shall not be liable under any contract creating an obligation chargeable against the lands of any local improvement district therein, unless the liability and the extent thereof is specifically stated in the contract. [1984 c 230 § 53; 1939 c 34 § 21; RRS § 5654-121.]

Chapter 52.22

SPECIAL PROCEEDINGS

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52.22.091	Costs.
52.22.101	Appellate review.
52.22.111	Districts governed by Title 52 RCW.

52.22.011 Legislative validation. The respective areas, organized and established or attempted to be organized and established under the authority granted in Title 52 RCW which since their organization and establishment or attempted organization and establishment have continuously maintained their organization as fire protection districts established under the authority of these statutes are declared to be properly organized fire protection districts existing under and by virtue of the statutes having in each case, the boundaries set forth in the respective organization proceedings of each of them as shown by the files and records in the offices of the legislative authority or authorities and auditor or auditors of the county or counties in which the particular area lies. [1989 c 63 § 33; 1984 c 230 § 66; 1947 c 230 § 1; Rem. Supp. 1947 § 5654-151o. Formerly RCW 52.32.010.]

52.22.021 Special proceedings for judicial confirmation of organization, bonds, warrants, contracts, etc. The board of fire commissioners of a fire protection district now existing or which may be organized under the laws of this state may commence a special proceeding in the superior court of the state of Washington. These proceedings for the organization of the fire district, for the formation of any local improvement district therein, or proceedings for the authorization, issuance, and sale of coupon or registered warrants or general obligation bonds issued pursuant to RCW 52.16.061, either of the fire district or for a local improvement district therein, or both, whether the bonds or coupon or registered warrants have been sold, or proceedings for any contract of the district involving the fire district or any local improvement district therein, and any other proceedings that may affect the legality of the proceedings concerned or any or all of the proceedings above outlined, may be judicially examined, approved, and confirmed. [1984 c 230 § 67; 1983 c 167 § 130; 1947 c 255 § 1; Rem. Supp. 1947 § 5654-153a. Formerly RCW 52.34.010 and 52.32.020.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—1947 c 255: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, provision, or part thereof not adjudged to be invalid or unconstitutional." [1947 c 255 § 10.] This applies to RCW 52.22.021 through 52.22.101.

52.22.031 Petition. The board of fire commissioners of the fire protection district shall file in the superior court of the county in which the fire protection district was organized, a petition requesting in effect that the proceedings be examined, approved, and confirmed by the court. The petition shall state the facts showing any of the proceedings that the petition asks the court to examine, approve, and confirm, but need allege only generally that the fire protection district was properly organized and that the first board of fire commissioners was properly elected. [1984 c 230 § 68; 1947 c 255 § 2; Rem. Supp. 1947 § 5654-153b. Formerly RCW 52.34.020 and 52.32.030.]

52.22.041 Hearing date to be fixed—Notice. The court shall fix the time for the hearing of the petition and direct the clerk of the court to give notice of the filing of the petition and of the time and place fixed for the hearing. The notice shall state the time and place of the hearing of the petition and that any person interested in the proceedings sought by the petition to be examined, approved, and confirmed by the court, may on or before the date of the hearing of the petition, answer the petition. The petition may be referred to and described in the notice as the petition of the board of fire commissioners of ----- county fire protection district No. ----- (giving the county and its number or any other name by which it is officially designated), requesting that the proceedings (naming them as set out in the request of the petition), be examined, approved, and confirmed by the court, and shall be signed by the clerk.

The notice shall be given by posting and publishing for the same length of time that the notice of the hearing on the petition before the county legislative body to form the district was required by law to be posted and published, and it may be published in any legal newspaper designated in the order of the court fixing the time and place of the hearing of the petition and directing the clerk of the court to give notice thereof. [1984 c 230 § 69; 1947 c 255 § 3; Rem. Supp. 1947 § 5654–153c. Formerly RCW 52.34.030 and 52.32.040.]

Public hearing—Notice—Publication and posting: RCW 52.02.050.

52.22.051 Answer of petition. A person interested in the fire protection district, or in a local improvement district therein, involved in the petition or in any proceedings sought by the petition to be examined, approved, and confirmed by the court, may answer the petition. The statutes of this state respecting answers to verified complaints are applicable to answers to the petition. The person so answering the petition shall be the defendant in the special proceeding, and the board of fire commissioners shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer must, for purposes of the special proceedings, be taken as true, and each person failing to answer the petition is deemed to admit as true all the material statements of the petition. [1984 c 230 § 70; 1947 c 255 § 4; Rem. Supp. 1947 § 5654–153d. Formerly RCW 52.34.040 and 52.32.050.]

Pleadings: Chapters 4.32, 4.36 RCW.

52.22.061 Pleading and practice—Motion for new trial. The rules of pleading and practice governing civil actions are applicable to the special proceedings provided for except where inconsistent with this chapter. A motion for a new trial must be made upon the minutes of the court and in case of an order granting a new trial, the order must specify the issue to be reexamined at the new trial. The findings of the court on the other issues shall not be affected by the order granting a new trial. [1984 c 230 § 71; 1947 c 255 § 5; Rem. Supp. 1947 § 5654–153e. Formerly RCW 52.34.050 and 52.32.060.]

New trials: Chapter 4.76 RCW.

52.22.071 Jurisdiction of court. At the hearing of the special proceedings, the court has power and jurisdiction to examine and determine the legality and validity of, and to approve and confirm, each and all of the proceedings for the organization of the fire protection district and for the formation of any local improvement district therein under the law relating to such districts from and including the petition for the organization of the fire district and for the formation of any local improvement district therein and all other proceedings which affect the legality of the districts, or the validity and legality of any coupon or registered warrants or bonds either of the fire district or for a local improvement district therein and all proceedings conducted by the fire district for a contract of the district involving the fire district or a local improvement district therein, and any other proceeding which may affect the legality of the proceedings concerned. [1984 c 230 § 72; 1983 c 167 § 131; 1947 c 255 § 6; Rem. Supp. 1947 § 5654–153f. Formerly RCW 52.34.060 and 52.32.070.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

52.22.081 Minor irregularities to be disregarded. The court has full authority and jurisdiction to consider any question of laches, estoppel, and other infirmities in the position and claims of the defendants, to question the legality of the proceedings sought by the plaintiff to be confirmed by the court, and to pass upon and determine them. The court, in inquiring into the regularity, legality, and correctness of the proceedings sought by the board of fire commissioners in its petition to be examined, approved, and confirmed by the court, must disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to the special proceedings. The court may approve and confirm the proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings, or it may approve and confirm all of the proceedings, and make and enter its decree accordingly. [1984 c 230 § 73; 1947 c 255 § 7; Rem. Supp. 1947 § 5654–153g. Formerly RCW 52.34.070 and 52.32.080.]

52.22.091 Costs. The court shall find and determine, in these special proceedings, whether the notice of the filing of the petition and of the time and place of hearing on the petition has been properly posted and published for the time and in the manner prescribed in this chapter. The costs of the special proceedings may be allowed and apportioned between all the parties, in the court's discretion. [1984 c 230 § 74; 1947 c 255 § 8; Rem. Supp. 1947 § 5654–153h. Formerly RCW 52.34-080 and 52.32.090.]

52.22.101 Appellate review. Appellate review of an order granting or refusing a new trial, or from the judgment, in the special proceedings must be taken by the party aggrieved within thirty days after the entry of the

order or the judgment. [1988 c 202 § 50; 1984 c 230 § 75; 1947 c 255 § 9; Rem. Supp. 1947 § 5654–153i. Formerly RCW 52.34.090 and 52.32.100.]

Rules of court: Cf. RAP 2.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

52.22.111 Districts governed by Title 52 RCW. All fire protection districts are governed by Title 52 RCW. [1984 c 230 § 86.]

Chapter 52.30

MISCELLANEOUS PROVISIONS

Sections

52.30.020	Property of public agency included within district— Contracts for services.
52.30.040	Civil service for employees.
52.30.050	Residency not grounds for discharge of civil service employees.
52.30.060	Change of district name—Resolution.

52.30.020 Property of public agency included within district—Contracts for services. Wherever a fire protection district has been organized which includes within its area or is adjacent to, buildings and equipment, except those leased to a nontax exempt person or organization, owned by the legislative or administrative authority of a state agency or institution or a municipal corporation, the agency or institution or municipal corporation involved shall contract with such district for fire protection services necessary for the protection and safety of personnel and property pursuant to the provisions of chapter 39.34 RCW, as now or hereafter amended: *Provided*, That nothing in this section shall be construed to require that any state agency, institution, or municipal corporation contract for services which are performed by the staff and equipment of such state agency, institution, or municipal corporation: *Provided further*, That nothing in this section shall apply to state agencies or institutions or municipal corporations which are receiving fire protection services by contract from another municipality, city, town or other entities: *And provided further*, That school districts shall receive fire protection services from the fire protection districts in which they are located without the necessity of executing a contract for such fire protection services: *Provided further*, That prior to September 1, 1974 the superintendent of public instruction, the insurance commissioner, the director of financial management, and the executive director of the Washington fire commissioners association, or their designees, shall develop criteria to be used by the insurance commissioner in establishing uniform rates governing payments to fire districts by school districts for fire protection services. On or before September 1, 1974, the insurance commissioner shall establish such rates to be payable by school districts on or before January 1st of each year commencing January 1, 1975, payable July 1, 1975: *And provided further*, That beginning with the 1975–77 biennium and in each biennium thereafter the superintendent of public instruction shall present in his budget submittal to the governor an

amount sufficient to reimburse affected school districts for the moneys necessary to pay the costs of the uniform rates established by the insurance commissioner. [1979 c 151 § 164; 1974 ex.s. c 88 § 1; 1973 1st ex.s. c 64 § 1; 1941 c 139 § 1; Rem. Supp. 1941 § 5654–143a. Formerly RCW 52.36.020.]

Effective date—1974 ex.s. c 88: "This 1974 amendatory act shall take effect on July 1, 1974." [1974 ex.s. c 88 § 2.]

Effective date—1973 1st ex.s. c 64: "This 1973 amendatory act shall take effect on July 1, 1974." [1973 1st ex.s. c 64 § 2.]

Fire, medical, or other emergency services provided to county by political subdivision—Financial assistance authorized: RCW 36.32.470.

Fire protection services for state-owned buildings: RCW 35.21.775.

52.30.040 Civil service for employees. A fire protection district with a fully-paid fire department may, by resolution of its board of fire commissioners, provide for civil service in its fire department in the same manner, with the same powers, and with the same force and effect as provided by chapter 41.08 RCW for cities, towns, and municipalities, including restrictions against the discharge of an employee because of residence outside the limits of the fire protection district. [1984 c 230 § 79; 1971 ex.s. c 256 § 2; 1949 c 72 § 1; Rem. Supp. 1949 § 5654–120a. Formerly RCW 52.36.060.]

52.30.050 Residency not grounds for discharge of civil service employees. Residence of an employee outside the limits of a fire protection district is not grounds for discharge of any regularly-appointed civil service employee otherwise qualified. [1984 c 230 § 80; 1971 ex.s. c 256 § 1. Formerly RCW 52.36.065.]

52.30.060 Change of district name—Resolution. The name of a fire protection district shall be changed, as proposed by resolution of the board of fire commissioners of the district, upon the adoption of a resolution approving the change by the county legislative authority of the county in which all, or the largest portion, of a fire protection district is located. [1989 c 63 § 34.]

Title 53

PORT DISTRICTS

Chapters

- 53.04 Formation.**
- 53.06 Coordination of administrative programs and operations.**
- 53.08 Powers.**
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Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.90.150.

Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.

Offshore items, use of in performance of public contracts: Chapter 39.25 RCW.

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Pollution control—Municipal bonding authority: Chapter 70.95A RCW.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Title to certain second class shorelands vested in port districts: RCW 79.94.230.

Vacation of streets or alleys abutting on bodies of water, prohibited unless to be used by city or port district for port, recreational, educational, etc. purposes: RCW 35.79.030.

Chapter 53.04

FORMATION

Sections

- 53.04.010 Port districts authorized—Purposes.
- 53.04.015 Port districts in areas lacking appropriate bodies of water—Authorized—Purposes.
- 53.04.016 Port districts in areas lacking appropriate bodies of water—Authority an additional and concurrent method.
- 53.04.017 Port districts in areas lacking appropriate bodies of water—Elections.
- 53.04.020 Formation of district.
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- 53.04.080 Annexation of territory—Petition—Election.
- 53.04.085 Petition by electors of area desiring annexation to port district.
- 53.04.100 Order of annexation—Liability of area annexed.
- 53.04.110 Change of name.
- 53.04.120 Transfer of port district property to adjacent district—Procedure—Boundary changes—Jurisdiction.

53.04.010 Port districts authorized—Purposes. Port districts are hereby authorized to be established in the various counties of the state for the purposes of acquisition, construction, maintenance, operation, development and regulation within the district of harbor improvements, rail or motor vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and terminal facilities, or any combination of such transfer and terminal facilities, and other commercial transportation, transfer, handling, storage and terminal facilities, and industrial improvements. [1963 c 147 § 1; 1911 c 92 § 1; RRS § 9688.]

Construction—1911 c 92: "This act shall not be construed to repeal, amend or modify any law heretofore enacted providing a method of harbor improvement, regulation or control in this state, but shall be held to be an additional and concurrent method providing for such purpose." [1911 c 92 § 14.]

Establishment of harbor lines: State Constitution Art. 15 § 1 (Amendment 15).

53.04.015 Port districts in areas lacking appropriate bodies of water—Authorized—Purposes. In areas which lack appropriate bodies of water so that harbor improvements cannot be established, port districts are hereby authorized to be established under the laws of the state, for the purposes for which port districts may be established under RCW 53.04.010, and such port districts shall have all of the powers, privileges and immunities conferred upon all other port districts under the laws of this state, including the same powers and rights relating to municipal airports that other port districts now have or hereafter may be granted. [1963 c 147 § 2; 1959 c 94 § 1.]

53.04.016 Port districts in areas lacking appropriate bodies of water—Authority an additional and concurrent method. RCW 53.04.015 shall not be construed to repeal, amend or modify any law heretofore enacted providing a method of harbor improvement, regulation or control; acquisition, maintenance and operation of municipal airports; or industrial development; but shall be held to be an additional and concurrent method providing such purposes. [1959 c 94 § 2.]

53.04.017 Port districts in areas lacking appropriate bodies of water—Elections. All elections with respect to any such port districts authorized by RCW 53.04.015 and 53.04.016 shall be held, conducted and the results canvassed in the same manner and at the same time as now or hereafter provided by law for other port districts. [1959 c 94 § 3.]

53.04.020 Formation of district. At any general election or at any special election which may be called for that purpose, the board of county commissioners of any county in this state may, or on petition of ten percent of the qualified electors of such county based on the total vote cast in the last general county election, shall, by resolution submit to the voters of such county the proposition of creating a port district which may: (1) Be coextensive with the limits of such county as now or hereafter established; or (2) be under the provisions of RCW 53.04.022. Such petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereof and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed port district. If such petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the legislative authority of the county, who shall submit such proposition at the next general election or, if such petition so requests, the board of county commissioners shall, at their first meeting after the date of such certificate, by resolution, call a special election to be held not less than thirty days nor more than sixty days from the date of such certificate. The notice of election shall state the boundaries of the proposed port district and the object of such election. In submitting the said question to the voters for their approval or rejection, the proposition shall be expressed on said ballot substantially in the following terms:

"Port of _____, Yes." (giving the name of the principal seaport city within such proposed port district, or if there be more than one city of the same class

within such district, such name as may be determined by the legislative authority of the county).

"Port of _____, No." (giving the name of the principal seaport city within such port district, or if there be more than one city of the same class within such district, such name as may be determined by the legislative authority of the county). [1986 c 262 § 1; 1971 ex.s. c 157 § 1; 1913 c 62 § 1; 1911 c 92 § 2; RRS § 9689. Formerly RCW 53.04.020 through 53.04.040.]

Effective date—1971 ex.s. c 157: "The effective date of this act shall be May 1, 1972." [1971 ex.s. c 157 § 4.]

53.04.060 District declared formed. Within five days after an election held under the provisions of RCW 53.04.020, the board of county commissioners shall canvass the returns, and if at such election a majority of the voters voting upon the proposition shall vote in favor of the formation of the district, the board of county commissioners shall so declare in its canvass of the returns of such election, and the port district shall then be and become a municipal corporation of the state of Washington and the name of such port district shall be "Port of _____" (inserting the name appearing on the ballot). [1959 c 17 § 2. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.04.070 Expense of election. All expenses of elections for the formation of such port districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the port district, if formed. [1959 c 17 § 6. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.04.080 Annexation of territory—Petition—Election. At any general election or at any special election which may be called for that purpose the board of county commissioners of any county in this state in which there exists a port district which is not coextensive with the limits of the county, shall on petition of the commissioners of such port district, by resolution, submit to the voters residing within the limits of any territory which the existing port district desires to annex or include in its enlarged port district, the proposition of enlarging the limits of such existing port districts so as to include therein the whole of the territory embraced within the boundaries of such county, or such territory as may be described in said petition by legal subdivisions. Such petition shall be filed with the county auditor, who shall forthwith transmit the same to the board of county commissioners, who shall submit such proposition at the next general election, or, if such petition so request, the board of county commissioners, shall at their first meeting after the date of filing such petition, by resolution, call a special election to be held not less than thirty days nor more than sixty days from the date of filing said petition. The notice of election shall state the boundaries of the proposed enlarged port district and the object of the special election. In submitting said

question to the voters of the territory proposed to be annexed or included for their approval or rejection, the proposition shall be expressed on the ballots substantially in the following terms:

"Enlargement of the port of -----, yes." (Giving then name of the port district which it is proposed to enlarge);

"Enlargement of the port of -----, no." (Giving the name of the port district which it is proposed to enlarge).

Such election, whether general or special, shall be held in each precinct wholly or partially embraced within the limits of the territory proposed to be annexed or included and shall be conducted and the votes cast thereat counted, canvassed, and the returns thereof made in the manner provided by law for holding general or special county elections. [1935 c 16 § 1; 1921 c 130 § 1; RRS § 9707. Formerly RCW 53.04.080 and 53.04.090.]

Elections: Title 29 RCW.

53.04.085 Petition by electors of area desiring annexation to port district. If an area, not currently part of an existing port district desires to be annexed to a port district in the same county, upon receipt of a petition bearing the names of ten percent of the qualified electors residing within the proposed boundaries of the area desiring to be annexed, the commissioners of such port district shall petition the board of county commissioners to annex such territory, as provided in RCW 53.04.080. [1971 ex.s. c 157 § 2.]

Effective date—1971 ex.s. c 157: See note following RCW 53.04.020.

53.04.100 Order of annexation—Liability of area annexed. If a majority of all the votes cast at any such election upon the proposition of enlarging such port district shall be for the "Enlargement of the port of -----, yes" then and in that event the board of county commissioners shall enter an order declaring such port district enlarged so as to embrace within the limits thereof the territory described in the petition for such election, and thereupon the boundaries of said port district shall be so enlarged and the commissioners thereof shall have jurisdiction over the whole of said district as enlarged to the same extent, and with like power and authority, as though the additional territory had been originally embraced within the boundaries of the existing port district: *Provided, however,* That none of the lands or property embraced within the territory added to and incorporated within such port district shall be liable to assessment for the payment of any outstanding bonds, warrants or other indebtedness of such original port district, but such outstanding bonds, warrants or other indebtedness, together with interest thereon, shall be paid exclusively from assessments levied and collected on the lands and property embraced within the boundaries of the preexisting port district. [1921 c 130 § 2; RRS § 9708.]

53.04.110 Change of name. Any port district now existing or which may hereafter be organized under the laws of the state of Washington is hereby authorized to change its corporate name under the following conditions and in the following manner:

(1) On presentation, at least thirty days before any general port election to be held in said port district, of a petition to the commissioners of any port district now existing or which may hereafter be established under the laws of the state of Washington, signed by not less than two hundred fifty electors residing within said port district and asking that the corporate name of said port district be changed, it shall be the duty of said commissioners to submit to the electors of said port district at the next general port election held in said port district the proposition as to whether the corporate name of said port shall be changed.

(2) Said petition shall contain the present corporate name of said port district and the corporate name which is proposed to be given to said port district.

(3) On submitting said proposition to the electors of said port district it shall be the duty of said port commissioners to cause to be printed on the official ballot used at said election the following proposition:

"Shall the corporate name, 'Port of -----' be changed to 'Port of -----' YES
"Shall the corporate name, 'Port of -----' be changed to 'Port of -----' NO"

(4) At the time when the returns of said general election shall be canvassed by the commissioners of the said port district, it shall be the duty of said commissioners to canvass the vote upon said proposition so submitted, recording in their record the result of said canvass.

(5) Should a majority of the electors of said port district voting at said general port election vote in favor of said proposition it shall be the duty of said port commissioners to certify said fact to the auditor of the county in which said port district shall be situated and to the secretary of state of the state of Washington, under the seal of said port district. On and after the filing of said certificate with the county auditor as aforesaid and with the secretary of state of the state of Washington, the corporate name of said port district shall be changed, and thenceforth said port district shall be known and designated in accordance therewith. [1929 c 140 § 1; RRS § 9689-1.]

53.04.120 Transfer of port district property to adjacent district—Procedure—Boundary changes—Jurisdiction. Property may be acquired and owned by any port district, at least one boundary of which property is contiguous to or within one-quarter air mile of such port district and is also located in an adjacent port district, and such property may be transferred to the owning port district upon unanimous resolution of the boards of commissioners of both port districts authorizing the same. The resolution of the port district within which such property is located shall be a resolution to

permit the acquisition and to make the transfer, while the resolution of the port district which owns the property shall be a resolution to acquire and own the property and to accept the transferred property. Upon the filing of both official resolutions with the legislative authority and the auditor of the county or counties within which such port districts lie, together with maps showing in reasonable detail the boundary changes made, such acquisition and ownership shall be lawful and such transfer shall be effective and the commissioners of the port district acquiring, owning and receiving such property shall have jurisdiction over the whole of said enlarged port district to the same extent, and with like power and authority, as though the additional territory had been owned by and originally embraced within the boundaries of the port district. [1979 c 72 § 1; 1977 ex.s. c 91 § 1.]

Validity—Ratification—1979 c 72: "Any purchase or other acquisition of such property by any port district which occurred prior to the enactment of this 1979 amendatory act is hereby confirmed and ratified and shall not be deemed to have been ultra vires." [1979 c 72 § 2.] This applies to the 1979 amendments to RCW 53.04.120 and 53.32.050. The effective date of 1979 c 72 is March 21, 1979.

Severability—1979 c 72: "If any provision of this 1979 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 72 § 4.]

Chapter 53.06

COORDINATION OF ADMINISTRATIVE PROGRAMS AND OPERATIONS

Sections

53.06.010	Declaration of necessity.
53.06.020	Actions required of commissions—Joint reports to governor and legislature.
53.06.030	Washington public ports association as coordinating agency—Purposes, powers, and duties.
53.06.040	Dues and assessments may be paid association from district funds—Limitation on amount.
53.06.050	Further action by commissions authorized—Meetings.
53.06.060	Financial records of association subject to audit by division of municipal corporations.
53.06.070	Federation of Washington ports authorized—Purposes—Expiration of section.

53.06.010 Declaration of necessity. The necessity and desirability of coordinating the administration programs and operations of all the port districts in this state is recognized and declared as a matter of legislative determination. [1961 c 31 § 1.]

53.06.020 Actions required of commissions—Joint reports to governor and legislature. It shall be the duty of the port district commissions in the state to take such action to effect the coordination of the administrative programs and operations of each port district in the state and to submit to the governor and the legislature biennially a joint report or joint reports containing the recommendations for procedural changes which would increase the efficiency of the respective port districts.

Beginning with the 1990 legislative session, the association shall report on steps being taken to establish a federation of Washington ports pursuant to RCW 53.06.070. [1989 c 425 § 3; 1961 c 31 § 2.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.06.030 Washington public ports association as coordinating agency—Purposes, powers, and duties. The port district commissions in this state are empowered to designate the Washington public ports association as a coordinating agency through which the duties imposed by RCW 53.06.020 may be performed, harmonized or correlated. The purposes of the Washington public ports association shall be:

(1) To initiate and carry on the necessary studies, investigations and surveys required for the proper development and improvement of the commerce and business generally common to all port districts, and to assemble and analyze the data thus obtained and to cooperate with the state of Washington, port districts both within and without the state of Washington, and other operators of terminal and transportation facilities for this purpose, and to make such expenditures as are necessary for these purposes, including the proper promotion and advertising of all such properties, utilities and facilities;

(2) To establish coordinating and joint marketing bodies comprised of association members, including but not limited to establishment of a federation of Washington ports as described in RCW 53.06.070, as may be necessary to provide effective and efficient marketing of the state's trade, tourism, and travel resources;

(3) To exchange information relative to port construction, maintenance, operation, administration and management;

(4) To promote and encourage port development along sound economic lines;

(5) To promote and encourage the development of transportation, commerce and industry;

(6) To operate as a clearing house for information, public relations and liaison for the port districts of the state and to serve as a channel for cooperation among the various port districts and for the assembly and presentation of information relating to the needs and requirements of port districts to the public. [1989 c 425 § 4; 1961 c 31 § 3.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.06.040 Dues and assessments may be paid association from district funds—Limitation on amount. Each port district which designates the Washington public ports association as the agency through which the duties imposed by RCW 53.06.020 may be executed is authorized to pay dues and/or assessments to said association from port district funds in any calendar year in an amount not exceeding a sum equal to the amount which would be raised by a levy of one cent per thousand dollars of assessed value against the taxable property within the port district. [1973 1st ex.s. c 195 § 55; 1970 ex.s. c 47 § 3; 1961 c 31 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

53.06.050 Further action by commissions authorized—Meetings. The port district commissions are authorized to take such further action as they deem necessary to comply with the intent of this chapter, including the attendance at state and district meetings which may be required to formulate the reports provided for in RCW 53.06.020. [1961 c 31 § 5.]

53.06.060 Financial records of association subject to audit by division of municipal corporations. The financial records of the Washington public ports association shall be subject to audit by the Washington state division of municipal corporations of the state auditor. [1961 c 31 § 6.]

53.06.070 Federation of Washington ports authorized—Purposes—Expiration of section. The Washington public ports association is authorized to create a federation of Washington ports to enable member ports to strengthen their international trading capabilities and market the region's products worldwide. Such a federation shall maintain the authority of individual ports and have the following purposes:

(1) To operate as an export trading company under the provisions enumerated in chapter 53.31 RCW;

(2) To provide a network to market the services of the members of the Washington public ports association;

(3) To provide expertise and assistance to businesses interested in export markets;

(4) To promote cooperative efforts between ports and local associate development organizations to assist local economic development efforts and build local capacity; and

(5) To assist in the efficient marketing of the state's trade, tourism, and travel resources.

This section shall expire July 1, 1994, and shall be subject to review under chapter 43.131 RCW. [1989 c 425 § 2.]

Findings—1989 c 425: "The legislature finds: (1) That the continuous development of Washington's ports should be a long-term goal for the state of Washington; (2) that Washington's ports are a valuable economic development resource, whose strength as a combined, coordinated entity for the purpose of trade and tourism development would far exceed their individual strengths in those areas; and (3) that, therefore, the ports should work together as a federation, coordinating their efforts further still with other public entities as well as the private sector.

The legislature concurs with the 1989 report of the economic development board on a long-term economic development strategy for Washington state as follows: (a) Competition for tourism dollars, as well as dollars to purchase Washington's goods and services, is global in nature and to compete, the state must identify its unique market niches, and market its trade, travel, and tourism assets aggressively; (b) the ports of the state of Washington are an integral part of the technological and physical infrastructure needed to help the state compete in the international marketplace; and (c) links among public agencies, associate development organizations, including ports, universities, and industry-oriented organizations must be strengthened in an effort to improve coordination, prevent duplication, and build local capacity." [1989 c 425 § 1.]

Severability—1989 c 425: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder

of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 425 § 12.]

Chapter 53.08 POWERS

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Permits to use waterways within a port district: RCW 79.93.040.

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Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

53.08.010 Acquisition of property—Levy of assessments. A port district may acquire by purchase, for cash or on deferred payments for a period not exceeding twenty years, or by condemnation, or both, all lands, property, property rights, leases, or easements necessary for its purposes and may exercise the right of eminent domain in the acquirement or damaging of all such lands, property, and property rights, and may levy and collect assessments upon property for the payment of all damages and compensation in carrying out its purposes, and such right shall be exercised in the same manner and by the same procedure as provided for cities of the first class insofar as consistent with this title, and in connection therewith the county treasurer shall perform the duties of the treasurers of such cities. [1983 c 24 § 1; 1955 c 65 § 2. Prior: 1953 c 171 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by cities: Chapter 8.12 RCW.

53.08.015 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

53.08.020 Acquisition and operation of facilities. A port district may construct, condemn, purchase, acquire, add to, maintain, conduct, and operate sea walls, jetties, piers, wharves, docks, boat landings, and other harbor improvements, warehouses, storehouses, elevators, grain-bins, cold storage plants, terminal icing plants, bunkers, oil tanks, ferries, canals, locks, tidal basins, bridges, subways, tramways, cableways, conveyors, administration buildings, fishing terminals, together with modern appliances and buildings for the economical handling,

packaging, storing, and transporting of freight and handling of passenger traffic, rail and motor vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and terminal facilities, and any combination of such transfer and terminal facilities, commercial transportation, transfer, handling, storage and terminal facilities, and improvements relating to industrial and manufacturing activities within the district, and in connection with the operation of the facilities and improvements of the district, it may perform all customary services including the handling, weighing, measuring and reconditioning of all commodities received. A port district may also construct, condemn, purchase, acquire, add to and maintain facilities for the freezing or processing of goods, agricultural products, meats or perishable commodities. A port district may also construct, purchase and operate belt line railways, but shall not acquire the same by condemnation. [1963 c 147 § 3; 1961 c 126 § 1; 1955 c 65 § 3. Prior: 1953 c 171 § 2; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—1961 c 126: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 126 § 2.]

Essential rail assistance account, distribution of moneys to port districts: RCW 47.76.030.

53.08.030 Operation of foreign trade zones. A district may apply to the United States for permission to establish, operate, and maintain foreign trade zones within the district: *Provided*, That nothing herein shall be construed to prevent such zones from being operated and financed by a private corporation(s) on behalf of such district acting as zone sponsor: *Provided further*, That when the money so raised is to be used exclusively for the purpose of acquiring land for sites and constructing warehouses, storage plants, and other facilities to be constructed within the zone for use in the operation and maintenance of the zones, the district may contract indebtedness and issue general bonds therefor in an amount, in addition to the three-fourths of one percent hereinafter fixed, of one percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015, such additional indebtedness only to be incurred with the assent of three-fifths of the voters of the district voting thereon. [1977 ex.s. c 196 § 7; 1970 ex.s. c 42 § 31; 1955 c 65 § 4. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Effective date—1977 ex.s. c 196: See note following RCW 24.46.010.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Foreign trade zones: Chapter 24.46 RCW.

53.08.040 Improvement of lands for industrial and commercial purposes—Providing sewer and water utilities—Providing pollution control facilities. A district may improve its lands by dredging, filling, bulkheading,

providing waterways or otherwise developing such lands for industrial and commercial purposes. A district may also acquire, construct, install, improve, and operate sewer and water utilities to serve its own property and other property owners under terms, conditions, and rates to be fixed and approved by the port commission. A district may also acquire, by purchase, construction, lease, or in any other manner, and may maintain and operate other facilities for the control or elimination of air, water, or other pollution, including, but not limited to, facilities for the treatment and/or disposal of industrial wastes, and may make such facilities available to others under terms, conditions and rates to be fixed and approved by the port commission. Such conditions and rates shall be sufficient to reimburse the port for all costs, including reasonable amortization of capital outlays caused by or incidental to providing such other pollution control facilities: *Provided*, That no part of such costs of providing any pollution control facility to others shall be paid out of any tax revenues of the port: *And provided further*, That no port shall enter into an agreement or contract to provide sewer and/or water utilities or pollution control facilities if substantially similar utilities or facilities are available from another source (or sources) which is able and willing to provide such utilities or facilities on a reasonable and nondiscriminatory basis unless such other source (or sources) consents thereto.

In the event that a port elects to make such other pollution control facilities available to others, it shall do so by lease, lease purchase agreement, or other agreement binding such user to pay for the use of said facilities for the full term of the revenue bonds issued by the port for the acquisition of said facilities, and said payments shall at least fully reimburse the port for all principal and interest paid by it on said bonds and for all operating or other costs, if any, incurred by the port in connection with said facilities: *Provided, however*, That where there is more than one user of any such facilities, each user shall be responsible for its pro rata share of such costs and payment of principal and interest. Any port intending to provide pollution control facilities to others shall first survey the port district to ascertain the potential users of such facilities and the extent of their needs. The port shall conduct a public hearing upon the proposal and shall give each potential user an opportunity to participate in the use of such facilities upon equal terms and conditions. [1989 c 298 § 1; 1972 ex.s. c 54 § 1; 1967 c 131 § 1; 1955 c 65 § 5. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—1972 ex.s. c 54: "If any provision of this 1972 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this 1972 amendatory act are declared to be severable." [1972 ex.s. c 54 § 5.]

53.08.041 Pollution control facilities or other industrial development actions—Validation—Implementation of Article 8, section 8 of the Constitution. All

actions heretofore taken by port districts in conformity with the provisions of this chapter, and the provisions of *this 1975 amendatory act hereby made applicable thereto, relating to pollution control facilities or other industrial development, including, but not limited to, all bonds issued for such purposes, shall be deemed to have been taken pursuant to Article 8, section 8 of the Washington state Constitution and are hereby declared to be valid, legal and binding in all respects. All provisions of Title 53 RCW directly or indirectly relating to pollution control facilities or other industrial development are hereby found and declared to be legislation implementing the provisions of Article 8, section 8 of the Washington state Constitution. [1975 c 6 § 5.]

***Reviser's note:** For codification of "this 1975 amendatory act" [1975 c 6], see Codification Tables, Volume 0.

Severability—1975 c 6: See RCW 70.95A.940.

Construction—1975 c 6: See RCW 70.95A.912.

53.08.045 Facilities constructed under authority of chapter subject to taxation of leasehold interest. Facilities constructed by a port district under authority of this chapter will be subject to taxation of leasehold interest pursuant to applicable laws as now or hereafter enacted. [1972 ex.s. c 54 § 3.]

Severability—1972 ex.s. c 54: See note following RCW 53.08.040.
Taxation of leasehold estates: Chapter 84.40A RCW.

53.08.047 Chapter not to be construed as restricting or limiting powers of district under other laws. Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which a district might otherwise have under any laws of this state, but shall be construed as cumulative. [1972 ex.s. c 54 § 4.]

Severability—1972 ex.s. c 54: See note following RCW 53.08.040.

53.08.050 Local improvement districts—Assessments—Bonds. (1) A district may establish local improvement districts within the district, and levy special assessments, in annual installments extending over a period not exceeding ten years on all property specially benefited by the local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of the local improvement, and issue local improvement bonds to be paid from local improvement assessments. The levy and collection of such assessments and issuance of such bonds shall be as provided for the levy and collection of local improvement assessments and the issuance of local improvement bonds by cities and towns, insofar as consistent with this title: *Provided*, That the duties of the treasurers of such cities and towns in connection therewith shall be performed by the county treasurer. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 132; 1955 c 65 § 6. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c

125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Liberal construction—Severability—1983 c 167: See RCW 39-.46.010 and note following.

Cities

issuance of local improvement bonds: Chapter 35.45 RCW.

levy and collection of local improvement assessments: Chapters 35.44, 35.49 RCW.

Public lands subject to local assessments: RCW 79.44.010.

53.08.055 Local improvement districts—Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 8.]

53.08.060 Improvement of waters and waterways. A district may improve navigable and nonnavigable waters of the United States and the state of Washington within the district; create and improve for harbor purposes new waterways within the district; and regulate and control all such waters and all natural or artificial waterways within the district and remove obstructions therefrom, and straighten, widen, deepen, and otherwise improve any water, watercourses, bays, lakes or streams, whether navigable or otherwise, flowing through or located within the district. [1979 ex.s. c 30 § 8; 1955 c 65 § 7. Prior: 1943 c 171 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

53.08.070 Rates and charges—Government contracts. A district may fix, without right of appeal therefrom the rates of wharfage, dockage, warehousing, and port and terminal charges upon all improvements owned and operated by it, and the charges of ferries operated by it. The port commission shall file with the utilities and transportation commission its schedule of rates and charges so fixed, as required of public service corporations. It may change any rate and charge so filed by filing with the commission a notice of the proposed change not less than thirty days before the change shall go into effect.

It may fix, subject to state regulation, rates of wharfage, dockage, warehousing, and all necessary port and terminal charges upon all docks, wharves, warehouses, quays, and piers owned by it and operated under lease from it.

Notwithstanding any provision of this section, a port district may enter into any contract for wharfage, dockage, warehousing, or port or terminal charges, with the United States or any governmental agency thereof or with the state of Washington or any political subdivision thereof under such terms as the commission may, in its discretion, negotiate. [1955 c 65 § 8. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Utilities and transportation commission: Chapter 80.01 RCW.

53.08.080 Lease of property—Authorized—

Duration. A district may lease all lands, wharves, docks and real and personal property owned and controlled by it, for such purposes and upon such terms as the port commission deems proper: *Provided*, That no lease shall be for a period longer than fifty years with option for extensions for up to an additional thirty years, except where the property involved is or is to be devoted to airport purposes the port commission may lease said property for such period as may equal the estimated useful life of such work or facilities, but not to exceed seventy-five years: *Provided further*, That where the property is held by the district under lease from the United States government or the state of Washington, or any agency or department thereof, the port commission may sublease said property, with option for extensions, up to the total term and extensions thereof permitted by such lease, but in any event not to exceed ninety years. [1989 c 298 § 2; 1983 c 64 § 1; 1973 c 87 § 1; 1961 ex.s. c 8 § 1; 1959 c 157 § 1; 1955 c 65 § 9. Prior: 1953 c 243 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Lease of

county property for airport purposes: RCW 36.34.180.

municipal property for airport purposes: RCW 14.08.120.

Restrictions on leases of harbor areas: State Constitution Art. 15 § 2.

53.08.085 Lease of property—Security for rent.

Every lease of all lands, wharves, docks, and real and personal property of a port district for a term of more than one year shall have the rent secured by rental insurance, bond, or other security satisfactory to the port commission, in an amount equal to one-sixth the total rent, but in no case shall such security be less than an amount equal to one year's rent or more than an amount equal to three years' rent. Evidence of the existence of such insurance, bonds, or security shall be on file with the commission at all times during the term of the lease: *Provided*, That nothing in this section shall prevent the port commission from requiring additional security on leases or provisions thereof, or on other agreements to use port facilities: *Provided further*, That any security agreement may provide for termination on the anniversary date of such agreement on not less than one year's written notice to the port if said lease is not in default at the time of said notice: *Provided further*, That if the security as required herein is not maintained throughout the full term of the lease, said lease shall be considered in default: *Provided, however*, That the port commission may in its discretion waive the rent security requirement or lower the amount of such requirement on the lease of real and/or personal port property. [1981 c 125 § 1; 1977 c 41 § 1; 1973 c 87 § 2.]

53.08.090 Sale of property. A port commission may, by resolution, authorize the managing official of a port district to sell and convey port district property of less

than twenty-five hundred dollars in value. Such authority shall be in force for not more than one calendar year from the date of resolution and may be renewed from year to year. Prior to any such sale or conveyance the managing official shall itemize and list the property to be sold and make written certification to the commission that the listed property is no longer needed for district purposes. Any large block of such property having a value in excess of twenty-five hundred dollars shall not be broken down into components of less than twenty-five hundred dollars value and sold in such smaller components unless such smaller components be sold by public competitive bid. A port district may sell and convey any of its real or personal property valued at more than twenty-five hundred dollars when the port commission has, by resolution, declared the property to be no longer needed for district purposes, but no property which is a part of the comprehensive plan of improvement or modification thereof shall be disposed of until the comprehensive plan has been modified to find such property surplus to port needs. The comprehensive plan shall be modified only after public notice and hearing provided by RCW 53.20.010.

Nothing in this section shall be deemed to repeal or modify procedures for property sales within industrial development districts as set forth in chapter 53.25 RCW. [1981 c 262 § 1; 1969 ex.s. c 30 § 1; 1965 c 23 § 1; 1955 c 65 § 10. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Restriction on sale of harbor rights and property: State Constitution Art. 15 § 1 (Amendment 15).

53.08.091 Sale of property—Contract sales—
Terms and conditions. Except in cases where the full purchase price is paid at the time of the purchase, every sale of real property or personal property under authority of RCW 53.08.090 or RCW 53.25.110 shall be subject to the following terms and conditions:

(1) The purchaser shall enter into a contract with the district in which the purchaser shall covenant that he will make the payments of principal and interest when due, and that he will pay all taxes and assessments on such property. Upon failure to make payments of principal, interest, assessments or taxes when due all rights of the purchaser under said contract may, at the election of the district, after notice to said purchaser, be declared to be forfeited. When the rights of the purchaser are declared forfeited, the district shall be released from all obligation to convey land covered by the contract, and in the case of personal property, the district shall have all rights granted to a secured party under chapter 62A.9 RCW;

(2) The district may, as it deems advisable, extend the time for payment of principal and interest due or to become due;

(3) The district shall notify the purchaser in each instance when payment is overdue, and that the purchaser is liable to forfeiture if payment is not made within thirty days from the time the same became due, unless the time be extended by the district;

(4) Not less than four percent of the total purchase price shall be paid on the date of execution of the contract for sale and not less than four percent shall be paid annually thereafter until the full purchase price has been paid, but any purchaser may make full payment at any time. All unpaid deferred payments shall draw interest at a rate not less than six percent per annum.

Nothing in this section shall be deemed to supersede other provisions of law more specifically governing sales of port district property. It is the purpose of this section to provide additional authority and procedures for sale of port district property no longer needed for port purposes. [1982 c 75 § 1; 1969 ex.s. c 11 § 1; 1965 c 23 § 2.]

53.08.092 Sale of property—Taxes and assessments against property sold by contract. A copy of all contract sales of port district property shall be filed with the county assessor within thirty days after the first payment is received by the port. The assessor shall place such property on the tax rolls of the county and the purchaser of such property shall become liable for all levies and assessments against such property. The port shall not be liable for any taxes or assessments, but if any outstanding taxes are not paid the property may be sold by the county as with other property with delinquent taxes due. Any amounts accruing from such a sale by the county, not required to pay outstanding and delinquent taxes or assessments and foreclosure costs, shall be paid to the port district. [1965 c 23 § 3.]

53.08.110 Gifts—Improvement. Port commissioners of any port district are hereby authorized to accept for and on behalf of said port district gifts of real and personal property and to expend in improvements and betterment such amount as may be necessary. [1921 c 39 § 4; RRS § 9705.]

53.08.120 Contracts for labor and material—
Small works roster. All material required by a port district may be procured in the open market or by contract and all work ordered may be done by contract or day labor. All such contracts for work, the estimated cost of which exceeds one hundred thousand dollars, shall be let at public bidding upon notice published in a newspaper in the district at least ten days before the letting, calling for sealed bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder.

Each port district shall maintain a small works roster which shall be comprised of all contractors who have requested to be on the roster and are, where required by law, properly licensed or registered to perform such work in the state of Washington.

Whenever work is done by contract, the estimated cost of which is one hundred thousand dollars or less, the managing official of the port district may invite proposals from all appropriate contractors on the small works

roster: *Provided*, That not less than five separate appropriate contractors shall be invited to submit proposals on any individual contract: *Provided further*, That whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section. Such invitation shall include an estimate of the scope and nature of the work to be performed, and materials and equipment to be furnished.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster. [1988 c 235 § 1; 1982 c 92 § 1; 1975 1st ex.s. c 47 § 1; 1955 c 348 § 2. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Severability—1955 c 348: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1955 c 348 § 7.]

53.08.130 Notice—**Award of contract.** The notice shall state generally the nature of the work to be done and require that bids be sealed and filed with the commission at a time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, money order, or surety bid bond to the commission for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named the bids shall be publicly opened and read and the commission shall proceed to canvass the bids and, except as otherwise in this section provided, shall let the contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all such bid proposal deposits shall be returned to the bidders; but if the contract is let, then all bid proposal deposits shall be returned to the bidders, except that of the successful bidder which shall be retained until a contract is entered into for the purchase of such materials or doing such work, and a bond given to the port district for the performance of the contract and otherwise conditioned as required by law, with sureties satisfactory to the commission, in an amount to be fixed by the commission, but not in any event less than twenty-five percent of the contract price. If said bidder fails to enter into the contract in accordance with his bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the check or money order and the amount thereof shall be forfeited to the port district or the port district shall recover the amount of the surety bid bond. [1971 ex.s. c 258 § 2; 1955 c 348 § 3. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Severability—1971 ex.s. c 258: See note following RCW 28B.10.350.

Severability—1955 c 348: See note following RCW 53.08.120.

Contractor's bond: Chapter 39.08 RCW.

Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.

53.08.135 Construction projects over forty thousand dollars—**Contracting out.** Port districts shall determine if any construction project over forty thousand dollars can be accomplished less expensively by contracting out. If contracting out is less expensive, the port district may contract out such project. [1982 c 92 § 2.]

53.08.140 Leases or contracts without bond. Port districts may enter into leases and contracts of every kind and nature with the United States of America or any of its departments, the state of Washington or any of its departments, or its political subdivisions or with any municipal corporation or quasi municipal corporation of the state of Washington, without requiring said port district or public bodies to provide bonds to secure the performance thereof. All such leases or contracts heretofore entered into are hereby ratified. [1943 c 136 § 1; Rem. Supp. 1943 § 9710.]

53.08.150 Notices when no newspaper in county. Notices required in port districts in which no newspaper is published may be given by publication in any newspaper of general circulation in the county. [1921 c 39 § 3; RRS § 9704.]

53.08.160 Studies, investigations, surveys—**Promotion of facilities.** All port districts organized under the provisions of this act shall be, and they are hereby, authorized and empowered to initiate and carry on the necessary studies, investigations and surveys required for the proper development, improvement and utilization of all port properties, utilities and facilities, and for industrial development within the district when such agricultural and industrial development is carried out by a public agency, institution, or body for a public purpose, and to assemble and analyze the data thus obtained and to cooperate with the state of Washington, other port districts and other operators of terminal and transportation facilities for these purposes, and to make such expenditures as are necessary for said purposes, and for the proper promotion, advertising, improvement and development of such port properties, utilities and facilities: *Provided however*, That nothing in this section shall authorize a port district to develop its properties as an agricultural or dairy farm. [1973 1st ex.s. c 55 § 1; 1947 c 24 § 2; Rem. Supp. 1947 § 9692A.]

53.08.170 Employment—**Wages**—**Benefits**—**Agents**—**Insurance for port district commissioners.** The port commission shall have authority to create and fill positions, to fix wages, salaries and bonds thereof, to pay costs and assessments involved in securing or arranging to secure employees, and to establish such benefits for employees, including holiday pay, vacations or vacation pay, retirement and pension benefits, medical, surgical or hospital care, life, accident, or health disability insurance, and similar benefits, already established

by other employers of similar employees, as the port commissioner shall by resolution provide: *Provided*, That any district providing insurance benefits for its employees in any manner whatsoever may provide health and accident insurance, life insurance with coverage not to exceed that provided district employees, and business related travel, liability, and errors and omissions insurance, for its commissioners, which insurance shall not be considered to be compensation.

The port commission shall have authority to provide or pay such benefits directly, or to provide for such benefits by the purchase of insurance policies or entering into contracts with and compensating any person, firm, agency or organization furnishing such benefits, or by making contributions to vacation plans or funds, or health and welfare plans and funds, or pension plans or funds, or similar plans or funds, already established by other employers of similar employees and in which the port district is permitted to participate for particular classifications of its employees by the trustees or other persons responsible for the administration of such established plans or funds: *Provided further*, That no port district employee shall be allowed to apply for admission to or be accepted as a member of the state employees' retirement system after January 1, 1965 if admission to such system would result in coverage under both a private pension system and the state employees' retirement system, it being the purpose of this proviso that port districts shall not at the same time contribute for any employee to both a private pension or retirement plan and to the state employees' retirement system. The port commission shall have authority by resolution to utilize and compensate agents for the purpose of paying, in the name and by the check of such agent or agents or otherwise, wages, salaries and other benefits to employees, or particular classifications thereof, and for the purpose of withholding payroll taxes and paying over tax moneys so withheld to appropriate government agencies, on a combined basis with the wages, salaries, benefits, or taxes of other employers or otherwise; to enter into such contracts and arrangements with and to transfer by warrant such funds from time to time to any such agent or agents so appointed as are necessary to accomplish such salary, wage, benefit, or tax payments as though the port district were a private employer, notwithstanding any other provision of the law to the contrary. The funds of a port district transferred to such an agent or agents for the payment of wages or salaries of its employees in the name or by the check of such agent or agents shall be subject to garnishment with respect to salaries or wages so paid, notwithstanding any provision of the law relating to municipal corporations to the contrary. [1987 c 50 § 1; 1985 c 81 § 1; 1973 1st ex.s. c 6 § 1; 1965 c 20 § 1; 1955 c 64 § 1.]

Garnishment: Chapter 6.27 RCW.

Payroll deductions: RCW 41.04.020.

Prevailing wages on public works: Chapter 39.12 RCW.

53.08.171 Employment relations—Collective bargaining and arbitration. See chapter 53.18 RCW.

53.08.175 Commissioners, officers, and employees—Reimbursement of expenses. Employees, officers, and commissioners of port districts shall, when engaged in official business of the port district, be entitled to receive their necessary and reasonable travel and other business expenses incurred on behalf of the port district. Reimbursement of such expenses may be granted, whether incurred within or without the port district, when submitted on a voucher with appropriate evidence of payment by such employee or official. [1965 c 101 § 1.]

Section headings—1965 c 101: "Section headings as used in this act do not constitute any part of the law." [1965 c 101 § 3.]

53.08.176 Commissioners, officers, and employees—Regulation of expenses. Each port district shall adopt a resolution (which may be amended from time to time) which shall establish the basic rules and regulations governing methods and amount of reimbursement payable to such port officials and employees for travel and other business expenses incurred on behalf of the district. The resolution shall, among other things, establish procedures for approving such expenses; set forth the method of authorizing the direct purchase of transportation; the form of the voucher; and requirements governing the use of credit cards issued in the name of the port district. Such regulations may provide for payment of per diem in lieu of actual expenses when travel requires overnight lodging: *Provided*, That in all cases any per diem payment shall not exceed twenty-five dollars per day. The state auditor shall, as provided by general law, cooperate with the port district in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses. [1965 c 101 § 2.]

Section headings—1965 c 101: See note following RCW 53.08.175.

53.08.180 Federal old age and survivors' insurance for employees. As used in RCW 53.08.180 through 53.08.200, the term "employees" shall be as defined in RCW 41.48.020 and no distinction shall be made for the purposes of coverage under the social security act, between persons employed by a port district on a casual or temporary basis, or on a regular or steady basis, or between persons paid hourly wages and persons paid wages on a weekly, monthly, or other periodic basis. It being the intent of RCW 53.08.180 through 53.08.200 that all employees shall be entitled to the coverage of the federal social security act for work performed in the service of a port district, which is not covered by the state employees' retirement system. [1955 c 219 § 1.]

Public employees' retirement system: Chapter 41.40 RCW.

53.08.190 Federal old age and survivors' insurance for employees—Plan for extension of benefits. Each port district, which has not previously done so, shall within thirty days of June 8, 1955, submit for approval by the governor a plan for extending the benefits of Title II of the federal social security act, as amended, in conformity with applicable provisions of said act as set forth

in chapter 41.48 RCW, to employees of such port district who are employed in positions not covered by the employees' retirement system of the state of Washington. The plan required to be submitted by this section shall be as set forth in RCW 41.48.050 and shall be in conformance therewith. [1955 c 219 § 2.]

53.08.200 Federal old age and survivors' insurance for employees—Contributions. All port districts are authorized to make contributions on employees' wages, and to impose upon their employees contributions with respect to their wages in accordance with RCW 41.48-.030 through 41.48.050. [1955 c 219 § 3.]

53.08.205 Liability insurance for officials and employees. The board of commissioners of each port district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 4.]

53.08.207 Liability insurance for officers and employees authorized. See RCW 36.16.138.

53.08.208 Actions against officer, employee, or agent—Defense and costs provided by port district—Exception. Whenever any action, claim or proceeding is instituted against any person who is or was an officer, employee, or agent of a port district established under this title arising out of the performance or failure of performance of duties for, or employment with any such district, the commission of the district may grant a request by such person that the attorney of the district's choosing be authorized to defend said claim, suit or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the district's funds: *Provided*, That costs of defense and/or judgment or settlement against such person shall not be paid in any case where the court has found that such person was not acting in good faith or within the scope of his employment with or duties for the district. [1975 c 60 § 1.]

53.08.210 Quorum. See RCW 53.12.246.

53.08.220 Regulations authorized—Adoption as part of ordinance or resolution of city or county, procedure—Enforcement—Penalty for violation. A port district may formulate all needful regulations for the use by tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, shippers, business visitors, and members of the general public of any properties or facilities owned or operated by it, and request the adoption, amendment, or repeal of such regulations as part of the ordinances of the city or town in which such properties or facilities are situated, or as part of the resolutions of the county, if such properties or facilities be situated outside any city or town. The port commission shall make such request by resolution after holding a public hearing on the proposed regulations, of which at least

ten days' notice shall be published in a legal newspaper of general circulation in the port district. Such regulations must conform to and be consistent with federal and state law. As to properties or facilities situated within a city or town, such regulations must conform to and be consistent with the ordinances of the city or town. As to properties or facilities situated outside any city or town, such regulations must conform to and be consistent with county resolutions. Upon receiving such request, the governing body of the city, town, or county, as the case may be, may adopt such regulations as part of its ordinances or resolutions, or amend or repeal such regulations in accordance with the terms of the request. Any violation of such regulations shall constitute a misdemeanor which shall be redressed in the same manner as other police regulations of the city, town, or county, and it shall be the duty of all law enforcement officers to enforce such regulations accordingly: *Provided*, That violation of a regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [1979 ex.s. c 136 § 103; 1961 c 38 § 1.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

53.08.230 Making motor vehicle and other police regulations applicable to district property—Filing plat with county auditor—Duty of law enforcement officers. A port district may at its option file with the county auditor a plat of any of its properties or facilities, showing thereon such private streets, alleys, access roads, parking areas, parks and other places as the port district may wish to have treated as public for purposes of motor vehicle or other police regulations. Such plat may be amended at any time by the filing of an amendatory plat, and may be vacated at any time by the filing of a resolution of vacation. So long as any such plat or amendatory plat is on file and not vacated, the motor vehicle or other police regulations of the state, and the motor vehicle regulations of the city, town or county, as the case may be, in which the areas described in the plat are situated, shall apply to such areas as though they were public streets, alleys, access roads, parking areas, parks or other places, and it shall be the duty of all state and local law enforcement officers to enforce such regulations accordingly. [1961 c 38 § 2.]

53.08.240 Joint exercise of powers and joint acquisition of property—Contracts with other governmental entities. Any two or more port districts shall have the power, by mutual agreement, to exercise jointly all powers granted to each individual district, and in the exercise of such powers shall have the right and power to acquire jointly all lands, property, property rights, leases, or easements necessary for their purposes, either entirely within or partly within or partly without or entirely without such districts: *Provided*, That any two or more districts so acting jointly, by mutual agreement, shall not acquire any real property or real property

rights in any other port district without the consent of such district.

A district may enter into any contract with the United States, or any state, county, or municipal corporation, or any department of those entities, for carrying out any of the powers that each of the contracting parties may by law exercise separately. [1961 c 24 § 1.]

53.08.245 Economic development programs authorized. It shall be in the public purpose for all port districts to engage in economic development programs. In addition, port districts may contract with nonprofit corporations in furtherance of this and other acts relating to economic development. [1985 c 125 § 1.]

53.08.250 Participation in world fairs or expositions authorized. See chapter 35.60 RCW.

53.08.255 Tourism promotion authorized. Any port district in this state, acting through its commission, has power to expend moneys and conduct promotion of resources and facilities in the district or general area by advertising, publicizing, or otherwise distributing information to attract visitors and encourage tourist expansion. [1984 c 122 § 10.]

53.08.260 Park and recreation facilities. A port district may construct, improve, maintain, and operate public park and recreation facilities when such facilities are necessary to more fully utilize boat landings, harbors, wharves and piers, air, land, and water passenger and transfer terminals, waterways, and other port facilities authorized by law pursuant to the port's comprehensive plan of harbor improvements and industrial development. [1965 c 81 § 1.]

53.08.270 Park and recreation facilities—Approval of other agencies. Before undertaking any such plan for the acquisition and operation of any park or recreational facility the proposed plan therefor shall be first submitted in writing to the director of the parks and recreation commission and to the governing body of any county or municipal park agency having jurisdiction in the area. The state director and/or such county or municipal park agency shall examine the port's proposed plan, and may disapprove such proposed plan if it is found to be in conflict with state or local park and recreation plans for the same area. If such proposed port plan is disapproved the port district shall not proceed further with such plan. If the state director or the governing body of the county or municipal agency does not respond in writing to the port within sixty days, it shall be deemed that approval has been granted. [1965 c 81 § 2.]

53.08.280 Police officers—Appointment authorized—Jurisdiction. Any port district operating an airport with a police department as authorized by RCW 14.08.120 or designated as a port of entry by the federal government is authorized to appoint police officers with full police powers to enforce all applicable federal, state, or municipal statutes, rules, regulations, or ordinances

upon any port-owned or operated properties or operations: *Provided*, That such police officers must have successfully graduated from a recognized professional police academy or training institution. [1981 c 97 § 1; 1974 ex.s. c 62 § 1.]

53.08.290 Intermodal movement of interstate and foreign cargo—Restrictions. In addition to the other powers under this chapter, a port district, in connection with the operation of facilities and improvements of the district, may perform all necessary activities related to the intermodal movement of interstate and foreign cargo: *Provided*, That nothing contained herein shall authorize a port district to engage in the transportation of commodities by motor vehicle for compensation outside the boundaries of the port district. A port district may, by itself or in conjunction with public or private entities, acquire, construct, purchase, lease, contract for, provide, and operate rail services, equipment, and facilities inside or outside the port district: *Provided*, That such authority may only be exercised outside the boundaries of the port district if such extraterritorial rail services, equipment, or facilities are found, by resolution of the commission of the port district exercising such authority, to be reasonably necessary to link the rail services, equipment, and facilities within the port district to an interstate railroad system; however, if such extraterritorial rail services, equipment, or facilities are in or are to be located in one or more other port districts, the commission of such other port district or districts must consent by resolution to the proposed plan of the originating port district which consent shall not be unreasonably withheld: *Provided further*, That no port district shall engage in the manufacture of rail cars for use off port property. [1981 c 47 § 1; 1980 c 110 § 2.]

Purpose—1980 c 110: "The purpose of this act is to:

(1) Clarify existing law as to the authority of port districts to perform certain cargo movement activities and to contract for or otherwise provide facilities for rail service for the movement of such cargo; and

(2) Provide authority for port districts to assist in development of the recreation-tourism industry by acquiring and operating certain watercraft in limited areas." [1980 c 110 § 1.]

53.08.295 Passenger carrying watercraft. A port district may acquire, lease, construct, purchase, maintain, and operate passenger carrying vessels on interstate navigable rivers of the state and intrastate waters of adjoining states. Service provided shall be under terms, conditions, and rates to be fixed and approved by the port commission. Operation of such vessels shall be subject to applicable state and federal laws pertaining to such service. [1980 c 110 § 3.]

Purpose—1980 c 110: See note following RCW 53.08.290.

53.08.300 Rewards for arrest and conviction of persons committing criminal offenses against port district authorized. See RCW 10.85.030.

53.08.310 Moorage facilities—Definitions. Unless the context clearly requires otherwise, the definitions in

this section apply throughout this section and RCW 53.08.320.

(1) "Port charges" mean charges of a moorage facility operator for moorage and storage, and all other charges owing or to become owing under a contract between a vessel owner and the moorage facility operator, or under an officially adopted tariff including, but not limited to, costs of sale and related legal expenses.

(2) "Vessel" means every species of watercraft or other artificial contrivance capable of being used as a means of transportation on water and which does not exceed two hundred feet in length. "Vessel" includes any trailer used for the transportation of watercraft.

(3) "Moorage facility" means any properties or facilities owned or operated by a moorage facility operator which are capable of use for the moorage or storage of vessels.

(4) "Moorage facility operator" means any port district, city, town, metropolitan park district, or county which owns and/or operates a moorage facility.

(5) "Owner" means every natural person, firm, partnership, corporation, association, or organization, or agent thereof, with actual or apparent authority, who expressly or impliedly contracts for use of a moorage facility.

(6) "Transient vessel" means a vessel using a moorage facility and which belongs to an owner who does not have a moorage agreement with the moorage facility operator. Transient vessels include, but are not limited to: Vessels seeking a harbor of refuge, day use, or overnight use of a moorage facility on a space-as-available basis. [1986 c 260 § 1; 1983 c 188 § 1.]

Construction—Savings—1983 c 188: "Nothing contained in RCW 53.08.310 and 53.08.320 may be construed as a limitation of any rights, privileges, or remedies previously existing under any applicable laws of port districts, cities, towns, metropolitan park districts, or counties." [1983 c 188 § 3.]

Severability—1983 c 188: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 188 § 5.]

53.08.320 Moorage facilities—Regulations authorized—Port charges, delinquency—Abandoned vessels, public sale. A moorage facility operator may adopt all regulations necessary for rental and use of moorage facilities and for the expeditious collection of port charges. The regulations may also establish procedures for the enforcement of these regulations by port district, city, county, metropolitan park district or town personnel. The regulations shall include the following:

(1) Procedures authorizing moorage facility personnel to take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the moorage facility so that the vessels are in the possession and control of the moorage facility operator and cannot be removed from the moorage facility. These procedures may be used if an owner mooring or storing a vessel at the moorage facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay the port charges owed or to

commence legal proceedings. Notification shall be by registered mail to the owner at his last known address. In the case of a transient vessel, or where no address was furnished by the owner, the moorage facility operator need not give such notice prior to securing the vessel. At the time of securing the vessel, an authorized moorage facility employee shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached;

(b) A statement that if the account is not paid in full within ninety days from the time the notice is attached, the vessel may be sold at public auction to satisfy the port charges; and

(c) The address and telephone number where additional information may be obtained concerning release of the vessel.

After a vessel is secured, the operator shall make a reasonable effort to notify the owner by registered mail in order to give the owner the information contained in the notice.

(2) Procedures authorizing moorage facility personnel at their discretion to move moored vessels ashore for storage within properties under the operator's control or for storage with private persons under their control as bailees of the moorage facility, if the vessel is, in the opinion of port personnel a nuisance, if the vessel is in danger of sinking or creating other damage, or is owing port charges. Costs of any such procedure shall be paid by the vessel's owner.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the moorage facility operator for port charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the moorage facility operator for the immediate removal of the vessel from the moorage facility or for authorized moorage; and

(b) Making payment to the moorage facility operator of all port charges, or by posting with the moorage facility operator a sufficient cash bond or other acceptable security, to be held in trust by the moorage facility operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the moorage facility operator shall receive so much of the bond or other security as is agreed, or as is necessary to satisfy any judgment, costs, and interest as may be awarded to the moorage facility operator. The balance shall be refunded immediately to the owner at his last known address.

(4) If a vessel has been secured by the moorage facility operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this

section, the vessel shall be conclusively presumed to have been abandoned by the owner.

(5) If a vessel moored or stored at a moorage facility is abandoned, the moorage facility operator may, by resolution of its legislative authority, authorize the public sale of the vessel by authorized personnel to the highest and best bidder for cash as follows:

(a) Before the vessel is sold, the owner of the vessel shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of port charges owed with respect to the vessel. The notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the moorage facility is located. Such notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The moorage facility operator may bid all or part of its port charges at the sale and may become a purchaser at the sale;

(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of the port charges owing. Such lawsuit must be commenced within ten days of the date the notification was provided pursuant to subsection (1) of this section, or the right to a hearing shall be deemed waived and the owner shall be liable for any port charges owing the moorage facility operator. In the event of litigation, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall first be applied to the payment of port charges. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the moorage facility operator within one year of the date of the sale, the excess funds from the sale shall revert to the department of revenue pursuant to chapter 63.29 RCW. If the sale is for a sum less than the applicable port charges, the moorage facility operator is entitled to assert a claim for a deficiency.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the moorage facility operator.

(6) The regulations authorized under this section shall be enforceable only if the moorage facility has had its tariff containing such regulations conspicuously posted at its moorage facility at all times. [1986 c 260 § 2; 1985 c 7 § 124; 1983 c 188 § 2.]

Severability—Construction—Savings—1983 c 188: See notes following RCW 53.08.310.

(1989 Ed.)

Chapter 53.12

COMMISSIONERS—ELECTIONS

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Elections: Title 29 RCW.

Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on, request for review of, certification, remand—Sanctions when review request frivolous: RCW 29.70.100.

53.12.010 Port commission—Number of commissioners. The powers of the port district shall be exercised through a port commission consisting of three members. In port districts located in a class AA county the members shall be residents of the county in which the port district is located. In all other port districts, three commissioner districts, numbered consecutively, having approximately equal population and boundaries following ward and precinct lines, shall be described in the petition for the formation of the port district, and one commissioner shall be elected from each of said commissioner districts.

In port districts having additional commissioners as authorized by RCW 53.12.120 and 53.12.130, the powers of the port district shall be exercised through a port commission consisting of five members constituted as provided therein. [1965 c 51 § 1; 1959 c 17 § 3. Prior: 1913 c 62 § 2; 1911 c 92 § 3; RRS § 9690.]

53.12.020 Qualifications—Eligibility following void in candidacy. In port districts located in a class AA county no person shall be eligible to hold the office of port commissioner unless he is a qualified voter of the district. In all other port districts except those located in

a class AA county the person must be a qualified voter of the commissioner district from which he is elected.

If, pursuant to RCW 29.21.350, a void in candidacy has been declared for a port district, any registered voter of the port district is eligible to file a declaration of candidacy for the office of port commissioner when filing for the office is reopened pursuant to RCW 29.21.360 or 29.21.370. [1986 c 262 § 2; 1965 c 51 § 2; 1959 c 175 § 1; 1959 c 17 § 4. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.035 Declarations of candidacy in class AA and A counties—Place, time, and manner of filing. All candidates for district offices in port districts of class AA and class A counties shall file their declarations of candidacy with the county auditor of the county as set forth in RCW 29.21.060, as now or hereafter amended and in the same manner as candidates for county offices. In port districts located in a class AA county the declaration may be for any numbered port commissioner position to be open in the next port district election. In port districts with five commissioners in existence on July 1, 1965, the respective numbered positions shall correspond to the numbers of the county commissioner districts from which the three original commissioners in the port districts were elected, with the central district being numbered one, and with positions four and five being assigned to the original at large commissioner positions for which the first incumbents received, respectively, the greater and lesser number of votes cast.

In all port districts in a class AA county, with three port commissioners there shall be three positions denominated positions one, two and three, and declarations of candidacy shall be for a specific position. Where a proposition for an increased number of port commissioners is on the ballot under RCW 53.12.120 and RCW 53.12.130, the two additional positions shall be denominated positions four and five, and candidates for the positions thus proposed to be created shall file declarations of candidacy for a specific position. [1965 c 51 § 3; 1959 c 175 § 9.]

53.12.040 Declarations of candidacy, except districts in class AA county—Place of filing. In port districts, other than port districts located in a class AA county, port commissioners shall file declarations of candidacy with the county auditor in which the port district is located for the commissioner district in which the candidate is a resident. [1965 c 51 § 4; 1959 c 175 § 2; 1959 c 17 § 7. Prior: 1951 c 69 § 2; 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part. Cf. 1923 c 53 § 5; RRS § 5148-1.]

53.12.044 Declarations of candidacy, except districts in class AA and class A counties—Time of filing. In all port districts, except port districts in class AA and class A counties, declarations of candidacy shall be filed with the county auditor not more than sixty nor less than forty-six days prior to the date of the election;

declarations of candidacy for an election for the formation of a port district shall be filed with the county auditor not more than sixty nor less than twenty days prior to such election. [1963 c 200 § 21; 1959 c 175 § 4; 1951 c 69 § 3.]

53.12.050 Election of commissioners. At the same election at which the proposition is submitted to the voters as to whether a port district shall be formed, three commissioners shall be elected to hold office as provided by law. All candidates shall be voted upon by the entire port district. [1959 c 17 § 5. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.055 Primaries in class AA and A counties. In the event that more than two candidates are filed after the last day for withdrawal of candidacy, in port districts in class AA and class A counties, the county auditor shall conduct a port district primary at the time provided by general law for such primaries.

In the event that after the last day for withdrawal of candidacy no more than two candidates are filed for the office of port district commissioner in any port commissioner district of a port district located in a class A county or for any numbered position for port district commissioner in any port district in a class AA county, the county auditor shall not conduct a primary and shall notify the candidates that there will be no primary. [1965 c 51 § 5; 1959 c 175 § 10.]

53.12.057 Ballots—Rotating names of candidates. The names of candidates for each position for port commissioner shall be rotated in the manner provided in RCW 29.30.040. [1965 c 51 § 6.]

53.12.060 Elections. A general election shall be held in conjunction with county elections for the election of a port commissioner or commissioners and for the submission of propositions, and special elections shall be held at such times and for such propositions as the port commission may by resolution prescribe, subject to the limitations and pursuant to the requirements of this act.

There shall be not less than one polling place in each of the various wards of any incorporated city within such port district, and one polling place within each precinct of each port district not within the limits of any incorporated city: *Provided*, That the commissioners of any port district having a population of less than two hundred and fifty registered voters, may, by resolution, provide that all elections of said district be held at one central polling place to be designated by them. It shall be the duty of the county commissioners in the formation of a port district, and of the port commission in all subsequent elections, to, at least twenty days before each election, designate the polling places and appoint three election officers for each place of voting. At all elections the vote shall be by ballot. The polls shall be open between such hours of the day as the commission shall designate, but in every case the polls shall be open between one o'clock p.m. and eight o'clock p.m. All electors who are, at the time of such election, duly qualified

to vote within their respective precincts under the general election laws for state and county officers shall be entitled to vote at any election held in such port district.

Officers of the city and county having charge of the registration books of any city or precinct in a port district shall deliver the same for the use of the election officers at all port elections. In the event of such registration books being required by law to be used by any school district or other public corporation at the same time as the use thereof will be necessary by the port district, such books shall be delivered to the port commission and school district or other public corporation jointly, and the same polling places and registration books may be used jointly in such cases, and the same individuals may serve as election officers for all such joint elections, and in such cases the compensation of such election officers and other expense shall be so divided that the port district shall bear only its proportionate share thereof.

The manner of conducting and voting at elections under this act, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as provided by the general election laws governing the election of state and county officers, except as otherwise provided in this act. [1959 c 175 § 6; 1927 c 204 § 1; 1913 c 62 § 3; RRS § 9691. Formerly RCW 53.12.060, part, and 53.12.070 through 53.12.110. FORMER PART OF SECTION: 1913 c 62 § 2, part, now codified in RCW 53.12.010.]

Elections: Title 29 RCW.

53.12.120 Increasing number of commissioners to five—Proposition—Numbered positions. When the population of a port district reaches five hundred thousand, in accordance with the latest United States regular or special census or with the official state population estimate, there shall be submitted to the voters of the district, at the next general election or at a special port election called for that purpose, the proposition of increasing the number of commissioners to five. At any general election thereafter, the same proposition may be submitted by resolution of the port commissioners, by filing a certified copy of the resolution with the county auditor at least four months prior to the general election. If the proposition is adopted, the commission in that port district shall consist of five commissioners in positions numbered as specified in RCW 53.12.035, the additional commissioners to take office five days after the election. [1982 c 219 § 1; 1965 c 51 § 7; 1959 c 175 § 3; 1959 c 17 § 10. Prior: 1953 c 198 § 1; 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.130 Increasing number of commissioners to five—Election of additional commissioners—Commencement and term of office. At the same general election the names of the candidates for the additional port commissioner positions numbered four and five shall be printed on the ballot and voted on, but the election of such additional commissioners shall be contingent upon the adoption of the proposition for a commission of five members. The candidate for each additional numbered

position receiving the highest number of votes shall be elected, and shall take office five days after the election. The additional commissioner thus elected receiving the highest number of votes shall hold office for six years and the other shall hold office for four years from the date provided by law for port commissioners to next commence their terms of office.

A successor to a commissioner holding position four or five whose term is about to expire, shall be elected at the general election next preceding such expiration, for a term of six years. [1965 c 51 § 8; 1959 c 17 § 11. Prior: 1953 c 198 § 2; 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.140 Vacancy, how caused. A vacancy in the office of port commissioner shall occur by death, resignation, removal, conviction of a felony, nonattendance at meetings of the port commission for a period of sixty days unless excused by the port commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. [1959 c 17 § 9. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.150 Vacancies, how filled. A vacancy in the office of port commissioner created by death, resignation, or otherwise, shall be filled as follows:

(1) If there are simultaneously such number of vacancies that less than a majority of the full number of commissioners fixed by law remain in office, the legislative authority of the county shall within thirty days of such vacancies appoint the number of commissioners necessary to provide a majority. The commissioners thus appointed, together with any remaining commissioners, shall then, within sixty days of their appointment, meet and appoint the number of commissioners needed to complete the board of commissioners. However, if they fail to fill the remaining vacancies within this sixty-day period, the legislative authority of the county shall make the necessary appointments.

(2) If a majority of the full number of commissioners fixed by law remains on the board, the remaining commissioners shall fill any vacancies. However, if they fail to fill any vacancy within sixty days of its occurrence, the legislative authority of the county shall make the necessary appointment.

(3) A person appointed to fill a vacancy in the office of port commissioner shall serve until a successor is elected and qualified at the next district general election occurring sixty or more days after the vacancy has occurred. The person who is elected shall take office immediately after he or she is qualified and shall serve the remainder of the unexpired term. However, if at this next district general election an election would have otherwise been held to elect a person to the position in which a vacancy has occurred, a separate election shall not be held to elect a person to fill the vacancy during the remainder of the unexpired term. The person who is elected at this election for this position shall take office immediately upon being qualified and shall serve for both the remainder of the unexpired term in addition to

the full term to which he or she is elected. [1985 c 87 § 1; 1983 c 11 § 1; 1959 c 175 § 8; 1959 c 17 § 8. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.160 Elections in districts less than entire county. In port districts comprising less than the entire county, except port districts in class AA and class A counties, elections for the selection of commissioners shall be held at the same time as the county general election is held: *Provided*, That if the petition for the organization of the district so requests, the first election of commissioners may be held at a special election which shall be called and held in the manner provided for special organization elections of port districts. [1963 c 200 § 19; 1951 c 68 § 1; 1941 c 17 § 1; 1935 c 133 § 1; Rem. Supp. 1941 § 9691A-1.]

Construction—1935 c 133: "This act shall not be construed as repealing, amending or modifying any law now in effect, except as to the time of election and the tenure of office of port commissioners in port districts comprising less than the entire county, and the manner of holding elections and canvassing returns of such port districts." [1935 c 133 § 11.]

53.12.172 Terms in districts less than entire county. In every such port district the term of office of each port commissioner shall be six years and until his or her successor is elected and qualified, and one commissioner shall be elected at the time of the general election in each odd-numbered year for the term of six years beginning in accordance with RCW 29.04.170: *Provided*, That the terms of office of the port commissioners shall be staggered in any district hereafter organized as follows: (1) The candidate residing in the first commissioner district receiving the highest number of votes in the port district at the election organizing the district shall hold office until a successor assumes office who is elected from the election held in the sixth year after the organizational election, if such organizational election was held in an odd-numbered year, or from the election held in the fifth year after the organizational election if such organizational election was held in an even-numbered year; (2) the candidate residing in the second commissioner district receiving the highest number of votes in the port district at such organizational election shall hold office until a successor assumes office who is elected from the election held in the fourth year after the organizational election, if such organizational election was held in an odd-numbered year, or from the election held in the third year after the organizational election if such organizational election was held in an even-numbered year; and (3) the candidate residing in the third commissioner district receiving the highest number of votes in the port district at such organizational election shall hold office until a successor assumes office who is elected from the election held in the second year after the organizational election, if such organizational election was held in an odd-numbered year, or from the election held in the first year after the organizational election if such organizational election was held in an even-numbered year. [1979 ex.s. c 126 § 34; 1951 c 68 § 2. Prior: (i) 1935 c 133 § 2; RRS § 9691A-2. (ii)

1935 c 133 § 3; RRS § 9691A-3. (iii) 1935 c 133 § 4; RRS § 9691A-4. (iv) 1935 c 133 § 5; RRS § 9691A-5. (v) 1935 c 133 § 6; RRS § 9691A-6. (vi) 1935 c 133 § 7; RRS 9691A-7.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

53.12.180 Conduct of elections in districts less than entire county. Notice of such election shall be given in the same manner and for the same time and by the same officials as is provided by law for the general biennial election in such counties, and in the matter of polling places, election boards, manner of conducting and voting, time for opening and closing the polls, keeping poll lists, canvassing the votes, declaring the result of the election, certifying the returns and in all other particulars as nearly as may be such election shall be called, held and conducted as is provided by law and as a part of the general biennial election in such counties; except that separate ballots shall be used for the port district and returns shall be made on the respective candidates and on each proposition or propositions which may be submitted, but all such returns shall be made by the regular election board and canvassed by the board or body that canvass the general county and state election. [1935 c 133 § 8; RRS § 9691A-8.]

Construction—1935 c 133: See note following RCW 53.12.160. *Elections: Title 29 RCW.*

53.12.190 Cost of election notice and ballots. The cost of printing and publishing the notices of such port election and the printing of the ballots shall be paid by the port district for which they are prepared. [1935 c 133 § 10; RRS § 9691A-10.]

Construction—1935 c 133: See note following RCW 53.12.160. *Printing must be done in state: RCW 43.78.130.*

53.12.200 Separate ballots and returns for each district. In case of two or more port districts comprising part of the same voting precinct the election officers shall be furnished ballots for each of said separate port districts, and each voter will be given the port district ballot for the port district in which he or she may reside, and said election officers shall in making their returns make a separate return covering each port district, although such separate returns may be in the same book as the returns for the general county and state election, but shall be separately stated. [1935 c 133 § 9; RRS § 9691A-9.]

Construction—1935 c 133: See note following RCW 53.12.160.

53.12.210 Elections in districts covering entire county. In every port district the boundaries of which are coextensive with the county in which it is located, except port districts in class AA and class A counties, all elections for port commissioners shall be held at the same time as the county general biennial election is held: *Provided*, That if the petition for organization of such port districts so requests, the first election of commissioners may be held at a special election, which shall be called

and held in the manner provided by law for special organization elections for such port districts. [1963 c 200 § 20; 1941 c 45 § 1; 1925 ex.s. c 113 § 1; Rem. Supp. 1941 § 9691-1.]

Time for holding elections: Chapter 29.13 RCW.

53.12.220 Terms—Districts covering entire county. In every such port district the term of office of each port commissioner shall be six years and until his or her successor is elected and qualified, and one port commissioner shall be elected at the time of the general election in each odd-numbered year for the term of six years beginning in accordance with RCW 29.04.170: *Provided*, That the terms of office of the port commissioners shall be staggered in any such district hereafter organized as follows: (1) The candidate residing in the first commissioner's district receiving the highest number of votes in the port district at the election organizing the district shall hold office until a successor assumes office who is elected from the election held in the sixth year after the organizational election, if such organizational election was held in an odd-numbered year, or from the election held in the fifth year after the organizational election if such organizational election was held in an even-numbered year; (2) the candidate residing in the second commissioner district receiving the highest number of votes in the port district at such organizational election shall hold office [until] a successor assumes office who is elected from the election held in the fourth year after the organizational election, if such organizational election was held in an odd-numbered year, or from the election held in the third year after the organizational election if such organizational election was held in an even-numbered year; and (3) the candidate residing in the third commissioner district receiving the highest number of votes in the port district at such organizational election shall hold office until a successor assumes office who is elected from the election held in the second year after the organizational election, if such organizational election was held in an odd-numbered year, or from the election held in the first year after the organizational election if such organizational election was held in an even-numbered year. [1979 ex.s. c 126 § 35; 1941 c 45 § 2; 1925 ex.s. c 113 § 2; Rem. Supp. 1941 § 9691-2. Formerly RCW 53.12.220 and 53.12.230.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Validating—1929 c 219: "Each port district election which was called by the election board for any class 'A' county or county of the first class, and which was held at the time of the last general election in November, 1928, and at which a proposition for the issuance of bonds of such district was approved by three-fifths of the voters therein voting on such proposition, is hereby validated, notwithstanding any irregularity or omission in the calling or holding of such election." [1929 c 219 § 1.]

53.12.245 Organization of commission—Powers and duties—Record of proceedings. The port commission shall organize by the election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the port commission

shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records. [1955 c 348 § 6.]

Severability—1955 c 348: See note following RCW 53.08.120.

Public records: Title 40 RCW, chapter 42.17 RCW.

53.12.246 Quorum. A majority of the persons holding the office of port commissioner at any time shall constitute a quorum of the port commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted unless there are in office at least a majority of the full number of commissioners fixed by law. [1959 c 17 § 12. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690.]

53.12.260 Compensation. Each commissioner of a port district shall receive fifty dollars per day or portion thereof spent (a) in actual attendance at official meetings of the port district commission, or (b) in performance of other service in behalf of the district: *Provided*, That no commissioner shall receive compensation to exceed five thousand eight hundred dollars for any calendar year: *Provided further*, That no commissioner of a port district shall receive compensation to exceed four thousand eight hundred dollars for any calendar year if the port district had gross operating income of less than twenty-five million dollars in the preceding calendar year.

For any commissioner who has not elected to become a member of public employees retirement system before May 1, 1975, the compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state nor shall attendance at such meetings or other service on behalf of the district constitute service as defined in RCW 41.40.010(9): *Provided*, That in the case of a port district when commissioners are receiving compensation and contributing to the public employees retirement system, these benefits shall continue in full force and effect notwithstanding the provisions of RCW 53.12.260 and 53.12.265. [1985 c 330 § 3; 1975 1st ex.s. c 187 § 1.]

53.12.265 Waiver of compensation. A commissioner of any port district may waive all or any portion of his compensation payable under RCW 53.12.260 as to any month or months during his term of office, by a written waiver filed with the secretary of the commission. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which said compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [1975 1st ex.s. c 187 § 2.]

53.12.270 Delegation of powers to managing official of port district. The commission may delegate to the managing official of a port district such administrative powers and duties of the commission as it may deem proper for the efficient and proper management of port

district operations. Any such delegation shall be authorized by appropriate resolution of the commission, which resolution must also establish guidelines and procedures for the managing official to follow. [1975 1st ex.s. c 12 § 1.]

Chapter 53.16

REVISION OF COMMISSIONER DISTRICTS

Sections

53.16.010	Revision authorized.
53.16.020	Notice of hearing on revision.
53.16.030	Change not to affect term of office.

53.16.010 Revision authorized. At whatever time as they in their judgment deem appropriate, except between thirty days prior to the closing of filings of candidacy for port commissioner until the next ensuing election thereof, the port commissioners may, and upon petition signed by not less than two hundred and fifty electors residing in the district shall, reestablish the boundaries of the commissioner districts in the port district, so that each commissioner district shall comprise as nearly as possible one-third of the population of the port district: *Provided*, That no voting precinct shall be divided by the boundary lines of a commissioner district. [1969 ex.s. c 9 § 1; 1957 c 69 § 2. Prior: (i) 1933 c 145 § 1; RRS § 9708-1. (ii) 1933 c 145 § 2; RRS § 9708-2.]

53.16.020 Notice of hearing on revision. The revision of boundary lines provided for in this chapter shall be made only at a meeting of the board of port commissioners with attendance of all of the members of the commission, which meeting shall be public, following notice of said meeting, and the purpose thereof published in a newspaper of general circulation within the port district, or, if there be no such newspaper published within the district, in a newspaper published at the county seat of the county in which such port district is located. Such notice shall be published not less than twice, the date of the first publication to be not less than fifteen nor more than twenty days prior to the date fixed for said hearing, and shall state the time, place and purpose of the hearing. [1933 c 145 § 3; RRS § 9708-3.]

53.16.030 Change not to affect term of office. Any change of boundary lines provided for in this chapter shall not affect the term for which a commissioner shall hold office at the time the change is made, and the requirement of two years' residence within the commissioner district for eligibility for office of port commissioner shall not apply to incumbent commissioners seeking election at any port district election held within three years of the change of such district boundaries: *Provided*, That at the time of nomination the incumbent commissioner resides in the commissioner district for which he seeks election. [1933 c 145 § 4; RRS § 9704-8.]

Chapter 53.18

EMPLOYMENT RELATIONS—COLLECTIVE BARGAINING AND ARBITRATION

Sections

53.18.010	Definitions.
53.18.015	Application of public employees' collective bargaining act.
53.18.020	Agreements authorized.
53.18.030	Criteria for choice of employee organization—Procedures for resolution of controversy.
53.18.040	Incidental powers of district.
53.18.050	Agreements—Authorized provisions.
53.18.060	Restraints on agreement.

53.18.010 Definitions. "Port district" shall mean a municipal corporation of the state of Washington created pursuant to Title 53 RCW. Said port districts may also be hereinafter referred to as the "employer."

"Employee" shall include all port employees except managerial, professional, and administrative personnel, and their confidential assistants.

"Employee organization" means any lawful association, labor organization, union, federation, council, or brotherhood, having as its primary purpose the representation of employees on matters of employment relations.

"Employment relations" includes, but is not limited to, matters concerning wages, salaries, hours, vacation, sick leave, holiday pay and grievance procedures. [1967 c 101 § 1.]

53.18.015 Application of public employees' collective bargaining act. Port districts and their employees shall be covered by the provisions of chapter 41.56 RCW except as provided otherwise in this chapter. [1983 c 287 § 1.]

Severability—1983 c 287: See note following RCW 41.56.450.

53.18.020 Agreements authorized. Port districts may enter into labor agreements or contracts with employee organizations on matters of employment relations: *Provided*, That nothing in this chapter shall be construed to authorize any employee, or employee organization to cause or engage in a strike or stoppage of work or slow-down or similar activity against any port district. [1967 c 101 § 2.]

53.18.030 Criteria for choice of employee organization—Procedures for resolution of controversy. In determining which employee organization will represent them, employees shall have maximum freedom in exercising their right of self-organization.

Controversies as to the choice of employee organization within a port shall be submitted to the public employment relations commission. Employee organizations may agree with the port district to independently resolve jurisdictional disputes: *Provided*, That when no other procedure is available the procedures of RCW 49.08.010 shall be followed in resolving such disputes. In such case the chairman of the public employment relations commission shall, at the request of any employee organization, arbitrate any dispute between employee

organizations and enter a binding award in such dispute. [1975 1st ex.s. c 296 § 38; 1967 c 101 § 3.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Powers and duties of public employment relations commission: Chapter 41.58 RCW.

53.18.040 Incidental powers of district. Port districts exercising the authority granted by RCW 53.18.020 may take any of the following actions as incidental thereto: Make necessary expenditures; act jointly with other ports or employers; engage technical assistance; make appearances before and utilize the services of state or federal agencies, boards, courts, or commissions; make retroactive payments of wages where provided by agreements; and exercise all other necessary powers to carry this chapter into effect, including the promulgation of rules and regulations to effectuate the purposes of this chapter. [1967 c 101 § 4.]

53.18.050 Agreements—Authorized provisions. A labor agreement signed by a port district may contain:

(1) Provisions that the employee organization chosen by a majority of the employees in a grouping or unit will be recognized as the representative of all employees in the classification included in such grouping or unit;

(2) Maintenance of membership provisions including dues check-off arrangements; and

(3) Provisions providing for binding arbitration, the expenses being equally borne by the parties, in matters of contract interpretation and the settlement of jurisdictional disputes. [1967 c 101 § 5.]

53.18.060 Restraints on agreement. No labor agreement or contract entered into by a port district shall:

(1) Restrict the right of the port district in its discretion to hire;

(2) Limit the right of the port to secure its regular or steady employees from the local community; and

(3) Include within the same agreements: (a) Port security personnel, or (b) port supervisory personnel. [1967 c 101 § 6.]

Chapter 53.20

HARBOR IMPROVEMENTS

Sections

53.20.010	Adoption of harbor improvement plan.
53.20.020	Improvement to follow plans adopted.
53.20.030	Improvements—Ownership of.
53.20.040	Fifty percent of cost of local improvement may be paid from general fund.
53.20.050	Local improvements upon majority petition.

Joint improvement of navigable rivers: RCW 88.32.240 and 88.32.250.

53.20.010 Adoption of harbor improvement plan. It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive scheme of harbor improvement in the port district, after a public hearing thereon, of which notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the

port district, and no expenditure for the carrying on of any harbor improvements shall be made by the port commission other than the necessary salaries, including engineers, clerical and office expenses of the port district, and the cost of engineering, surveying, preparation and collection of data necessary for the making and adoption of a general scheme of harbor improvements in the port district, unless and until the comprehensive scheme of harbor improvement has been so officially adopted by the port commission. [1985 c 469 § 51; 1943 c 166 § 3; 1913 c 62 § 6; 1911 c 92 § 6; Rem. Supp. 1943 § 9694.]

53.20.020 Improvement to follow plans adopted. When such general plans shall have been adopted or approved, as aforesaid, every improvement to be made by said commission shall be made substantially in accordance therewith unless and until such general plans shall have been officially changed by the port commission after a public hearing thereon, of which at least ten days' notice shall be published in a newspaper in general circulation in such port district. [1947 c 24 § 1; 1913 c 62 § 7; 1911 c 92 § 7; Rem. Supp. 1947 § 9695.]

53.20.030 Improvements—Ownership of. No improvements shall be acquired or constructed, by the port district, unless such improvements shall, when completed, be the property of such port district, the county in which such port district is located, any city within such port district, the state of Washington or the United States of America, and the funds of such port district may be expended in the acquirement or construction of any harbor improvement embraced in such general plan adopted as in this chapter provided in conjunction with the county in which such port district is located, any city in such port district, the state of Washington or the United States of America, or all or any of them. [1979 ex.s. c 30 § 9; 1913 c 62 § 8; 1911 c 92 § 8; RRS § 9696.]

53.20.040 Fifty percent of cost of local improvement may be paid from general fund. Whenever any improvement shall be ordered, payment for which shall be made in part from assessments against property specially benefited, not more than fifty percent of the cost thereof shall ever be borne by the entire port district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed [exceeding] such amount, unless a majority vote of the electors of the port district shall consent to or ratify the making of such expenditure. [1911 c 92 § 11; RRS § 9698.]

53.20.050 Local improvements upon majority petition. Whenever a petition signed by one hundred freeholders in the district to be therein described, shall be filed with the port commission, asking that any portion of the general plan adopted be ordered, and defining the boundaries of a local improvement district to be assessed in whole or in part to pay the cost thereof, it shall be the duty of the port commission to fix a date for hearing on

the petition, after which it may alter the boundaries of the proposed district and prepare and adopt detail plans of any such local improvement, declare the estimated cost thereof, what proportion of the cost shall be borne by the proposed local improvement district, and what proportion of the cost, if any, but in any event not to exceed fifty percent, shall be borne by the entire port district. At any time within two years thereafter, upon petition of the owners of a majority of the lands in the proposed local improvement district, fixed by the port commission, as shown in the office of the auditor of the county, asking that the improvement be ordered, the port commission shall forthwith by resolution order the improvement, provide the general funds of the port district to be applied thereto, acquire all lands necessary therefor, pay all damages caused thereby, and commence in the name of the port district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle the port district to proceed with such work, and shall thereafter proceed with the work, and shall make and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within the local improvement district in proportion to the special benefits to be derived by the property in the local improvement district from the improvement. Before the approval of the roll a notice shall be published once a week for two consecutive weeks in one or more newspapers of general circulation in the local improvement district, stating that the roll is on file and open to inspection in the office of the clerk of the port commission, and fixing a time not less than fifteen nor more than thirty days from the date of the first publication of the notice within which protests must be filed with the clerk of the port commission against any assessments shown thereon, and fixing a time when a hearing shall be held by the commission on the protests. After the hearing the port commission may alter any and all assessments shown on the roll and may then by resolution approve the same, but in the event of any assessment being raised a new notice similar to the first notice shall be given, after which final approval of the roll may be made by the port commission. Any person feeling aggrieved by any such assessments shall perfect an appeal to the superior court of the county within ten days after the approval in the manner now provided by law for appeals from assessments levied by cities of the first class in this state. Engineering and office expenses in all cases shall be borne by the general district. [1985 c 469 § 52; 1911 c 92 § 10; RRS § 9697. Formerly RCW 53.20.050 through 53.20.080.]

Appeal from assessments: RCW 35.44.200 through 35.44.270.

Special assessments for local improvement: State Constitution Art. 7 § 9.

Chapter 53.25

INDUSTRIAL DEVELOPMENT DISTRICTS— MARGINAL LANDS

Sections	
53.25.010	Marginal lands—Declaration of policies and purposes.
53.25.020	Marginal lands—Further declaration.
53.25.030	"Marginal lands" defined.
53.25.040	Industrial development districts authorized—Boundaries—Deletion of land area.
53.25.050	Tax title lands may be conveyed to district.
53.25.060	Private lands may be conveyed to district—Cancellation of taxes.
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53.25.190	Eminent domain.
53.25.200	Advances of general fund moneys or credit.
53.25.210	Determination that land sought by eminent domain is marginal.
53.25.900	Repeal and saving.
53.25.910	Severability—1955 c 73.

53.25.010 Marginal lands—Declaration of policies and purposes. It is hereby declared to be the public policy of the legislature of the state of Washington, that it is in the public interest to employ the power of eminent domain and advance and expend public moneys for the purposes herein contained, and to provide for means by which marginal area properties may be developed or redeveloped in accordance with the legislative policies hereinafter stated:

(1) A sound development of the economic security of the peoples of the state of Washington is dependent upon proper development and redevelopment of marginal properties, and the general welfare of the inhabitants of the port districts in which they exist require the remedying of such injurious conditions marginal properties are now subjected to; and

(2) The development and redevelopment of such marginal area properties cannot be accomplished by private enterprise alone without public participation and assistance in the acquisition of land and planning and in the financing of land assembly in the work of clearance, development and redevelopment, and in the making of improvements necessary therefor.

(3) To protect and promote sound development and redevelopment of marginal lands as hereinafter defined, and the general welfare of the inhabitants of the port districts in which they exist, to remedying such injurious conditions through the employment of all appropriate means.

(4) That whenever the development or redevelopment of such marginal lands cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land and planning and in financing of land assembly in the work of clearance, development and redevelopment, and in the making of improvements necessary therefor, it is in the public interest to employ the power of eminent domain, to advance and expend public moneys for those purposes, and to provide for means by which such marginal lands may be developed or redeveloped.

(5) That the development or redevelopment of such marginal lands and the provision of appropriate continuing land use constitute public uses and purposes for which public moneys may be advanced or expended and private property acquired, and are governmental functions and are of state concern in the interest of health, safety and welfare of the state of Washington, and of the communities in which such areas exist.

(6) That the necessity in the public interest for the provision of this chapter is declared to be a matter of legislative determination. [1955 c 73 § 1.]

53.25.020 Marginal lands—Further declaration. It is further found and declared that:

(1) The existence of such marginal lands characterized by any or all of such conditions constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety, and welfare of the people of the communities in which they exist and of the people of the state.

(2) Such marginal lands present difficulties and handicaps which are beyond remedy and control solely by regulatory processes in the exercise of the police power.

(3) They contribute substantially and increasingly to the problems of, and necessitate excessive and disproportionate expenditures for, crime prevention, correction, prosecution and punishment, the treatment of juvenile delinquency, the preservation of the public health and safety, and the maintaining of adequate police, fire and accident protection and other public services and facilities.

(4) This menace is becoming increasingly direct and substantial in its significance and effect.

(5) The benefits which will result from the remedying of such conditions and the redevelopment of such marginal lands will accrue to all the inhabitants and property owners of the communities in which they exist.

(6) Such conditions of marginal lands tend to further obsolescence, deterioration, and disuse because of the lack of incentive to the individual landowner and his inability to improve, modernize, or rehabilitate his property while the condition of the neighboring properties remains unchanged.

(7) As a consequence the process of deterioration of such marginal lands frequently cannot be halted or corrected except by redeveloping the entire area, or substantial portions of it.

(8) Such conditions of marginal lands are chiefly found in areas subdivided into small parcels, held in divided and widely scattered ownerships, frequently under defective titles, and in many such instances the private assembly of the land areas for redevelopment is so difficult and costly that it is uneconomic and as a practical matter impossible for owners to undertake because of lack of the legal power and excessive costs.

(9) The remedying of such conditions may require the public acquisition at fair prices of adequate areas, the redevelopment of the areas suffering from such conditions under proper supervision, with appropriate planning, and continuing land use.

(10) The development or redevelopment of land, or both, acquired under the authority of this chapter constitute a public use and are governmental functions, and that the sale or leasing of such land after the same has been developed or redeveloped is merely incidental to the accomplishment of the real or fundamental purpose, that is, to remove the condition which caused said property to be marginal property as in this chapter defined. [1955 c 73 § 2.]

53.25.030 "Marginal lands" defined. "Marginal lands" is defined and characterized by any one or more of the following described conditions:

(1) An economic dislocation, deterioration, or disuse resulting from faulty planning.

(2) The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.

(3) The laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions.

(4) The existence of inadequate streets, open spaces, and utilities.

(5) The existence of lots or other areas which are subject to being submerged by water.

(6) By a prevalence of depreciated values, impaired investments, and social and economic maladjustment to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered.

(7) In some parts of marginal lands, a growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety and welfare.

(8) In other parts of marginal lands, a loss of population and reduction of proper utilization of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.

(9) Property of an assessed valuation of insufficient amount to permit the establishment of a local improvement district for the construction and installation of streets, walks, sewers, water and other utilities.

(10) Lands within an industrial area which are not devoted to industrial use but which are necessary to industrial development within the industrial area. [1955 c 73 § 3.]

53.25.040 Industrial development districts authorized—Boundaries—Deletion of land area. (1) A port commission may, after a public hearing thereon, of which at least ten days' notice shall be published in a newspaper of general circulation in the port district, create industrial development districts within the district and define the boundaries thereof, if it finds that the creation of the industrial development district is proper and desirable in establishing and developing a system of harbor improvements and industrial development in the port district.

(2) The boundaries of an industrial development district created by subsection (1) of this section may be revised from time to time by resolution of the port commission, to delete land area therefrom, if the land area to be deleted was acquired by the port district with its own funds or by gift or transfer other than pursuant to RCW 53.25.050 or 53.25.060.

As to any land area to be deleted under this subsection that was acquired or improved by the port district with funds obtained through RCW 53.36.100, the port district shall deposit funds equal to the fair market value of the lands and improvements into the fund for future use described in RCW 53.36.100 and such funds shall be thereafter subject to RCW 53.36.100. The fair market value of the land and improvements shall be determined as of the effective date of the port commission action deleting the land from the industrial development district and shall be determined by an average of at least two independent appraisals by professionally designated real estate appraisers as defined in RCW 74.46.020 or licensed real estate brokers. The funds shall be deposited into the fund for future use described in RCW 53.36.100 within ninety days of the effective date of the port commission action deleting the land area from the industrial district. Land areas deleted from an industrial development district under this subsection shall not be further subject to the provisions of this chapter. This subsection shall apply to presently existing and future industrial development districts. Land areas deleted from an industrial development district under this subsection that were included within such district for less than two years, if the port district acquired the land through condemnation or as a consequence of threatened condemnation, shall be offered for sale, for cash, at the appraised price, to the former owner of the property from whom the district obtained title. Such offer shall be made by certified or registered letter to the last known address of the former owner. The letter shall include the appraised price of the property and notice that the former owner must respond in writing within thirty days or lose the right to purchase. If this right to purchase is exercised, the sale shall be closed by midnight of the sixtieth day, including nonbusiness days, following close of the thirty-day period. [1989 c 167 § 1; 1985 c 469 § 53; 1955 c 73 § 4. Prior: 1943 c 166 § 1; 1939 c 45 § 1; Rem. Supp. 1943 § 9709-1; RCW 53.24.010.]

53.25.050 Tax title lands may be conveyed to district. Any lands in an industrial development district acquired by the county by tax foreclosure, may, if the

county commissioners deem the lands chiefly valuable for industrial development purposes, be conveyed to the port district. The lands shall be held in trust by the port district and may be managed, developed, leased, or sold by it as provided in this chapter.

From the proceeds of the sale or lease of the lands, the district shall first reimburse itself for any expense incurred by it in managing and developing the lands and any balance shall be paid to the county, which shall distribute it the same as general taxes collected in that year. [1955 c 73 § 5. Prior: 1939 c 45 § 2; RRS § 9709-2; RCW 53.24.020.]

53.25.060 Private lands may be conveyed to district—Cancellation of taxes. With the approval of the county commissioners, any lands in an industrial development district, owned privately, which the port commission deems valuable for industrial development purposes, may be deeded to and accepted by the port district, subject to delinquent general taxes thereon. When the commission has recorded the deed and notified the county commissioners thereof, the county commissioners shall order all taxes assessed against the lands canceled and the county treasurer shall record the cancellation, and remove the lands from the tax rolls. Thereafter the lands shall be held in trust, managed, developed, leased, and sold by the district, and the proceeds therefrom disposed of in the same manner as hereinabove provided. [1955 c 73 § 6. Prior: 1939 c 45 § 3; RRS § 9709-3; RCW 53.24.030.]

53.25.070 Discharge of trust. With the approval of the county commissioners, a port district may free any lands acquired by it pursuant to this chapter from the trust imposed upon it herein, by paying to the county the amount of the delinquent taxes against the land at the time the county acquired it by tax foreclosure, or the amount of the delinquent taxes against it when it was conveyed to the district by the private owner. [1955 c 73 § 7. Prior: 1939 c 45 § 4; RRS § 9709-4; RCW 53.24.040.]

53.25.080 When lands revert to county. Ten years from the date of its acquisition, property acquired by a port district pursuant to this chapter shall revert to the county to be used the same as property acquired by tax foreclosure, and upon demand by the county commissioners the port commission shall convey the property to the county, unless before the expiration of the ten year period, the port district has adopted a comprehensive plan of harbor improvement which provides for the improvement of an industrial development district which includes such lands or the district has freed the land from the trust imposed upon it as provided in this chapter. [1955 c 73 § 8. Prior: 1939 c 45 § 8; RRS § 9709-8; RCW 53.24.050.]

53.25.090 Conditions precedent to making improvements. No expenditure for improvement of property in

an industrial development district, other than the expense of preparing and submitting a plan of improvement shall be made by a port district, and no property shall be acquired by it therefor except as provided for hereinbefore until it has been made a part of the comprehensive scheme of harbor improvements and industrial developments or amendments thereto.

That said comprehensive scheme or amendments thereto shall provide for the development or redevelopment of those marginal lands acquired and a provision for the continuing of the land uses which are hereby declared to constitute public uses and the purposes for which public moneys may be advanced and provide property acquired. [1955 c 73 § 9. Prior: 1939 c 45 § 5; RRS § 9709-5; RCW 53.24.060.]

53.25.100 Powers as to industrial development districts. All port districts wherein industrial development districts have been established are authorized and empowered to acquire by purchase or condemnation or both, all lands, property and property rights necessary for the purpose of the development and improvement of such industrial development district and to exercise the right of eminent domain in the acquirement or damaging of all lands, property and property rights and the levying and collecting of assessments upon property for the payment of all damages and compensation in carrying out the provisions for which said industrial development district has been created; to develop and improve the lands within such industrial development district to make the same suitable and available for industrial uses and purposes; to dredge, bulkhead, fill, grade, and protect such property; to provide, maintain, and operate water, light, power and fire protection facilities and services, streets, roads, bridges, highways, waterways, tracks, and rail and water transfer and terminal facilities and other harbor and industrial improvements; to execute leases of such lands or property or any part thereof; to establish local improvement districts within such industrial development districts which may, but need not, be coextensive with the boundaries thereof, and to levy special assessments, under the mode of annual installments, over a period not exceeding ten years, on all property specially benefited by any local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of any improvement ordered in such local improvement district; to issue local improvement bonds in any such local improvement district; to be repaid by the collection of local improvement assessments; and generally to exercise with respect to and within such industrial development districts all the powers now or hereafter conferred by law upon port districts in counties of the first class: *Provided*, That the exercise of powers hereby authorized and granted shall be in the manner now and hereafter provided by the laws of the state for the exercise of such powers by port districts under the general laws relating thereto insofar as the same shall not be inconsistent with this chapter. [1955 c 73 § 10. Prior: 1939 c 45 § 6; RRS § 9709-6; RCW 53.24.070.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); Title 8 RCW.

53.25.110 Sale authorized in industrial development district. When a port commission deems it for the best interests of the district and the people thereof and in furtherance of its general plan of harbor improvement, or industrial development, or both, it may sell and convey any property or part thereof owned by it within an industrial district. This section shall not be limited by chapter 53.08 RCW, pertaining to powers of port districts. [1955 c 73 § 11. Prior: 1939 c 45 § 9; RRS § 9709-9; RCW 53.28.010.]

53.25.120 Notice of hearing on sale—Hearing—Plans and specifications—Conditions—Devotion of property to public use. The port commission shall give notice of the proposed sale by publication in a newspaper of general circulation in the county, and by posting in three public places in the port district at least ten days before the date fixed for the hearing thereon.

The notice shall describe the property to be sold and state that at the time and place specified therein, the commission will meet at its usual meeting place, designating it, to hear and determine the advisability of the sale.

The hearing shall be held not more than twenty days from the publication of notice. At the hearing the commission shall hear the reasons of any taxpayer in the port district, for or against the sale.

No sales shall be made, however, of the property of any industrial development district until the purchaser thereof shall have submitted to the port commission plans and specifications for the development of the property, and the plans and specifications shall be approved in writing before the property shall be conveyed, and the conditions upon which the properties are conveyed shall be set forth in the instrument conveying title thereof with the further condition that all of the conditions set forth shall be covenants running with the land. All properties acquired in the manner herein set forth shall be devoted to the public use herein provided for. [1985 c 469 § 54; 1963 c 138 § 1; 1955 c 73 § 12. Prior: 1939 c 45 § 10; RRS § 9709-10; RCW 53.28.020.]

Validating—1963 c 138: "All sales made prior to the effective date of this amendatory act which are otherwise valid except for compliance with the limitation in section 12, chapter 73, Laws of 1955, which provided that the hearing shall be held not more than ten days from the publication of notice, are hereby ratified and validated.

All sales made prior to the effective date of this amendatory act under the provisions of section 18, chapter 73, Laws of 1955 and RCW 53.25.180 are hereby ratified and validated." [1963 c 138 § 3.]

53.25.130 Findings and determination—Record—Appeal. Within three days after the hearing the commission shall make its findings and determination on the advisability of making the sale and enter its determination in its records. Any aggrieved party may appeal the determination of the commission by filing appeal with the superior court of the county in which the district is located within twenty days of the entry of the determination but no appeal shall be allowed except on the grounds that the action of the commission was arbitrary, capricious, or unlawful. [1955 c 73 § 13. Prior: 1939 c 45 § 11; RRS § 9709-11; RCW 53.28.030.]

53.25.140 Action on determination—Sale by competitive bid or negotiation. If the determination is against the sale, all proceedings thereon shall terminate. If the commission determines in favor of the sale by at least a two-thirds vote of the full commission, it shall in its discretion, either enter an order fixing a period, not less than twenty nor more than thirty days from the date of the order, during which bids will be received for the property or any part thereof, and give notice thereof in the same manner as for the hearing on the proposal to sell or negotiate the sale with an appropriate purchaser, provided that in any such negotiated sale the purchase price must not be less than the fair market value of the property which shall be determined by an average of at least two independent appraisals performed by licensed real estate brokers or professionally designated real estate appraisers as defined in RCW 74.46.020. Whether the property is sold by competitive bidding or negotiation, other real property conveyed by the purchaser to the commission may constitute all or a portion of the consideration for the sale. [1984 c 195 § 1; 1955 c 73 § 14. Prior: 1939 c 45 § 12; RRS § 9709-12; RCW 53.28.040.]

53.25.150 Competitive bids—Conditions—Acceptance. If the commission chooses to sell the property through competitive bidding under RCW 53.25.140:

(1) Bids may be submitted for the property or any part of it, shall state the use which the bidder intends to make of it, and the commission may require the successful bidder to file additional information as to the intended use, and may require of him security as assurance that the property will be used for that purpose;

(2) All sales shall be made to the best bidder, and in determining the best bid, the commission may also consider the nature of the proposed use and the relation thereof to the improvement of the harbor and the business and facilities thereof;

(3) Within thirty days after the last day for submitting bids, the commission shall decide which if any bids it accepts. All sales shall be made upon such terms and conditions as the commission may prescribe. [1984 c 195 § 2; 1955 c 73 § 15. Prior: 1939 c 45 § 13, part; RRS § 9709-13, part; RCW 53.28.050.]

53.25.160 Devotion of property to intended use—Remedy—Restraint on alienation. The purchaser shall, within one year from the date of purchase, devote the property to its intended use, or shall commence work on the improvements thereon to devote it to such use, and if he fails to do so, the port commission may cancel the sale and return the money paid on the purchase price, and title to the property shall revert to the district. This remedy shall be in addition to any other remedy under the terms of the sale. No purchaser shall transfer title to such property within one year from the date of purchase. [1955 c 73 § 16. Prior: 1939 c 45 § 13, part; RRS § 9709-13, part; RCW 53.28.060.]

53.25.170 Covenant running with the land—Forfeiture. All sales made in accordance with the provisions of this chapter shall have incorporated in the instrument of conveyance of title the conditions of this chapter relating to the use of the land as a covenant running with the land. Any violation of such covenant shall result in a right by the commission, as grantee, to forfeit the land. [1955 c 73 § 17.]

53.25.190 Eminent domain. All port districts of the state of Washington which have created or may hereafter create industrial development districts in the manner provided by law, in addition to all powers possessed by such port districts, be and are hereby granted power of eminent domain to acquire real property within the limits of such industrial development district which property is marginal lands as the term is herein defined. The exercise of the power granted in this section shall be exercised in the same manner and by the same procedure as in or may be provided by law for cities of the first class except insofar as such duties may be inconsistent with the provisions of this chapter and the duties devolving upon the city treasurer under said law be and the same are hereby imposed upon the county treasurer for the purposes of this chapter. [1955 c 73 § 19.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by cities: Chapter 8.12 RCW.

53.25.200 Advances of general fund moneys or credit. Port districts are hereby granted the power to advance their general fund moneys or credit, or both, without interest to accomplish the objects and purposes of this chapter, which fund shall be repaid from the sale or lease, or both, of such developed or redeveloped lands, provided, if the money advanced for such development or redevelopment was obtained from the sale of general obligation bonds of the port, then such advances shall bear the same rate of interest that said bonds bore. [1955 c 73 § 20.]

53.25.210 Determination that land sought by eminent domain is marginal. The determination that property sought by eminent domain proceedings is marginal lands as herein defined is a judicial question, provided that a duly adopted resolution of the commissioners of the port district that the property sought is marginal lands as the term is herein defined, setting forth the characteristics of the lands sought to be acquired which constitutes the marginal lands as herein defined, shall be prima facie evidence that such land is marginal lands as defined in this chapter. [1955 c 73 § 21.]

53.25.900 Repeal and saving. Chapter 53.24 RCW and chapter 53.28 RCW and chapter 45, Laws of 1939, as last amended by section 1, chapter 166, Laws of 1943 are repealed: *Provided*, That nothing herein contained shall be construed as affecting any existing right acquired under the provisions of said act. [1955 c 73 § 22.]

53.25.910 Severability—1955 c 73. Should any section or provision of this chapter be held invalid by

any court of competent jurisdiction, the same shall not affect the validity of the chapter as a whole or any part thereof other than the portion held to be invalid. [1955 c 73 § 23.]

Chapter 53.29 TRADE CENTER ACT

Sections

53.29.010	Declaration of purpose.
53.29.020	Power to establish trade centers—Facilities authorized.
53.29.030	Cooperation with other entities—Annual service fee for support of local government.
53.29.900	Short title—Liberal construction—Powers cumulative.
53.29.910	Severability—1967 c 56.

53.29.010 Declaration of purpose. It is declared to be the finding of the legislature of the state of Washington that:

(1) The servicing functions and activities connected with the oceanborne and overseas airborne trade and commerce of port districts, including customs clearance, shipping negotiations, cargo routing, freight forwarding, financing, insurance arrangements and other similar transactions which are presently performed in various, scattered locations in the districts should be centralized to provide for more efficient and economical transportation of persons and more efficient and economical facilities for the exchange and buying, selling and transportation of commodities and other property in world trade and commerce;

(2) Unification, at a single, centrally located site of a facility of commerce, i.e., a trade center, accommodating the functions and activities described in subsection (1) of this section and the appropriate governmental, administrative and other services connected with or incidental to transportation of persons and property and the promotion and protection of port commerce, and providing a central locale for exhibiting, and otherwise promoting the exchange and buying and selling of commodities and property in world trade and commerce, will materially assist in preserving the material and other benefits of a prosperous port community;

(3) The undertaking of the aforesaid unified trade center project by a port district or the Washington public ports association has the single object of preserving, and will aid in the promotion and preservation of, the economic well-being of port districts and the state of Washington and is found and determined to be a public purpose. [1989 c 425 § 5; 1967 c 56 § 1.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.020 Power to establish trade centers—Facilities authorized. In addition to all other powers granted to port districts, any such district, the Washington public ports association, or the federation of Washington ports as described in RCW 53.06.070 may acquire, as provided for other port properties in RCW 53.08.010, construct, develop, operate and maintain all

land or other property interests, buildings, structures or other improvements necessary to provide a trade center including but not limited to:

(1) A facility consisting of one or more structures, improvements and areas for the centralized accommodation of public and private agencies, persons and facilities in order to afford improved service to waterborne and airborne import and export trade and commerce;

(2) Facilities for the promotion of such import and export trade and commerce, inspection, testing, display and appraisal facilities, foreign trade zones, terminal and transportation facilities, office meeting rooms, auditoriums, libraries, language translation services, storage, warehouse, marketing and exhibition facilities, facilities for federal, state, county and other municipal and governmental agencies providing services relating to the foregoing and including, but not being limited to, customs houses and customs stores, and other incidental facilities and accommodations. [1989 c 425 § 6; 1967 c 56 § 2.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.030 Cooperation with other entities—Annual service fee for support of local government. (1) In carrying out the powers authorized by this chapter and chapter 53.06 RCW, port districts and the Washington public ports association are authorized to cooperate and act jointly with other public and private agencies, including, but not limited to the federal government, the state, other ports and municipal corporations, other states and their political subdivisions, and private non-profit trade promotion groups and associate development organizations.

(2) Port districts operating trade center buildings or operating association or federation trade centers, shall pay an annual service fee to the county treasurer wherein the center is located for municipal services rendered to the trade center building. The measure of such service fee shall be equal to three percent of the gross rentals received from the nongovernmental tenants of such trade center building. Such proceeds shall be distributed by the county treasurer as follows: Forty percent to the school district, forty percent to the city, and twenty percent to the county wherein the center is located: *Provided*, That if the center is located in an unincorporated area, twenty percent shall be allocated to the fire district, forty percent to the school district, and forty percent to the county. [1989 c 425 § 7; 1967 c 56 § 3.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.900 Short title—Liberal construction—Powers cumulative. This chapter, which may be known and cited as the "Trade Center Act", shall be liberally construed, its purpose being to provide port districts, and their related association and federation, with additional powers to provide trade centers and to promote and encourage trade, tourism, travel, and economic development in a coordinated and efficient manner through the ports of the state of Washington. The powers herein

granted shall be in addition to all others granted to port districts. [1989 c 425 § 8; 1967 c 56 § 4.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.910 Severability—1967 c 56. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons and circumstances is not affected. [1967 c 56 § 5.]

Chapter 53.31

EXPORT TRADING COMPANIES

Sections

53.31.010	Legislative findings—Intent.
53.31.020	Definitions.
53.31.030	Export trading companies—Authorized—Adoption of business plan.
53.31.040	Export trading companies—Powers—Formation—Dissolution.
53.31.050	Confidentiality of records supplied by private persons.
53.31.060	Certificate of review under federal export trading company act—Authorized.
53.31.900	Expiration of chapter—Review.
53.31.901	Severability—1986 c 276.

53.31.010 Legislative findings—Intent. It is declared to be the public policy of the state to promote and preserve the economic well-being of the citizens of this state by creating opportunities for expanded participation in international trade by state businesses and expanding international trade through state ports. Increased international trade of state products creates and retains jobs, increases the state's tax base, and diversifies the state's economy. Port districts, through economies of scale, are uniquely situated to promote and expand international trade and provide greater opportunities for state businesses to participate in international trade.

The legislature finds that significant public benefit, in the form of increased employment and tax revenues, can be realized through export trading companies without lending the credit of port districts, and without capital investment of public funds by port districts. The legislature finds that the use of port district funds to promote and establish export trading companies under this chapter constitutes trade promotion and industrial development within the meaning of Article VIII, section 8 of the state Constitution.

It is the purpose of this chapter: (1) To stimulate greater participation by private businesses in international trade; (2) to authorize port districts to promote and facilitate international trade more actively; (3) to make export services more widely available; (4) to generate revenue for port districts; and (5) to develop markets for Washington state goods and services. Port sponsored export trading companies can also assist small to medium-sized companies in achieving economies of scale in order to expand into the export market.

It is the intent of this chapter to enhance export trade and not to create outside competition for existing

Washington state businesses. The primary intent of a port sponsored export trading company is to increase exports of Washington state products.

This chapter shall not be construed as modifying or restricting any other powers granted to port districts by law. The legislature does not intend by the enactment of this chapter for port districts to use export trading companies to create unfair competition with private business. [1986 c 276 § 1.]

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

(1) "Port district" means any port district other than a county-wide port district in a class A or AA county, established under Title 53 RCW.

(2) "Export services" means the following services when provided in order to facilitate the export of goods or services through Washington ports: International market research, promotion, consulting, marketing, legal assistance, trade documentation, communication and processing of foreign orders to and for exporters and foreign purchasers, financing, and contracting or arranging for transportation, insurance, warehousing, foreign exchange, and freight forwarding.

(3) "Export trading company" means an entity created by a port district under RCW 53.31.040.

(4) "Obligations" means bonds, notes, securities, or other obligations or evidences of indebtedness.

(5) "Person" means any natural person, firm, partnership, association, private or public corporation, or governmental entity. [1986 c 276 § 2.]

53.31.030 Export trading companies—Authorized—Adoption of business plan. (1) Public port districts, formed under chapter 53.04 RCW are authorized to establish export trading companies and a company so formed may contract with other public ports, financial institutions, freight forwarders, and public or private concerns within or outside the state to carry out the purposes of this chapter. A port district may participate financially in only one export trading company.

(2) A port district proposing to establish an export trading company shall adopt a business plan with safeguards and limitations to ensure that any private benefit to be realized from the use of funds of the export trading company are incidental to the purposes of this chapter. The business plan shall be adopted only after public hearing and shall be reviewed at least once every two years. Amendments to the plan shall be adopted only after public hearing. The business plan shall include:

(a) A description of export promotion activities to be conducted during the period of the plan;

(b) A proposed budget of operations which shall include an itemized list of estimated revenues and expenditures;

(c) A description of the safeguards and limitations which ensure that the export trading company will best be used to enhance international trade and produce public benefit in the form of employment, capital investment, and tax revenues;

(d) A description of private competitors which may be capable of providing the functions in the business plan; and

(e) Such other matters as may be determined by the port district.

(3) A port district, for the purpose of establishing or promoting an export trading company under this chapter, may provide financial assistance to the export trading company. A port district may not provide such assistance or services for more than five years or in an amount greater than five hundred thousand dollars. [1986 c 276 § 3.]

53.31.040 Export trading companies—Powers—Formation—Dissolution. (1) For the purpose of promoting international trade, export trading companies formed under this chapter may provide export services through:

(a) Holding and disposing of goods in international trade;

(b) Taking title to goods.

All such activities engaged in or pursued by an export trading company shall be charged for in accordance with the customs of the trade at competitive market rates.

(2) Nothing contained in this chapter may be construed to authorize an export trading company to own or operate directly or indirectly any business which provides freight-forwarding, insurance, foreign exchange, or warehousing services. Nothing contained in this chapter may be construed to permit an export trading company to engage in the business of transporting commodities by motor vehicle, barge, ship, or rail for compensation.

(3) (a) Proceedings to form a public corporation designated as an export trading company shall be initiated by a resolution of the board of commissioners of a port district adopting a charter for the corporation. The charter shall contain such provisions as are authorized by law and include provisions for a board of directors which shall conduct the affairs of the export trading company. The board of directors shall include no fewer than three nor more than five members, all appointed by the port district board of commissioners. Commissioners of the port shall be eligible to serve as members of the board and shall constitute a majority of the board of directors at all times. Unless a later date is specified, the resolution shall take effect on the thirtieth day after adoption. The corporation shall be deemed formed for all purposes upon filing in the office of the secretary of state a certified copy of the effective resolution and the charter adopted by the resolution.

(b) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the corporation, the corporation is conclusively presumed to be established and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the resolution creating the corporation by the governing body. A copy of the resolution duly certified by the secretary of the port district commission shall be admissible in evidence in any suit, action, or proceeding.

(c) A corporation created by a port district pursuant to this chapter may be dissolved by the district if the corporation (i) has no property to administer, other than funds or property, if any, to be paid or transferred to the district by which it was established; and (ii) all its outstanding obligations have been satisfied. Such a dissolution shall be accomplished by the governing body of the port district adopting a resolution providing for the dissolution.

(d) The creating port district may, at its discretion and at any time, alter or change the structure, organizational programs, or activities of the corporation, including termination of the corporation if contracts entered into by the corporation are not impaired. Subject to any contractual obligations, any net earnings of the corporation shall inure only to the benefit of the creating port district. Upon dissolution of the corporation, all assets and title to all property owned by the corporation shall vest in the creating port district.

(4) A port district may contract with an export trading company to provide services on a reimbursement basis at current business rates to the export trading company, including but not limited to accounting, legal, clerical, technical, and other administrative services. Separate accounting records prepared according to generally accepted accounting principles shall be maintained by the export trading company.

(5) Any obligation of an export trading company shall not in any manner be an obligation of the port district nor a charge upon any revenues or property of the port district.

(6) An export trading company may borrow money or contract indebtedness and pledge, in whole or in part, any of its revenues or assets not subject to prior liens or pledges. An export trading company may not pledge any revenue or property of a port district or other municipal corporation and no port district or other municipal corporation may pledge its revenues or property to the payment thereof. An export trading company has no power to issue general obligation bonds, levy taxes, or exercise power of eminent domain. [1989 c 11 § 23; 1986 c 276 § 4.]

Severability—1989 c 11: See note following RCW 9A.56.220.

53.31.050 Confidentiality of records supplied by private persons. All financial and commercial information and records supplied by private persons to an export trading company with respect to export projects shall be kept confidential unless such confidentiality shall be waived by the party supplying the information or by all parties engaged in the discussion. [1986 c 276 § 5.]

53.31.060 Certificate of review under federal export trading company act—Authorized. An export trading company may apply for and hold a certificate of review provided for under 15 U.S.C. Secs. 4001 through 4021, the federal export trading company act of 1982. [1986 c 276 § 6.]

53.31.900 Expiration of chapter—Review. This chapter shall expire July 1, 1994, and shall be subject to

review under chapter 43.131 RCW. [1989 c 425 § 13; 1986 c 276 § 10.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.31.901 Severability—1986 c 276. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 276 § 11.]

Chapter 53.34 TOLL FACILITIES

Sections

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53.34.220	Chapter supplemental to other laws—Liberal construction.
53.34.900	Severability—1959 c 236.
53.34.910	Chapter controls inconsistent acts.

53.34.010 Toll bridges, tunnels authorized—Highway approaches. In addition to all other powers granted to port districts, any such district may, with the consent of the department of transportation, acquire by condemnation, purchase, lease, or gift, and may construct, reconstruct, maintain, operate, furnish, equip, improve, better, add to, extend, and lease to others in whole or in part and sell in whole or in part any one or more of the following port projects, within or without or

partially within and partially without the corporate limits of the district whenever the commission of the district determines that any one or more of such projects are necessary for or convenient to the movement of commercial freight and passenger traffic a part of which traffic moves to, from, or through the territory of the district:

(1) Toll bridges;

(2) Tunnels under or upon the beds of any river, stream, or other body of water, or through mountain ranges.

In connection with the acquisition or construction of any one or more of such projects the port districts may, with the consent of the state department of transportation, further acquire or construct, maintain, operate, or improve limited or unlimited access highway approaches of such length as the commission of such district deems advisable to provide means of interconnection of the facilities with public highways and of ingress and egress to any such project, including plazas and toll booths, and to construct and maintain under, along, over, or across any such project telephone, telegraph, or electric transmission wires and cables, fuel lines, gas transmission lines or mains, water transmission lines or mains, and other mechanical equipment not inconsistent with the appropriate use of the project, all for the purpose of obtaining revenues for the payment of the cost of the project. [1984 c 7 § 365; 1959 c 236 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

53.34.020 Contracts for use of projects—Regulations—Controversies. The district shall have the power to enter into a contract or contracts for the use of said projects, their approaches and equipment and from time to time to amend such contracts, with persons and with private and public corporations, and by said contracts to give such persons or corporations the right to use said projects, their approaches and equipment for the transmission of power for telephone and telegraph lines, for the transportation of water, gas, petroleum, and other products, for railroad and railway purposes, and for any other purpose to which the same may be adapted: *Provided*, That no such contract shall be for a period longer than ninety-nine years, and that the projects shall be put to the largest possible number of uses consistent with the purposes for which such projects are constructed.

In making such contract or contracts and providing for payments and rentals thereunder the port district shall determine the value of the separate and different uses to which the projects are to be put and shall apportion the annual rentals and charges as nearly as possible according to the respective values of such uses. No such contract shall be made with any person or corporation unless and until such person or corporation shall bind himself or itself to pay as rental therefor an amount determined by the port district and specified in the contract which shall be a fair and just proportion of the total amount required to pay interest on the bonds provided for in this chapter, plus a just proportion of the amount necessary for their retirement, and plus the cost

of maintenance of the projects, their approaches and equipment.

The port district may require any of such contracts to be entered into before beginning the construction of said projects or before the expenditure of funds under the provisions of this chapter if in its judgment it is deemed expedient.

There shall be no monopoly of the use of said projects, and their approaches by any one use, or by any person or corporation, private or public, in respect to the several uses, and the port district may continue to make separate, additional, and supplemental contracts for one or more uses until in the judgment of said port district the capacity of the projects and approaches for any such use has been reached. When such capacity has been reached contracts for the use of said projects shall be given preference in regard to such uses according to the public interest as determined by the port district, and subsequent contracts shall be subject to all existing and prior contracts. The port district shall have the power to prescribe regulations for the use of such facilities by the parties to contracts for such use, or any of them, and to hear and determine all controversies which may arise between such parties, under such rules as the port district may from time to time promulgate; and all contracts shall expressly reserve such power to the port district. [1959 c 236 § 2.]

53.34.030 Revenue bonds and notes—Authorized—Purposes—Sale, maturity, cost. Whenever any port district shall determine to acquire or construct any one or more projects authorized under the provisions of this chapter, the commission of such district shall have the power and is authorized to issue negotiable revenue bonds and notes from time to time in one or more series or installments in such principal amount as, in the opinion of the commission, shall be necessary to provide sufficient money for the acquisition, construction, reconstruction, extension or improvement thereof as set forth in RCW 53.34.010, including engineering, inspection, legal and financial fees and costs, working capital, interest on such bonds and notes during construction and for a reasonable period thereafter, establishment of reserves to secure such bonds and notes and all other expenditures of such district incidental, necessary or convenient to the establishment of such projects on a sound financial basis, and to issue negotiable revenue bonds and notes for the purpose of renewing or refunding such outstanding bonds and notes in whole or in part at or prior to maturity. All such revenue bonds or notes shall be negotiable instruments within the meaning and purposes of the negotiable instruments law and shall be sold by the commission in such manner and for such price as the commission deems for the best interests of the district: *Provided*, That the bonds and warrants may be in any form, including bearer bonds or bearer notes, or registered bonds or registered notes as provided in RCW 39.46.030. The commission may provide in any contract for the construction or acquisition of all or any part of a project or projects or for the additions or betterments thereto or extensions or improvements thereof

that payment therefor shall be made only in such revenue bonds or notes. Any revenue bonds issued under the authority of this act shall have a final maturity not to exceed forty years from date of issue. [1983 c 167 § 133; 1970 ex.s. c 56 § 69; 1969 ex.s. c 232 § 79; 1959 c 236 § 3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.34.040 Revenue bonds and notes—Resolution—Security—Form, interest, payment, etc. (1) Revenue bonds and notes may be issued by one or more resolutions and may be secured by trust agreement by and between the district and one or more corporate trustees, depositories, or fiscal agents, which may be any trust company or state or national bank having powers of a trust company within or without the state of Washington. Such bonds or notes shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places within or without the state of Washington, and be subject to such terms of redemption and at such redemption premiums as such resolution, resolutions, or trust agreements may provide. No proceedings for the issuance of such bonds or notes shall be required other than those required by the provisions of this chapter, and none of the provisions of any other laws relative to the terms and conditions for the issuance, payment, redemption, registration, sale or delivery of bonds of public bodies, corporation, or political subdivisions of this state shall be applicable to bonds or notes issued by port districts pursuant to this chapter.

(2) Notwithstanding subsection (1) of this section, such bonds and notes may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 134; 1970 ex.s. c 56 § 70; 1969 ex.s. c 232 § 80; 1959 c 236 § 4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.34.050 Covenants to safeguard and secure bonds and notes. Any resolution, resolutions, or trust agreements authorizing the issuance of any bonds or notes of a port district may contain covenants and agreements on the part of the district to protect and safeguard the security and payment of such bonds or notes, which shall be a part of the contract with the owners of such obligations thereby authorized as to:

(1) Pledging all or any part of the revenues, income, receipts, profits and other moneys derived by the district issuing such obligations from the ownership, operation, management, lease, or sale of any one or more of the projects constructed from the proceeds thereof to secure the payment of bonds or notes;

(2) The establishment and collection of rates, rentals, tolls, charges, license, and other fees to be charged by the district and the amounts to be raised in each year for the services and commodities sold, leased, furnished, or supplied by any one or more of the projects established from the proceeds of such obligations, and the deposit, use, and disposition of the revenues of the district received therefrom;

(3) The setting aside of reserves or sinking funds for such obligations, and the deposit, investment, and disposition thereof;

(4) Limitations on the purpose or purposes to which the proceeds of sale of any issue of bonds or notes then or thereafter issued payable from the revenues of any such project or projects may be applied, and pledging such proceeds to secure the payment of such bonds or notes;

(5) Limitations on the issuance of additional revenue bonds or notes of the district, the terms and conditions upon which such additional revenue bonds or notes may be issued and secured, and the refunding of outstanding or other bonds or notes;

(6) The procedure, if any, by which the terms of any contract with bond owners may be amended or abrogated, the amount of bonds or notes the owners of which must consent thereto, and the manner in which such consent may be given;

(7) Limitations on the amount of moneys derived from any project or projects to be expended for operating, administrative or other expenses of the district in connection with any such project or projects;

(8) The employment of independent auditors and engineers or other technical consultants to advise and assist the district in the operation, management, and improvement of any project or projects;

(9) Limitations or prohibitions on rendering free service in connection with any project or projects;

(10) Specifying conditions constituting events of default and vesting in one or more trustees including trustees which may be appointed by the bond owners and note owners, such special rights, property rights, powers, and duties with respect to the property and revenues of any project or projects as the commission of the district may deem advisable the better to secure the payment of such bonds and notes;

(11) Prescribing conditions controlling the acquisition, sale, lease, or other disposition of real and personal property used or useful in connection with any project or projects, the amount and kinds of policies of insurance to be carried by the district in connection therewith, and the use and disposition of the proceeds of policies of insurance; and

(12) Any other matters of like or different character which in any way affect the security or protection of bonds or notes of the district. [1983 c 167 § 135; 1959 c 236 § 5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

53.34.060 Notes. A district shall have power from time to time to issue bond anticipation revenue notes

(herein referred to as notes), and from time to time to issue renewal notes, such notes in any case to mature not later than six years from the date of incurring the indebtedness represented thereby in an amount not exceeding in the aggregate at any time outstanding the amount of revenue bonds then or theretofore authorized but not issued. Payment of such notes shall be made from any moneys or revenue which the district may have available for such purpose or the proceeds of the sale of revenue bonds of the district, or such notes may be exchanged for a like amount of such revenue bonds bearing the same or a lower or higher rate of interest than that borne by such notes.

All notes may be issued and sold in the same manner as revenue bonds. Any district shall have power to make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and the district shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of said notes, of revenue bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in amount deemed by the district sufficient to provide for the payment of the notes in full at the maturity thereof. The district may provide in such collateral agreement that the notes may be exchanged for revenue bonds held as collateral security for the notes, or that the trustee may sell the revenue bonds if the notes are not otherwise paid at maturity and apply the proceeds of such sale to the payment of the notes. Such notes shall bear interest at a rate or rates as authorized by the port commission. [1970 ex.s. c 56 § 71; 1969 ex.s. c 232 § 81; 1959 c 236 § 6.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.34.070 Bonds and notes payable solely from revenues, etc.—Adequate rates and charges to be established. Revenue bonds and notes issued under the provisions of this chapter shall be payable solely from the revenues, income, receipts, profits, charges, fees, rentals, and moneys received or derived by or through the ownership, operation, sale, lease, or other disposition in whole or in part of any project or projects authorized under the provisions of this chapter, or through the issuance of refunding bonds or notes, and the commission of any district issuing revenue bonds or notes under the authority of this chapter shall establish, maintain, and collect rates, tolls, rents, and charges from time to time so long as any of such revenue bonds are outstanding and unpaid for all services sold, furnished, or supplied by or through any such project or projects sufficient to produce an amount, together with any other moneys of the district available and dedicated to such purpose, to pay the principal of and interest and premium, if any, on all revenue bonds and notes payable from the revenues of any project or projects as the same may respectively fall due in accordance with the terms of the resolution or

resolutions or trust agreement authorizing the issuance and securing the payment of such obligations. [1959 c 236 § 7.]

53.34.080 Special funds and accounts—Disposition. The resolution, resolutions, or trust agreement providing for the issuance of revenue bonds or notes pursuant to the provisions of this chapter shall create and establish a special fund of the district into which the district shall be obligated to deposit as collected all income, revenues, receipts, and profits derived by the district through the ownership and operation of any project or projects acquired or constructed from the proceeds of the sale of such revenue bonds or notes: *Provided*, That additional separate special funds or accounts may be created by such resolution or trust agreement into which the district may obligate itself to deposit the proceeds of the sale of such revenue bonds and notes, the proceeds of the sale or other disposition in whole or in part of any project or projects, the proceeds of any policies of insurance on such projects, and any other additional moneys received by the district and applicable to such projects. All such moneys shall be held by the district, the depositories and trustees of such funds and accounts, in trust for the equal and ratable benefit and security of the holders from time to time of the revenue bonds and notes issued pursuant to the resolution, resolutions, or trust agreement establishing such special funds or accounts, and shall be collected, held, deposited, and disbursed solely for the acquisition, construction, operation, maintenance, renewal, replacement, improvement, extension, and betterment of such project or projects and the payment of the principal of and interest and premium, if any, on the revenue bonds and notes issued pursuant to such resolution, resolutions, or trust agreements, and the creation and maintenance of reasonable reserves for all such purposes: *Provided, however*, That the district may in its discretion and subject to any agreements with the holders of such revenue bonds and notes expend amounts of such moneys as are not required for the purposes aforesaid for other corporate purposes of the district.

The district may pledge such moneys or revenues of the district subject to prior pledges thereof, if any, for the payment of such notes and may in addition secure the notes in the same manner as herein provided for revenue bonds. [1959 c 236 § 8.]

53.34.090 Pledge of moneys, when binding—When lien attaches. It is the intention hereof that any pledge of revenues, income, receipts, profits, charges, fees, or other moneys made by a district for the payment of bonds shall be valid and binding from the time of the adoption of any resolution or the execution of any trust agreement making such pledge notwithstanding the fact that there may not then be any simultaneous delivery thereof, that the revenues, income, receipts, profits, charges, fees, and other moneys so pledged shall as soon as received by the district immediately be subject to the lien of such pledge without the physical delivery thereof and without further act, and that the lien of any such pledge shall be valid

and binding as against all parties having claims of any kind in tort, contract, or otherwise against the district irrespective of whether such parties have notice thereof. Neither the resolution, resolutions, or trust agreement authorizing revenue bonds or notes nor any other instrument by which such a pledge is created need be recorded to be effective. [1959 c 236 § 9.]

53.34.100 No personal liability on bonds or notes. Neither the members of a commission nor any person executing revenue bonds or notes shall be liable personally on such bonds or notes, or be subject to any personal liability or accountability by reason of the issuance thereof. [1959 c 236 § 10.]

53.34.110 District may purchase bonds or notes. A district shall have power out of any funds available therefor to purchase revenue bonds or notes of such district. Any bonds or notes so purchased may be held, canceled, or resold by the district subject to and in accordance with any resolution or resolutions or trust agreements with bondholders. [1959 c 236 § 11.]

53.34.120 State not to limit or alter rights of district or impair rights or remedies of bond or note holders. The state of Washington does hereby covenant and agree with the holders of revenue bonds or notes issued by a district under the authority of this chapter that the state will not limit or alter the rights hereby vested in a district to acquire, maintain, construct, reconstruct, improve, extend, add to, better and operate the projects authorized to be constructed or acquired under the provisions hereof and to establish, collect, and pledge such rates, rentals, tolls, charges, license, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with holders of such revenue bonds and notes or in any way impair the rights and remedies of bondholders and noteholders until the bonds or notes together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully met and discharged. The provisions of this chapter and of the resolutions, trust agreements and proceedings authorizing revenue bonds and notes hereunder shall constitute a contract with the holders of said bonds and notes. [1959 c 236 § 12.]

53.34.130 Bonds, notes, obligations not state or district debt—No ad valorem taxes. The revenue bonds, revenue notes, and any other obligations of a district issued under the authority of this chapter shall not be a debt of the state of Washington or of any political subdivision of this state, nor shall such obligations be considered indebtedness of the port district issuing same within any constitutional, statutory, or other limitation of indebtedness, and neither the state nor any political subdivision thereof, including the port district issuing such revenue bonds or notes, shall ever become obligated

to levy ad valorem taxes on any taxable property within the state for the payment of such revenue bonds and notes, but such revenue bonds and notes shall be payable solely from and shall be a charge only upon the revenues and other funds of the project or projects pledged to the payment thereof by the proceedings authorizing the issuance of such bonds and notes. [1959 c 236 § 13.]

53.34.140 Registration of bonds and notes—Prima facie validity. Prior to the issuance and delivery of revenue bonds or notes under the authority of this chapter, such revenue bonds or notes and a certified copy of the resolution, resolutions, or trust agreements authorizing such revenue bonds or notes shall be forwarded by the port commission to the state auditor together with any additional information requested by him, and when such revenue bonds or notes have been examined they shall be registered by the auditor in books to be kept by him for that purpose, and a certificate of registration shall be endorsed upon each such revenue bond or note and signed by the auditor or a deputy appointed by him for that purpose.

Revenue bonds or notes so registered shall then be prima facie valid and binding obligations of the port district in accordance with the terms thereof, notwithstanding any defect or irregularity in the proceedings for the authorization and issuance of such revenue bonds or notes or in the sale, execution or delivery thereof or in the application of the proceeds thereof. [1959 c 236 § 14.]

53.34.150 Bonds and notes as legal investment and security. Revenue bonds and notes issued under the authority of this chapter are made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds and notes are also made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities, municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized. [1959 c 236 § 15.]

53.34.160 Projects declared public benefit and governmental function—Covenant by state with bond and note holders—Tax exemption. It is found, determined, and declared that the creation and establishment of projects authorized by this chapter are in all respects for the

benefit of the people of the state of Washington, for the improvement of their welfare and prosperity, and for the promotion of intrastate, interstate, and foreign commerce, the transportation of freight, commercial, and passenger traffic, is a public purpose, that such projects operated by port districts are essential parts of the public transportation system, and that such districts will be performing essential governmental functions in the exercise of the powers conferred upon them by this chapter; and the state of Washington covenants with the holders of revenue bonds and notes that port districts shall not be required to pay any taxes or assessments, or other governmental charges in lieu thereof, upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision, upon the activities of port districts in the operation and maintenance of such projects, or upon any charges, fees, rentals, revenues, or other income received by such districts from such projects and that the revenue bonds and notes of port districts and the income therefrom shall at all times be exempt from all taxation in the state of Washington, except transfer, inheritance, and estate taxes. This section shall constitute a covenant and agreement with the holders of all revenue bonds and notes issued by port districts pursuant to the provisions of this chapter. [1959 c 236 § 16.]

53.34.170 District's power to acquire property, rights, etc.—Gifts—Condemnation—Contracts by public agencies authorized. In the acquisition, construction, reconstruction, improvement, extension, or betterment of any project or projects authorized under the provisions of this chapter any port district creating and establishing any such project or projects may have and exercise all of the powers heretofore or hereafter granted to port districts for corporate purposes and, in addition thereto, may acquire by gift or grant, lease, purchase, or condemnation any public and private property, franchises and property rights, including state, county, and school lands and property, and littoral and water rights whether or not any such property is then devoted to public or quasi public proprietary or governmental use: *Provided*, That the court shall find that the proposed condemnation of any property already devoted to a public use is for a higher public use, and may by appropriate contracts with any city, county, or other political subdivision of the state, with the state and any department of the government of the state (hereinafter referred to collectively as public agencies), or with any department, instrumentality or agency of the United States, acquire title to or the use of existing roads, streets, parkways, avenues, or highways or the closing of any roads, streets, parkways, avenues, or highways as may be necessary or convenient to the acquisition, construction, or operation of any such project or projects under such terms and conditions as may be mutually agreed upon. All public agencies are authorized to enter into contracts with port districts for the aforesaid purposes. [1959 c 236 § 17.]

53.34.180 Public agencies authorized to contract with district for contribution of money, property, services,

etc. Any public agency, including without limitation the department of transportation, may contract with a port district that is constructing a project or projects under this chapter for the contribution of moneys or real or personal property in aid of the construction of the projects, or for the furnishing of engineering, legal, police, and fire protection, and all other services necessary or convenient to the acquisition, construction, reconstruction, operation, maintenance, renewal, replacement, improvement, additions to, or extension of the project or projects. The contracts shall run for such period of years and contain such terms and conditions as the parties thereto mutually agree upon. Any public agency, by resolution, may authorize the execution of the contracts with a port district and no other authorization on the part of the public agency is necessary, regardless of any provision of laws or of a city charter to the contrary. Obligations assumed by a public agency under the contracts entered into under this chapter shall be included and provided for in each annual budget of the public agency made thereafter until all the obligations have been fully discharged. [1984 c 7 § 366; 1959 c 236 § 18.]

Severability—1984 c 7: See note following RCW 47.01.141.

53.34.190 Bylaws, rules for management, uses, charges—Penalty for violation. Any port district establishing a project under the authority of this chapter may make such bylaws, rules, and regulations for the management and use of such project and for the collection of rentals, tolls, fees, and other charges for services or commodities sold, furnished or supplied through such project, and the violation of any such bylaw, rule, or regulation shall be an offense punishable by fine not to exceed one hundred dollars or by imprisonment for not longer than thirty days, or both. [1959 c 236 § 19.]

53.34.200 Actions for damages, injuries, death—Allegation in complaint of presentment of claim. In every action against a district for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death arising in connection with the acquisition, construction, reconstruction, operation, or maintenance of a project authorized by the provisions of this chapter, the complaint shall contain an allegation that at least thirty days have elapsed since a demand, claim, or claims upon which such action is founded were presented to the secretary of the district, or to its chief executive officer, and that the district has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment. [1959 c 236 § 20.]

53.34.210 Actions—Statute of limitations—Notice and statement to be filed with district. No action against a district for damages for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, alleged to have been sustained in connection with the acquisition, construction, reconstruction, operation, or maintenance of a project shall be commenced more than one year after the cause of action

therefor shall have accrued nor unless a notice of intention to commence such action and of the time when and place where the damages or personal injuries or death were incurred or sustained, together with a verified statement showing in detail the property alleged to have been damaged or destroyed and the value thereof or the personal injuries alleged to have been sustained and by whom, shall have been filed with the secretary of the district in the principal office of the district within six months after such cause of action shall have accrued. [1959 c 236 § 21.]

53.34.220 Chapter supplemental to other laws—Liberal construction. The powers and rights granted to port districts and public agencies by the provisions of this chapter are in addition and supplemental to and not in substitution of the powers and rights heretofore or hereafter granted to such districts and public agencies by any other law or city charter, and no limitations or restrictions or proceedings for the exercise of powers and rights by port districts and public agencies contained in any other laws or city charters shall apply to the exercise of powers and rights granted by the provisions of this chapter, and the provisions of this chapter shall be liberally construed to permit the accomplishment of the purposes hereof. [1959 c 236 § 22.]

53.34.900 Severability—1959 c 236. If any section, clause or provision of this chapter shall be declared unconstitutional or invalid in whole or in part, to the extent that this chapter is not unconstitutional or invalid this chapter shall be valid and effective, and no other section, clause, or provision hereof shall on account of such declaration be deemed invalid or ineffective. [1959 c 236 § 23.]

53.34.910 Chapter controls inconsistent acts. Insofar as the provisions of this chapter are inconsistent with the provisions of any other act or of any city charter, the provisions of this chapter shall be controlling. [1959 c 236 § 24.]

Chapter 53.35 BUDGETS

Sections	
53.35.010	Preliminary budget.
53.35.020	Publication of notice of preliminary budget and hearing.
53.35.030	Hearing—Final budget.
53.35.040	Final budget to be filed with county commissioners.
53.35.045	Alternate date for filing final budget.
53.35.050	Supplemental budgets.
53.35.060	Fiscal year.
53.35.070	Chapter exclusive method for budgets.
53.35.071	Expenditures for industrial development, trade promotion or promotional hosting—Budgeting required.
53.35.900	Severability—1959 c 159.

53.35.010 Preliminary budget. On or before the 15th day of September of each year each port commission shall prepare a preliminary budget of the port district

for the ensuing fiscal year showing the estimated expenditures and the anticipated available funds from which all expenditures are to be paid. [1959 c 159 § 1.]

53.35.020 Publication of notice of preliminary budget and hearing. Following the preparation of the preliminary budget, the port commission shall publish a notice stating that the preliminary budget of the port district has been prepared and placed on file at the office of the port district; that a copy thereof may be obtained by any taxpayer at an address set forth in the notice; that the commission will meet at a date, hour and place set forth in the notice, such date to be not earlier than September 15th and not later than the first Tuesday following the first Monday in October, for the purpose of fixing and adopting the final budget of the port district for the ensuing year. The notice shall be published once each week for two consecutive weeks in a legal newspaper of the district, or if there is none, in any newspaper of general circulation in the county, the first publication to be not less than nine days nor more than twenty days prior to the date of the hearing. [1959 c 159 § 2.]

53.35.030 Hearing—Final budget. On the day set by the notice provided for in RCW 53.35.020 the commission shall meet at the place and hour designated for the purpose of a hearing on the budget and adoption of a final budget. Any person may present objections to the preliminary budget following which the commission shall, by resolution adopt a final budget. [1959 c 159 § 3.]

53.35.040 Final budget to be filed with county commissioners. It shall be the duty of the commissioners of port districts, for the purpose of levying port district taxes, to file with the clerk of the board of county commissioners on or before the Wednesday next following the first Monday in October in each year a certified copy of such final budget which shall specify the amounts to be raised by taxation on the assessed valuation of the property in the port district. [1959 c 159 § 4.]

53.35.045 Alternate date for filing final budget. Notwithstanding any provision of law to the contrary, the board of commissioners of a port district may file with the clerk of the county legislative authority a certified copy of the port district final budget, provided for in RCW 53.35.040, on the first Monday in December. The board of port commissioners may also set other dates relating to the budget process, including but not limited to the dates set in RCW 53.35.010 and 53.35.020 to conform to the alternate date for final budget filing. [1974 ex.s. c 19 § 1.]

53.35.050 Supplemental budgets. A port commission may adopt by resolution one or more supplemental budgets at any time during the fiscal year. Such supplemental budget shall be adopted only after public hearing. Notice of such hearing shall be given by a single publication of notice of the date, place and hour of the hearing in a legal newspaper of the district, or if there is

none, in any newspaper of general circulation in the county, the publication of such notice to be at least five days and not more than fifteen days prior to the hearing date. [1959 c 159 § 5.]

53.35.060 Fiscal year. The fiscal year for a port district shall be the calendar year. [1959 c 159 § 6.]

53.35.070 Chapter exclusive method for budgets. The provisions of this chapter shall constitute the exclusive requirement and authority for the preparation, adoption, certification and filing of port district budgets. [1959 c 159 § 7.]

53.35.071 Expenditures for industrial development, trade promotion or promotional hosting—Budgeting required. See RCW 53.36.120.

53.35.900 Severability—1959 c 159. Should any section or parts of sections of this chapter be declared unconstitutional it shall in no case affect the validity of other provisions of this chapter. [1959 c 159 § 8.]

Chapter 53.36 FINANCES

Sections

53.36.010	District treasurer.
53.36.020	Tax levy—Limitation.
53.36.030	Indebtedness—Limitation.
53.36.040	Funds in anticipation of revenues—Warrants.
53.36.050	County treasurer—General and special funds— Depositories—Investment of excess funds.
53.36.060	Incidental expense fund.
53.36.070	Levy for dredging, canal construction, or land leveling or filling purposes.
53.36.080	Collection of levies for dredging, canal construction, or land leveling or filling purposes.
53.36.100	Levy for industrial development district purposes— Notice—Petition—Election.
53.36.110	Levy for industrial development district purposes— Excess funds to be used solely for retirement of gen- eral obligations.
53.36.120	Expenditures for industrial development, trade promo- tion, or promotional hosting—Budgeting required.
53.36.130	Expenditures for industrial development, trade promo- tion, or promotional hosting—Source and amount of funds.
53.36.140	Expenditures for industrial development, trade promo- tion, or promotional hosting—Rules and regula- tions—Authorizations—Vouchers.
53.36.150	Expenditures for industrial development, trade promo- tion, or promotional hosting—Duties of state auditor.

*Accounting system and state examination: RCW 43.09.190 through
43.09.280.*

*Disposition of rentals from waterways located within a port district:
RCW 79.93.040.*

Tax district relief: Chapter 39.64 RCW.

Vouchers on public funds: Chapter 42.24 RCW.

53.36.010 District treasurer. The treasurer of the county in which a port district is located shall be treasurer of the district unless the commission of a port district which has for the last three consecutive years received annual gross operating revenues of one hundred

thousand dollars or more, excluding tax revenues and grants for capital purposes, designates by resolution some other person having experience in financial or fiscal matters as treasurer of the port district to act with the same powers and under the same restrictions as provided by law for a county treasurer acting on behalf of a port district: *Provided*, That any port district which was authorized by the county treasurer to appoint its own treasurer prior to July 24, 1983, may continue to appoint its own treasurer. The commission may, and if the treasurer is not the county treasurer it shall, require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on such bonds shall be paid by the district. All district funds shall be paid to the treasurer and shall be disbursed by him upon warrants signed by a port auditor appointed by the port commission, upon vouchers approved by the commission. [1983 c 250 § 1; 1974 ex.s. c 13 § 1; 1955 c 348 § 5. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Severability—1955 c 348: See note following RCW 53.08.120.
County treasurer, calling warrants: RCW 36.29.060.

53.36.020 Tax levy—Limitation. A district may raise revenue by levy of an annual tax not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district for general port purposes, including the establishment of a capital improvement fund for future capital improvements, except that any levy for the payment of the principal and interest of the general bonded indebtedness of the port district shall be in excess of any levy made by the port district under the forty-five cents per thousand dollars of assessed value limitation. The levy shall be made and taxes collected in the manner provided for the levy and collection of taxes in school districts of the first class. [1973 1st ex.s. c 195 § 56; 1955 c 65 § 11. Prior: 1951 c 133 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Budgets: Chapter 53.35 RCW.

Levy of taxes: Chapter 84.52 RCW.

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59); RCW 84.52.050 through 84.52.056.

School district levy: Chapter 28A.44 RCW.

53.36.030 Indebtedness—Limitation. A district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor not exceeding an amount, together with any existing indebtedness of the district not authorized by the voters, of one-fourth of one percent of the value of the taxable property in the district; and, with the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, may contract indebtedness or borrow money for district

purposes and may issue general obligation bonds therefor provided the total indebtedness of the district at any such time shall not exceed three-fourths of one percent of the value of the taxable property in the district: *Provided further*, That port districts having less than two hundred million dollars in value of taxable property and operating a municipal airport may at any time contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor not exceeding an additional one-eighth of one percent of the value of the taxable property in the district without authorization by the voters; and, with the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, may contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor for an additional three-eighths of one percent provided the total indebtedness of the district for all port purposes at any such time shall not exceed one and one-fourth percent of the value of the taxable property in the district. Any district may issue general district bonds evidencing any indebtedness, payable at any time not exceeding fifty years from the date of the bonds. Such elections shall be held as provided in RCW 39.36.050.

The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015.

Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 41; 1970 ex.s. c 42 § 32; 1965 ex.s. c 54 § 1; 1959 c 52 § 1; 1955 c 65 § 12. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Elections to authorize port district bonds: Chapter 39.40 RCW.

General provisions applicable to district bonds: Chapter 39.44 RCW.

Limitation upon indebtedness: State Constitution Art. 8 § 6 (Amendment 27); Chapter 39.36 RCW.

Port district indebtedness authorized, emergency public works: RCW 39.28.030.

53.36.040 Funds in anticipation of revenues—Warrants. (1) Any port commission is hereby authorized, prior to the receipt of taxes raised by levy, to borrow money or issue the warrants of the district in anticipation of the revenues to be derived by such district and such warrants shall be redeemed from the first money available from such taxes when collected. Such warrants may be in any form, including bearer warrants or registered warrants as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 136; 1921 c 179 § 2; 1911 c 92 § 12; RRS § 9699.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

53.36.050 County treasurer—General and special funds—Depositories—Investment of excess funds.

The county treasurer acting as port treasurer shall create a fund to be known as the "Port of ----- Fund," into which shall be paid all money received by him from the collection of taxes in behalf of such port district, and shall also maintain such other special funds as may be created by the port commission into which shall be placed such moneys as the port commission may by its resolution direct. All such port funds shall be deposited with the county depositories under the same restrictions, contracts and security as is provided by statute for county depositories and all interest collected on such port funds shall belong to such port district and shall be deposited to its credit in the proper port funds: *Provided*, That any portion of such port moneys determined by the port commission to be in excess of the current needs of the port district may be invested in certificates, notes, bonds, or other obligations of the United States of America, or any agency or instrumentality thereof, and all interest collected thereon shall likewise belong to such port district and shall be deposited to its credit in the proper port funds. [1959 c 52 § 2; 1921 c 179 § 3; 1911 c 92 § 13; RRS § 9700.]

County depositories: Chapter 36.48 RCW.

53.36.060 Incidental expense fund. The port commission of any port district may, by resolution, create an incidental expense fund in such amount as the port commission may direct. Such incidental expense fund may be kept and maintained in a bank or banks designated in the resolution creating the fund, and such depository shall be required to give bonds or securities to the port district for the protection of such incidental expense fund, in the full amount of the fund authorized by the said resolution. Vouchers shall be drawn to reimburse said incidental expense fund and such vouchers shall be approved by the port commission. Transient labor, freight, express, cartage, postage, petty supplies, and minor expenses of the port district may be paid from said incidental expense fund and all such disbursements therefrom shall be by check of the port auditor or such other officer as the port commission shall by resolution direct. All expenditures from said incidental expense fund shall be covered by vouchers drawn by the port auditor and approved by the manager or such other officer of the port district as the port commission may by resolution direct. The officer disbursing said fund shall be required to give bond to the port district in the full authorized amount of the said incidental expense fund for the faithful performance of his duties in connection with the disbursement of moneys from such fund. [1933 c 189 § 16; RRS § 9699-1.]

53.36.070 Levy for dredging, canal construction, or land leveling or filling purposes. Any port district organized under the laws of this state shall, in addition to the powers otherwise provided by law, have the power to raise revenue by the levy and collection of an annual tax on all taxable property within such port district of not to exceed forty-five cents per thousand dollars of assessed

value against the assessed valuation of the taxable property in such port district, for dredging, canal construction, or land leveling or filling purposes, the proceeds of any such levy to be used exclusively for such dredging, canal construction, or land leveling and filling purposes: *Provided*, That no such levy for dredging, canal construction, or land leveling or filling purposes under the provisions of RCW 53.36.070 and 53.36.080 shall be made unless and until the question of authorizing the making of such additional levy shall have been submitted to a vote of the electors of the district in the manner provided by law for the submission of the question of making additional levies in school districts of the first class at an election held under the provisions of RCW 29.13.020 and shall have been authorized by a majority of the electors voting thereon. [1983 c 3 § 162; 1973 1st ex.s. c 195 § 57; 1965 ex.s. c 22 § 1; 1925 c 29 § 1; RRS § 9692-1.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

53.36.080 Collection of levies for dredging, canal construction, or land leveling or filling purposes. Whenever such additional levy for dredging, canal construction, or land leveling or filling purposes shall have been authorized by the electors of the district at an election, held subsequent to the time of making the levy for the district for general purposes, in any year, such levy shall be certified by the port commission in the manner provided by law for certifying levies for general purposes of the district, and shall be forthwith spread and extended upon the tax rolls for the current year, and the taxes so levied and extended shall be collected in the manner provided by law for the collection of general taxes. [1965 ex.s. c 22 § 2; 1925 c 29 § 2; RRS § 9692-2.]

Collection of taxes, generally: Chapter 84.56 RCW.

53.36.100 Levy for industrial development district purposes—Notice—Petition—Election. A port district having adopted a comprehensive scheme of harbor improvements and industrial developments may thereafter raise revenue, for twelve years only, in addition to all other revenues now authorized by law, by an annual levy not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district. Said levy shall be used exclusively for the exercise of the powers granted to port districts under chapter 53.25 RCW except as provided in RCW 53.36.110. The levy of such taxes is herein authorized notwithstanding the provisions of RCW 84.52.050 and 84.52.043. The revenues derived from levies made under RCW 53.36.100 and 53.36.110 not expended in the year in which the levies are made may be paid into a fund for future use in carrying out the powers granted under chapter 53.25 RCW, which fund may be accumulated and carried over from year to year, with the right to continue to levy the taxes provided for in RCW 53.36.100 and 53.36.110 for the purposes herein authorized.

If a port district intends to levy a tax under this section for one or more years after the first six years authorized in this section, the port commission shall publish notice of this intention, in one or more newspapers of general circulation within the district, by June 1 of the year in which the first levy of the seventh through twelfth year period is to be made. If within ninety days of the date of publication a petition is filed with the county auditor containing the signatures of eight percent of the number of voters registered and voting in the port district for the office of the governor at the last preceding gubernatorial election, the county auditor shall canvass the signatures in the same manner as prescribed in RCW 29.79.200 and certify their sufficiency to the port commission within two weeks. The proposition to make these levies in the seventh through twelfth year period shall be submitted to the voters of the port district at a special election, called for this purpose, no later than the date on which a primary election would be held under RCW 29.13.070. The levies may be made in the seventh through twelfth year period only if approved by a majority of the voters of the port district voting on the proposition. [1982 1st ex.s. c 3 § 1; 1979 c 76 § 1; 1973 1st ex.s c 195 § 58; 1957 c 265 § 1.]

Effective date—1982 1st ex.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982." [1982 1st ex.s. c 3 § 3.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Levy by port district under RCW 53.36.100—Application of chapter 84.55 RCW: RCW 84.55.045.

53.36.110 Levy for industrial development district purposes—Excess funds to be used solely for retirement of general obligations. In the event the levy herein authorized shall produce revenue in excess of the requirements to complete the projects of a port district then provided for in its comprehensive scheme of harbor improvements and industrial developments or amendments thereto, said excess shall be used solely for the retirement of general obligation bonded indebtedness. [1957 c 265 § 2.]

53.36.120 Expenditures for industrial development, trade promotion, or promotional hosting—Budgeting required. Under the authority of Article VIII, section 8, of the state Constitution, port district expenditures for industrial development, trade promotion or promotional hosting shall be pursuant to specific budget items as approved by the port commission at the annual public hearings on the port district budget. [1967 c 136 § 1.]

53.36.130 Expenditures for industrial development, trade promotion, or promotional hosting—Source and amount of funds. Funds for promotional hosting expenditures shall be expended only from gross operating revenues and shall not exceed one percent thereof upon the first two million five hundred thousand dollars of such gross operating revenues, one-half of one percent upon the next two million five hundred thousand dollars of

such gross operating revenues, and one-fourth of one percent on the excess over five million dollars of such operating revenues: *Provided, however,* That in no case shall these limitations restrict a port district to less than twenty-five hundred dollars per year from any funds available to the port. [1967 c 136 § 2.]

53.36.140 Expenditures for industrial development, trade promotion, or promotional hosting—Rules and regulations—Authorizations—Vouchers. Port commissions shall adopt, in writing, rules and regulations governing promotional hosting expenditures by port employees or agents. Such rules shall identify officials and agents authorized to make such expenditures and the approved objectives of such spending. Port commissioners shall not personally make such expenditures, or seek reimbursement therefor, except where specific authorization of such expenditures has been approved by the port commission. All payments and reimbursements shall be identified and supported on vouchers approved by the port auditor. [1967 c 136 § 3.]

53.36.150 Expenditures for industrial development, trade promotion, or promotional hosting—Duties of state auditor. The state auditor shall, as provided in chapter 43.09 RCW:

(1) Audit expenditures made pursuant to RCW 53.36.120 through 53.36.150; and

(2) Promulgate appropriate rules and definitions as a part of the uniform system of accounts for port districts to carry out the intent of RCW 53.36.120 through 53.36.150: *Provided,* That such accounts shall continue to include "gross operating revenues" which shall be exclusive of revenues derived from any property tax levy except as provided in RCW 53.36.130. [1967 c 136 § 4.]

Chapter 53.40

REVENUE BONDS AND WARRANTS

Sections	
53.40.010	Revenue bonds authorized.
53.40.020	Purposes for which bonds may be issued and sold.
53.40.030	Bonds—Term, form, etc.
53.40.040	Bonds payable solely out of revenues—Special funds.
53.40.050	Sale of bonds to federal government.
53.40.110	Interest, signatures, sale of bonds—Covenants—Safeguards—Enforcement.
53.40.120	Irregularity in bonds or use of funds no defense.
53.40.125	District may mortgage industrial development facility.
53.40.130	Funding, refunding bonds.
53.40.135	Revenue warrants.
53.40.140	Construction of chapter.
53.40.150	Validation—1959 c 183.

53.40.010 Revenue bonds authorized. The port commission of any port district is authorized for the purpose of carrying out the lawful powers granted port districts by the laws of the state to contract indebtedness and to issue revenue bonds evidencing such indebtedness in conformity with this chapter. [1959 c 183 § 1; 1957 c 59 § 1; 1949 c 122 § 1; Rem. Supp. 1949 § 9711-1.]

Declaratory judgments of local bond issues: Chapter 7.25 RCW.

53.40.020 Purposes for which bonds may be issued and sold. All such revenue bonds authorized under the terms of this chapter may be issued and sold by the port district from time to time and in such amounts as is deemed necessary by the port commission to provide sufficient funds for the carrying out of all port district powers, and without limiting the generality thereof, shall include the following: Acquisition, construction, reconstruction, maintenance, repair, additions and operation of port properties and facilities, including in the cost thereof engineering, inspection, accounting, fiscal and legal expenses; the cost of issuance of bonds, including printing, engraving and advertising and other similar expenses; payment of interest on the outstanding bonds issued for any project during the period of actual construction and for six months after the completion thereof, and the proceeds of such bond issue are hereby made available for all such purposes. "Port property and facilities," as used in this section, includes facilities for the freezing or processing of agricultural products. [1987 c 289 § 2; 1959 c 183 § 2; 1957 c 59 § 3. Prior: 1949 c 122 § 2, part; Rem. Supp. 1949 § 9711-2, part.]

53.40.030 Bonds—Term, form, etc. (1) The port commission shall determine the form, conditions, and denominations of all such bonds, the maturity date or dates which the bonds so sold shall bear, and the interest rate or rates thereon. It shall not be necessary that all bonds of the same authorized issue bear the same interest rate or rates. Principal and interest of the bonds shall be payable at such place or places as may be fixed and determined by the port commission. The bonds may contain provisions for registration thereof as to principal only or as to both principal and interest as provided in RCW 39.46.030. The bonds shall have interest payable at such time or times as may be determined by the port commission and in such amounts as it may prescribe. The port commission may provide for retirement of bonds issued under this chapter at any time or times prior to their maturity, and in such manner and upon the payment of such premiums as may be fixed and determined by resolution of the port commission.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 137; 1970 ex.s. c 56 § 73; 1969 ex.s. c 232 § 37; 1959 c 183 § 3; 1957 c 59 § 4. Prior: 1949 c 122 § 2, part; Rem. Supp. 1949 § 9711-2, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Bonds—Form, terms of sale, payment, etc.: Chapter 39.44 RCW.

53.40.040 Bonds payable solely out of revenues—Special funds. Bonds issued under the provisions of this chapter shall be payable solely out of operating revenues of the port district. Such bonds shall be authorized by resolution adopted by the port commission, which resolution shall create a special fund or funds into which the

port commission may obligate and bind the port district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the gross revenue of the port district for the purpose of paying the principal of and interest on such bonds as the same shall become due, and if deemed necessary to maintain adequate reserves therefor. Such fund or funds shall be drawn upon solely for the purpose of paying the principal and interest upon the bonds issued pursuant to this chapter.

The bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, even though they shall be payable solely from such special fund or funds, and the tax revenue of the port district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. The bonds and any coupons attached thereto shall state upon their face that they are payable solely from such special fund or funds. If the port commission fails to set aside and pay into such fund or funds the payments provided for in such resolution, the owner of any such bonds may bring suit to compel compliance with the provisions of the resolution. [1983 c 167 § 138; 1959 c 183 § 4; 1957 c 59 § 5; 1949 c 122 § 4; Rem. Supp. 1949 § 9711-4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Negotiable instruments—Uniform Commercial Code: Title 62A RCW.

53.40.050 Sale of bonds to federal government. Port districts may, but are not required by the terms of this chapter to do so, sell any or all such bonds issued pursuant to this chapter to the federal government, or any agency of the federal government, at private sale and without the necessity of public advertisement or calling for bids. [1959 c 183 § 5; 1957 c 59 § 6; 1949 c 122 § 3; Rem. Supp. 1949 § 9711-3.]

Bonds sold to government at private sale: Chapter 39.48 RCW.

53.40.110 Interest, signatures, sale of bonds—Covenants—Safeguards—Enforcement. (1) The bonds issued pursuant to the provisions of this chapter shall bear interest at such rate or rates as authorized by the port commission; shall be signed on behalf of the port district by the president of the port commission and shall be attested by the secretary of the port commission, one of which signatures may be a facsimile signature, and shall have the seal of the port district impressed thereon; any interest coupons attached thereto shall be signed by the facsimile signatures of said officials. Such bonds shall be sold in the manner and at such price as the port commission shall deem best, either at public or private sale.

The port commission may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on such bonds and may but shall not be required to include covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing the payment of such principal and interest; to establish,

maintain, and collect tariffs, rates, charges, fees, rentals, and sales prices on facilities and services the income of which is pledged for the payment of such bonds, sufficient to pay or secure the payment of such principal and interest and to maintain an adequate coverage over annual debt service; and to make any and all other covenants not inconsistent with the provisions of this chapter which will increase the marketability of such bonds. The port commission may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. The provisions of this chapter and any resolution or resolutions providing for the authorization, issuance, and sale of such bonds shall constitute a contract with the owners of such bonds, and the provisions thereof shall be enforceable by any owner of such bonds by mandamus or any appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 139; 1970 ex.s. c 56 § 74; 1969 ex.s. c 232 § 38; 1959 c 183 § 6; 1949 c 122 § 9; Rem. Supp. 1949 § 9711-8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Mandamus: Chapter 7.16 RCW.

53.40.120 Irregularity in bonds or use of funds no defense. The Reconstruction Finance Corporation, or any other agency of the United States government making any such loan, or any other holder or owner of any bonds issued pursuant to this chapter, shall not be required to see to the application of the moneys derived from such bonds to the purposes for which the bonds are issued as specified in any resolution authorizing the issuance thereof. No defense of invalidity, or irregularity in any such bonds funded or refunded by the issuance of bonds hereunder, shall be a valid defense in any action at law or equity for a judgment upon or for the enforcement or collection of any bonds issued pursuant to this chapter, and no court shall have jurisdiction to entertain any such defense in any such action or proceeding. [1957 c 59 § 10. Prior: 1949 c 122 § 7, part; Rem. Supp. 1949 § 9711-6, part.]

53.40.125 District may mortgage industrial development facility. The port commission of any port district, as security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, may mortgage, pledge, or otherwise encumber the particular industrial development facility or facilities or any part or parts thereof that are being financed by the revenue bonds, whether then owned or thereafter acquired, and may assign any mortgage and repledge any security conveyed to the port district for that particular facility or facilities. [1987 c 289 § 1.]

53.40.130 Funding, refunding bonds. (1) The port commission of any port district may by resolution, from time to time, provide for the issuance of funding or refunding revenue bonds to fund or refund any outstanding revenue warrants, bonds, and any premiums and interest due thereon at or before the maturity of such warrants or bonds, and may combine various outstanding revenue warrants and parts or all of various series and issues of outstanding revenue bonds and any matured coupons in the amount thereof to be funded or refunded.

The port commission shall create a special fund for the sole purpose of paying the principal of and interest on such funding or refunding revenue bonds, into which fund the commission shall obligate and bind the port district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the gross revenue of the port district sufficient to pay such principal and interest as the same shall become due, and if deemed necessary to maintain adequate reserves therefor.

Such funding or refunding bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, and the tax revenue of the port district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The port district may exchange such funding or refunding bonds for the warrants, bonds, and any coupons being funded or refunded, or it may sell such funding or refunding bonds in the manner, at such rate or rates of interest and at such price as the port commission shall deem to be for the best interest of the district and its inhabitants, either at public or private sale.

The provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 140; 1970 ex.s. c 56 § 75; 1969 ex.s. c 232 § 39; 1959 c 183 § 7; 1949 c 122 § 8; Rem. Supp. 1949 § 9711-7.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.40.135 Revenue warrants. Port districts may also issue revenue warrants for the same purposes for which they may issue revenue bonds, and the provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such revenue warrants. [1959 c 183 § 8.]

53.40.140 Construction of chapter. This chapter shall be complete authority for the issuance of the bonds

and warrants hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations relative to the issuance of such bonds or warrants contained in any other act shall not apply to the bonds or warrants issued under this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1949 c 122 § 10; Rem. Supp. 1949 § 9711-9.]

53.40.150 Validation—1959 c 183. Any sale of revenue bonds or warrants of port districts heretofore made, whether at public or private sale and whether at par or less than par as authorized herein, and any terms, conditions, and covenants of any revenue bonds or warrants of port districts heretofore issued, are hereby declared to be valid, legal, and binding in all respects: *Provided, however,* That this section shall not be construed to exonerate any officer or agent of any such district from any liability for any acts which were committed fraudulently or in bad faith. [1959 c 183 § 9.]

Chapter 53.44

FUNDING AND REFUNDING INDEBTEDNESS— 1947 ACT

Sections

53.44.010	Funding and refunding authorized.
53.44.030	Maturities—Payment.

Funding and refunding revenue bonds: RCW 53.40.130.

Public bonds, form, terms of sale, payment, etc.: Chapter 39.44 RCW.

53.44.010 Funding and refunding authorized. The board of commissioners of any port district of the state may fund or refund any of the general bonded indebtedness and/or warrants of the district now or hereafter existing and accrued interest thereon, and may combine various series and/or issues of warrants and/or bonds into a single issue of funding or refunding bonds, by the issuance of general obligation funding or refunding bonds, when the board, by resolution, finds, determines, and declares that such proposed funding or refunding will inure to the benefit and credit of the district and will not result in an increase of the district's indebtedness or in an increase in the rate of interest borne by the indebtedness so funded or refunded. Such funding or refunding may be accomplished by the sale of said funding or refunding bonds or by their exchange for the bonds and/or warrants to be refunded. General obligation bonds of a port district which do not provide for prior redemption, may also be refunded with the consent of the holders thereof. Such bonds shall be issued in accordance with chapter 39.46 RCW. [1984 c 186 § 42; 1947 c 239 § 1; Rem. Supp. 1947 § 5623-1.]

Purpose—1984 c 186: See note following RCW 39.46.110.

53.44.030 Maturities—Payment. Such funding or refunding bonds shall run for a period of not exceeding twenty years from date thereof. The board may apply to

the payment of the funding or refunding bonds and to the prior redemption thereof any other moneys or funds belonging to the district which are legally available for such purpose. [1984 c 186 § 43; 1947 c 239 § 3; Rem. Supp. 1947 § 5623-3.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Chapter 53.46 CONSOLIDATION

Sections

53.46.005	Definitions.
53.46.010	Consolidation authorized—Petition or resolution, contents.
53.46.020	Special election, conduct—Declaration of candidacy, filing and withdrawal—Ballots.
53.46.030	Certification of election—Establishment as municipal corporation—Commissioners, terms.
53.46.040	Prior obligations—Powers of consolidated district—Separation of funds.
53.46.050	County commissioners may act if no active port commission.
53.46.060	Dissolution of district which has no active commission—Authority of county commissioners.
53.46.070	Title to property vests in consolidated district.
53.46.080	District including area from two or more counties—Procedure to determine proportion of taxes.
53.46.090	District including area from two or more counties—Levy and collection of taxes—Principal county treasurer, duties.
53.46.100	General powers of consolidated district—Debt limitation.

53.46.005 Definitions. As used in this chapter the term "principal county auditor" and "principal county treasurer" shall be the county auditor or county treasurer in the county having the largest assessed valuation of the total of the proposed consolidated port district. [1965 c 102 § 1.]

53.46.010 Consolidation authorized—Petition or resolution, contents. Two or more port districts may be joined into one consolidated port district in the following manner: The port commissioners of each of the port districts proposed to be consolidated may, or on petition of ten percent of the qualified electors residing within each of the districts proposed to be consolidated based on the total vote cast in the last general election, shall, by joint resolution submit to the qualified electors of the port districts to be consolidated the proposition of consolidating such districts into one port district. Such resolution or petition in request thereof shall identify each port district to be consolidated, listing its assets and liabilities; state the name by which the port district resulting from the consolidation shall be known; legally describe each port commissioner district to be created within the port district resulting from the consolidation; state the terms and conditions, if any, under which the consolidation is proposed; and call a special election in the territory of the port districts to be consolidated, to determine whether such consolidation shall take place, and to fill the offices of the port commission of the port district resulting from the consolidation. The resolution or petition

shall provide that the commission in the proposed district shall consist of three, five, or seven commissioners and that the number shall be approved by the voters at the time the proposition for consolidation is voted upon. The proposition in this respect shall provide that the commissioners shall be elected one each from commissioner districts which shall be described as set forth in this section, or if such districts are not so described then the commissioners shall be elected at large. [1965 c 102 § 2; 1961 c 26 § 1.]

53.46.020 Special election, conduct—Declaration of candidacy, filing and withdrawal—Ballots. The special election to consider such consolidation and to fill such offices shall be conducted in accordance with the general election laws of the state. Each candidate for the port commission of the port district resulting from the consolidation shall, not more than forty-five nor less than thirty days prior to the election, file with the county auditor a declaration of candidacy for port commissioner from the port commissioner district in which he is a qualified voter. If the proposed consolidated district will lie in two or more counties, candidates shall file with the principal county auditor. The principal county auditor in such case shall be election officer, and the county auditors of other counties having area within such proposed port district shall cooperate by providing such books and records and assisting as may be required in carrying out such election and all subsequent elections in any such consolidated port district. Any candidate may withdraw his declaration at any time within five days after the last day allowed for filing declaration of candidacy. There shall be no fee charged for filing a declaration of candidacy for port commissioner at this election. All names of candidates to be voted upon shall be printed upon the ballot alphabetically by port commissioner districts. Names of candidates printed upon the ballot need not be rotated. [1965 c 102 § 3; 1961 c 26 § 2.]

53.46.030 Certification of election—Establishment as municipal corporation—Commissioners, terms. The county canvassing board of election returns shall certify the results of the election to the board of county commissioners; and if at such election a majority of voters voting on the question of consolidation in each port district to be consolidated shall vote in favor of consolidation, the board of county commissioners shall so declare, and the port district resulting from the consolidation shall then be and become a municipal corporation of the state of Washington. The county auditor shall in such event issue a certificate of election to the successful candidate from each port commissioner district. If the proposed district includes area in two or more counties, certificates of election shall be issued by the principal county auditor, and the canvassing board of elections shall be made up of the chairmen of the board of county commissioners, prosecutors, and the auditors of each county with area within the consolidated port district. Of the successful port commissioner candidates, if three are elected, the one receiving the highest number of votes

shall serve until his successor is elected and qualified at the third subsequent regular election for port commissioner, and the ones receiving the second and third highest numbers of votes shall serve until their successors are elected and qualified at the second and first subsequent regular elections for port commissioner, respectively. If five or seven commissioners are elected, the two with the greatest number of votes shall serve until their successors are elected and qualified at the third subsequent regular election of port commissioners, the two commissioners receiving the next highest number of votes shall serve until their successors are elected and qualified at the second subsequent regular election of port commissioners; and the remaining commissioner or commissioners shall serve until their successors are elected and qualified at the next regular election of port commissioners. [1965 c 102 § 4; 1961 c 26 § 3.]

53.46.040 Prior obligations—Powers of consolidated district—Separation of funds. None of the obligations of each port district which has been consolidated shall be affected by the consolidation, and taxes and assessments for payment of such obligations shall continue to be levied and collected in respect to property in such former port district notwithstanding the consolidation. The port commission of the port district resulting from the consolidation shall have all the powers possessed at the time of the consolidation by the port commission of each port district which has been consolidated, to levy or collect taxes or assessments in respect to property in such former port district, for payment of such obligations. While any such obligations remain outstanding, funds subject to such obligations shall be kept separate. [1961 c 26 § 4.]

53.46.050 County commissioners may act if no active port commission. In the event a port district does not have an active port commission to which the petition for consolidation may be directed, the board of county commissioners of the county wherein such inactive port district is located may act in the place and stead of the port commission for the purposes of consolidation. [1961 c 26 § 5.]

53.46.060 Dissolution of district which has no active commission—Authority of county commissioners. For the purpose of dissolution of any port district not having an active port commission the board of county commissioners of the county wherein such inactive port district is located may exercise the powers and duties vested by chapter 53.48 RCW in the governing body of such port district. [1961 c 26 § 6.]

53.46.070 Title to property vests in consolidated district. Upon consolidation of two or more port districts the title to all property owned by or held in trust for the former districts shall vest in the consolidated port district. [1965 c 102 § 5.]

53.46.080 District including area from two or more counties—Procedure to determine proportion of taxes.

If the district includes area from two or more counties, it shall be the duty of the county assessor in each county to certify annually to the auditor of his county, who shall forward the same to the principal county auditor, the total assessed valuation of that part of the port district which lies within his county. The port commission of such consolidated port district shall certify to the principal county auditor the budget and the levies to be assessed for port purposes: *Provided*, That the amount of tax to be levied upon taxable property of that part of a port district lying in one county shall be in such ratio to the whole amount levied upon the property lying in the entire consolidated port district as the assessed valuation lying in such county bears to the assessed valuation of the property in the entire consolidated port district.

Thereafter the principal county auditor shall forward a certificate to each county auditor, for the county commissioners thereof, which shall specify the proportion of taxes to be levied for port district purposes. [1965 c 102 § 6.]

53.46.090 District including area from two or more counties—Levy and collection of taxes—Principal county treasurer, duties. Upon receipt of the certificate from the principal county auditor as provided in RCW 53.46.080 it shall be the duty of the board of county commissioners of each county to levy on all taxable property of the consolidated port district which lies within the county a tax sufficient to raise the amount necessary to meet the county's proportionate share of the total tax levy. Such taxes shall be levied and collected in the same manner as other taxes are levied and collected. The proceeds shall be forwarded quarterly by the treasurer of each county to the principal county treasurer. The principal county treasurer shall place to the credit of said consolidated port district all funds received from the other county treasurers as well as those amounts he shall have collected for the account of the port district. The principal county treasurer shall be the treasurer of the consolidated port district and shall perform all functions required of a treasurer of a port district. [1965 c 102 § 7.]

53.46.100 General powers of consolidated district—Debt limitation. Any port district created by consolidation prior to June 10, 1965, or formed hereafter under *this amendatory act, shall have all the powers of a newly formed port district, without any other restriction except the requirements of RCW 53.46.040: *Provided*, That general obligation indebtedness outstanding for all port purposes within the area of the consolidated port shall not exceed the limits of RCW 53.36.030, and for purpose of computing such bonded debt, the bonds outstanding of all port agencies shall be considered. [1965 c 102 § 8.]

*Reviser's note: This amendatory act [1965 c 102] consisted of amendments to RCW 53.46.010, 53.46.020, and 53.46.030 and the enactment of RCW 53.46.005, 53.46.070, 53.46.080, 53.46.090, and 53.46.100.

Chapter 53.47

DISSOLUTION OF INACTIVE PORT DISTRICTS

Sections	
53.47.010	Purpose.
53.47.020	Port district deemed inactive, when.
53.47.030	Petition for dissolution—Filing—Contents.
53.47.040	Hearing on petition—Notice, publication—Creditor claims, determination—Terms and conditions of court order if district to be dissolved.
53.47.050	Effect of final order of dissolution.
53.47.900	Chapter cumulative and nonexclusive.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

53.47.010 Purpose. This chapter shall provide an additional method by which inactive port districts may be dissolved. [1971 ex.s. c 162 § 1.]

53.47.020 Port district deemed inactive, when. A port district shall be deemed inactive if, at the time of the filing of the petition for dissolution with the clerk of the superior court of the county in which such port district is situated, such port has failed to comply with subdivision (1), (2), or (3) of this section.

(1) The port district has failed to file its budget with the board of county commissioners or, in the case of home rule charters, the appropriate governing body for the two fiscal years immediately preceding the date of filing such petition, and the port district, having been in existence for two years or more, has failed to adopt its comprehensive plan of harbor improvement and/or industrial development as provided by statute, and does not presently own or has not leased within two years prior to the filing of such petition, real property for use for port purposes.

(2) The port district does not presently own or has not leased or owned real property for use for port purposes within the four calendar years prior to the filing of such petition.

(3) The port district has not filed its budget with the board of county commissioners or, in the case of home rule charters, the appropriate governing body for the two fiscal years immediately preceding the filing of said petition has not adopted its comprehensive plan of harbor improvement and/or industrial development as provided by statute, and has not met with a legal quorum at least twice in the last two calendar years prior to the filing of such petition. [1971 ex.s. c 162 § 2.]

53.47.030 Petition for dissolution—Filing—Contents. The county prosecutor of the county in which such port district is located acting upon his own motion shall file such petition for dissolution with the clerk of the superior court of the county in which such inactive port district is located. Such petition shall:

(1) Describe with certainty the port district which is declared to be inactive and which is sought to be dissolved;

(2) Allege with particularity that the port district sought to be dissolved is inactive within the purview of any of the several particulars set forth in RCW 53.47.020; and

(3) Request that the court find the port district inactive and declare it dissolved upon such terms and conditions as the court may impose and declare. [1971 ex.s. c 162 § 3.]

53.47.040 Hearing on petition—Notice, publication—Creditor claims, determination—Terms and conditions of court order if district to be dissolved. The superior court, upon the filing of such petition, shall set such petition for hearing not less than one hundred twenty days and not more than one hundred eighty days after the date of filing said petition. Further, the court shall order the clerk of said court to give notice of the time and place fixed for the hearing by publication of notice in a newspaper of general circulation within such district, such publication to be once each week for three consecutive weeks, the date of first publication to be not less than thirty nor more than seventy days prior to the date fixed for the hearing upon such petition. Said notice shall further provide that all creditors of said district, including holders of revenue or general obligation bonds issued by said district, if any, shall present their claims to the clerk of said court within ninety days from the date of first publication of said notice, and that upon failure to do so all such claims will be forever barred. The clerk shall also mail a copy by ordinary mail of such notice to all creditors of said district, including holders of revenue or general obligation bonds issued by said district, if any, such mailing to be mailed not later than thirty days after the hearing date has been set. No other or further notices shall be required at any stage of the proceedings for dissolution of an inactive port district pursuant to this chapter.

The clerk, ten days prior to the date set for the hearing, shall deliver to the court the following:

(1) A list of the liabilities of the port district in detail with the names and addresses of creditors as then known; and

(2) A list of the assets of the port district in detail as then known.

The court upon hearing the petition shall fix and determine all such claims subject to proof being properly filed as provided in this section; shall fix and determine the financial condition of the district as to its assets and liabilities, and if it finds the port district to be inactive in respect of any standard of inactivity set forth by this chapter, shall order the port district to be dissolved upon the following terms and conditions:

(1) If there be no outstanding debts, or if the debts be less than the existing assets, the court shall appoint the auditor of the county in which the port district is located to be trustee of the port's assets and shall empower such person to wind up and liquidate the affairs of such district in such manner as the court shall provide and to file his accounting with the court within ninety days from the date of his appointment. Upon the filing of such account, the court shall fix a date for hearing upon the same and upon approval thereof, if such accounting be the final accounting, shall enter its order approving the same and declaring the port district dissolved.

At the request of the trustee the county sheriff may sell, at public auction, all real and personal property of the port district. The county sheriff shall cause a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale. Such notice shall contain a description of the property to be sold and shall be signed by the sheriff or his deputy. Such notice shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The sheriff or his deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. The moneys arising from such sale shall be turned over to the county auditor acting as trustee: *Provided, however,* That the sheriff shall first deduct the costs and expenses of the sale from the moneys and shall apply such moneys to pay said costs and expenses.

The court order shall provide that the assets remaining in the hands of the trustee shall be transferred to any school district, districts, or portions of districts, lying within the dissolved port district boundaries. The transfer of assets shall be prorated to the districts based on the assessed valuation of said districts.

(2) If the debts exceed the assets of the port district, then the court shall appoint the auditor of the county in which a port district is located to be trustee of the port's assets for the purpose of conserving the same and of paying liability of the port district as funds become available therefor. The trustee shall be empowered to generally manage, wind up, and liquidate the affairs of such district in such manner as the court shall provide and to file his accounting with the court within ninety days from the date of his appointment and as often thereafter as the court shall provide. The board of county commissioners, acting as pro tempore port district commissioners under the authority of RCW 53.36-.020 shall levy an annual tax not exceeding forty-five cents per thousand dollars of assessed value or such lesser amount as may previously have been voted by the taxpayers within said district, together with an amount deemed necessary for payment of the costs and expenses attendant upon the dissolution of said district, upon all the taxable property within said district, the amount of such levy to be determined from time to time by the court. When, as shown by the final accounting of the trustee, all of the indebtedness of the district shall have been satisfied, the cost and expense of the proceeding paid or provided for, and the affairs of the district wound up, the court shall declare the district dissolved: *Provided,* That if the indebtedness be composed in whole or in part of bonded debt for which a regular program of retirement has been provided, then the board of county commissioners shall be directed by the court to continue to make such annual levies as are required for the purpose of debt service upon said bonded debt. [1973 1st ex.s. c 195 § 59; 1971 ex.s. c 162 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

53.47.050 Effect of final order of dissolution. Upon the entry of the final order of dissolution declaring the port district dissolved all offices of the port district shall be deemed abolished, and no other or further levy shall be certified by the county commissioners except pursuant to the directive of the court as hereinabove provided. [1971 ex.s. c 162 § 5.]

53.47.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1971 ex.s. c 162 § 6.]

Chapter 53.48

DISSOLUTION OF PORT AND OTHER DISTRICTS

Sections

53.48.001	Dissolution of certain districts subject to review by boundary review board.
53.48.010	Definitions.
53.48.020	Petition.
53.48.030	Order for hearing—Notice.
53.48.040	Order of dissolution—Sale of assets.
53.48.050	Payment of debts and costs—Balance to school district.
53.48.060	Insolvency—Second hearing.
53.48.070	Notice of second hearing.
53.48.080	Sale of property—Levy to pay deficit.
53.48.090	Order of dissolution or refusal.
53.48.120	Provision for costs and expenses.
53.48.140	Dissolution of district which has no active commission—Powers of county commissioners.

Dissolution of

air pollution control authorities: RCW 70.94.260.
cemetery districts: RCW 68.52.320.
depopulated school districts: RCW 28A.57.200.
fire protection districts, election method: RCW 52.10.010.
flood control districts: 1937 act—RCW 86.09.622, 86.09.625.
inactive special purpose districts: Chapter 36.96 RCW.
irrigation districts: Chapters 87.52, 87.53, 87.56 RCW.
metropolitan park districts: RCW 35.61.310.
sewer districts: RCW 56.04.090.
soil conservation districts: RCW 89.08.350 through 89.08.380.
water districts, election method: RCW 57.04.090, 57.04.100 and chapter 53.48 RCW.

53.48.001 Dissolution of certain districts subject to review by boundary review board. The dissolution of a metropolitan park district, fire protection district, sewer district, water district, or flood control zone district under chapter 53.48 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 46.]

53.48.010 Definitions. The following words and terms shall, whenever used in this chapter, have the meaning set forth in this section:

(1) The term "district" as used herein, shall include all municipal and quasi municipal corporations having a governing body, other than cities, towns, counties, and townships, such as port, school, water, fire protection, and all other districts of similar organization, but shall not include local improvement districts, diking, drainage and irrigation districts, special districts as defined in RCW 85.38.010, nor public utility districts.

(2) The words "board of commissioners," as used herein, shall mean the governing authority of any district as defined in subdivision (1) of this section. [1986 c 278 § 17; 1979 ex.s. c 30 § 10; 1941 c 87 § 1; Rem. Supp. 1941 § 8931–11.]

Severability—1986 c 278: See note following RCW 36.01.010.

Purpose—1941 c 87: "This act is intended to authorize the dissolution of all types of municipal corporations having governing bodies, other than those excepted from the application of this act, in cases where the occasion or reason for continued existence of such corporation has ceased, or where the best interests of all persons concerned would be served by such dissolution, and shall be liberally construed to effect such intent." [1941 c 87 § 12.]

Severability—1941 c 87: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1941 c 87 § 11.]

53.48.020 Petition. For the purpose of dissolution of a district, a petition for an order of dissolution signed by the majority of the board of commissioners, or other governing authority of such district shall be presented to the superior court of the county in which the board of commissioners is situated. [1941 c 87 § 2; Rem. Supp. 1941 § 8931–12.]

53.48.030 Order for hearing—Notice. Upon the filing of such petition for an order of dissolution, the superior court shall enter an order setting the same for hearing at a date not less than thirty days from the date of filing, and the clerk of the court of said county shall give notice of such hearing by publication in a newspaper of general circulation in the county in which the district is located once a week for three successive weeks, and by posting in three public places in the county in which the district is located at least twenty-one days before said hearing. At least one notice shall be posted in the district. The notices shall set forth the filing of the petition, its purpose and the date and place of the hearing thereon. [1941 c 87 § 3; Rem. Supp. 1941 § 8931–13.]

53.48.040 Order of dissolution—Sale of assets. After said hearing the court shall enter its order dissolving or refusing to dissolve said district. A finding that the best interests of all persons concerned will be served by the proposed dissolution shall be essential to an order of dissolution. If the court find that such district is solvent, the court shall order the sale of such assets, other than cash, by the sheriff of the county in which the board is situated, in the manner provided by law for the sale of property on execution. [1941 c 87 § 4; Rem. Supp. 1941 § 8931–14.]

Execution: Chapter 6.17 RCW.

53.48.050 Payment of debts and costs—Balance to school district. The proceeds of the sale, together with moneys on hand in the treasury of the district, shall after payment of all costs and expenses, be paid to the treasurer of the same county and placed to the credit of

the school district, or districts, in which such district is situated. [1941 c 87 § 5; Rem. Supp. 1941 § 8931-15.]

Port districts in counties of sixth class—Disposition of funds: Chapter 53.49 RCW.

53.48.060 Insolvency—Second hearing. Upon a finding of insolvency the court shall then determine the indebtedness of the district, the creditors thereof and their claims. The court shall then set a date and a place for a second hearing, which hearing shall be not less than sixty days nor more than one hundred twenty days from the hearing as provided in RCW 53.48.030.

The purpose of such hearing shall be to determine ways and means of retiring the established indebtedness of the district and paying all costs and expenses of proceedings hereunder. Such ways and means may include the levy of assessments against the property in the district as provided in RCW 53.48.080. [1941 c 87 § 6; Rem. Supp. 1941 § 8931-16.]

53.48.070 Notice of second hearing. The clerk shall give notice of the second hearing by publication in a newspaper of general circulation in the county in which the district is located once a week for three successive weeks, and by posting in three public places in the county in which the district is located at least twenty-one days before the hearing, and shall give such other notice to creditors and other interested parties as the court may deem necessary or advisable. At least one notice shall be posted in the district. The notices shall set forth the filing of the petition, its purpose, the finding of the court on the petition, the date and place of the second hearing and the purpose of the hearing as stated in RCW 53.48.060. [1941 c 87 § 7; Rem. Supp. 1941 § 8931-17.]

53.48.080 Sale of property—Levy to pay deficit. At the second hearing the court shall have authority to order the sale of any district property. If the proceeds of such sale together with any cash remaining on hand to the credit of the district are insufficient to retire such indebtedness together with all costs and expenses, the court shall have authority to order the board of commissioners to levy assessments in the manner provided by law against the property in the district in amounts sufficient to retire said indebtedness and pay the costs and expenses. At such hearing any property owner within the district may appear and be heard for or against such levy. [1941 c 87 § 8; Rem. Supp. 1941 § 8931-18.]

53.48.090 Order of dissolution or refusal. After the indebtedness of the district has been settled or paid, the court shall determine whether the best interests of all persons concerned will be served by the proposed dissolution and shall make a finding thereon. The court shall then enter its order dissolving or refusing to dissolve said district. [1941 c 87 § 9; Rem. Supp. 1941 § 8931-19.]

53.48.120 Provision for costs and expenses. In all proceedings brought under this chapter the court shall make provision for the costs and expenses of proceedings

hereunder and for the payment of the same. [1941 c 87 § 10; Rem. Supp. 1941 § 8931-20.]

53.48.140 Dissolution of district which has no active commission—Powers of county commissioners. See RCW 53.46.060.

Chapter 53.49

DISPOSITION OF FUNDS ON DISSOLUTION OF CERTAIN DISTRICTS

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| 53.49.010 | Port districts in counties of sixth class—Disposition of funds. |
| 53.49.020 | Port districts in counties of sixth class—Order to transfer funds. |

53.49.010 Port districts in counties of sixth class—Disposition of funds. Whenever any port district located in any county of the sixth class shall be dissolved and disestablished or is about to be dissolved and disestablished and any sums of money remain in any of its funds, the port commissioners are authorized and directed to apply by petition, which may be filed without fee, to the superior court of such county for an order authorizing the transfer of such funds to the school district fund or if there be more than one such district, the school district funds of all districts, which are located within the boundaries of such port district. [1943 c 282 § 1; Rem. Supp. 1943 § 9718-10. Formerly RCW 53.48.100.]

53.49.020 Port districts in counties of sixth class—Order to transfer funds. The superior court of any such county shall enter his order authorizing such transfer of funds if he is satisfied, after hearing the petition therefor, that the port district is dissolved and disestablished or is about to be dissolved and disestablished and that no obligations of the port district remain unpaid. The court shall equitably divide such sums of money between school districts if there be more than one district involved. [1943 c 282 § 2; Rem. Supp. 1943 § 9718-11. Formerly RCW 53.48.110.]

Chapter 53.54

AIRCRAFT NOISE ABATEMENT

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| 53.54.010 | Programs for abatement of aircraft noise authorized. |
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53.54.010 Programs for abatement of aircraft noise authorized. A port district operating an airport serving more than twenty scheduled jet aircraft flights per day may undertake any of the programs or combinations of such programs, as authorized by this chapter, for the

purpose of alleviating and abating the impact of jet aircraft noise on areas surrounding such airport. [1974 ex.s. c 121 § 1.]

53.54.020 Investigation and monitoring of noise impact—Programs to conform to needs—"Impacted areas". Prior to initiating programs as authorized in this chapter, the port commission shall undertake the investigation and monitoring of aircraft noise impact to determine the nature and extent of the impact. The port commission shall adopt a program of noise impact abatement based upon the investigations and as amended periodically to conform to needs demonstrated by the monitoring programs: *Provided*, That in no case may the port district undertake any of the programs of this chapter in an area which is more than six miles beyond the paved end of any runway or more than one mile from the centerline of any runway or from an imaginary runway centerline extending six miles from the paved end of such runway. Such areas as determined above, shall be known as "impacted areas". [1984 c 193 § 1; 1979 c 85 § 1; 1974 ex.s. c 121 § 2.]

53.54.030 Authorized programs—When property deemed within impacted area. For the purposes of this chapter, in developing a remedial program, the port commission may utilize one or more of the following programs:

(1) Acquisition of property or property rights within the impacted area, which shall be deemed necessary to accomplish a port purpose. The port district may purchase such property or property rights by time payment notwithstanding the time limitations provided for in RCW 53.08.010. The port district may mortgage or otherwise pledge any such properties acquired to secure such transactions. The port district may assume any outstanding mortgages.

(2) Transaction assistance programs, including assistance with real estate fees and mortgage assistance, and other neighborhood remedial programs as compensation for impacts due to aircraft noise and noise associated conditions. Any such programs shall be in connection with properties located within an impacted area and shall be provided upon terms and conditions as the port district shall determine appropriate.

(3) Programs of soundproofing structures located within an impacted area. Such programs may be executed without regard to the ownership, provided the owner waives all damages and conveys a full and unrestricted easement for the operation of all aircraft, and for all noise and noise associated conditions therewith, to the port district.

(4) Mortgage insurance of private owners of lands or improvements within such noise impacted area where such private owners are unable to obtain mortgage insurance solely because of noise impact. In this regard, the port district may establish reasonable regulations and may impose reasonable conditions and charges upon the granting of such mortgage insurance: *Provided*, That

such fees and charges shall at no time exceed fees established for federal mortgage insurance programs for like service.

(5) An individual property may be provided benefits by the port district under each of the programs described in subsections (1) through (4) of this section. However, an individual property may not be provided benefits under any one of these programs more than once.

(6) Management of all lands, easements, or development rights acquired, including but not limited to the following:

(a) Rental of any or all lands or structures acquired;

(b) Redevelopment of any such lands for any economic use consistent with airport operations, local zoning and the state environmental policy;

(c) Sale of such properties for cash or for time payment and subjection of such property to mortgage or other security transaction: *Provided*, That any such sale shall reserve to the port district by covenant an unconditional right of easement for the operation of all aircraft and for all noise or noise conditions associated therewith.

(7) A property shall be considered within the impacted area if any part thereof is within the impacted area. [1985 c 115 § 1; 1974 ex.s. c 121 § 3.]

53.54.040 Fund authorized—Sources. A port district may establish a fund to be utilized in effectuating the intent of this chapter. The port district may finance such fund by: The proceeds of any grants or loans made by federal agencies; rentals, charges and other revenues as may be generated by programs authorized by this chapter, airport revenues; and revenue bonds based upon such revenues. The port district may also finance such fund, as necessary, in whole or in part, with the proceeds of general obligation bond issues of not more than one-eighth of one percent of the value of taxable property in the port district: *Provided*, That any such bond issue shall be in addition to bonds authorized by RCW 53.36-.030: *Provided further*, That any such general obligation bond issue may be subject to referendum by petition as provided by county charter, the same as if it were a county ordinance. [1974 ex.s. c 121 § 4.]

53.54.900 Liberal construction—Powers additional. The rule of strict construction shall have no application to this chapter, which shall be liberally construed to carry out the purposes and objects for which this chapter is intended. The powers granted in this chapter shall be in addition to all others granted to port districts. [1974 ex.s. c 121 § 5.]

53.54.910 Severability—1974 ex.s. c 121. If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1974 ex.s. c 121 § 7.]

Title 54

PUBLIC UTILITY DISTRICTS

Chapters

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- 54.12** Commissioners.
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Utility poles, unlawful to attach object to: RCW 70.54.090 and 70.54.100.

54.04.010 Definitions. As used in this title "revenue obligation" or "revenue obligations" mean and include bonds, notes, warrants, certificates of indebtedness, or any other evidences of indebtedness issued by a district which, by the terms thereof, shall be payable from the revenues of its public utilities. [1959 c 218 § 14.]

"Wholesale power" defined: RCW 54.04.100.

54.04.020 Districts authorized. Municipal corporations, to be known as public utility districts, are hereby authorized for the purposes of *this act and may be established within the limits of the state of Washington, as provided herein. [1931 c 1 § 2; RRS § 11606.]

*Reviser's note: This act [1931 c 1] is codified as RCW 54.04.020, 54.04.030, 54.04.060, 54.04.070, 54.04.080, 54.04.090, 54.08.010, 54.12.010, 54.12.080, 54.12.090, 54.16.010 through 54.16.090, 54.16.100 through 54.16.160, 54.16.170, 54.16.180, 54.16.190, 54.24.010, 54.24.018, and 54.32.010.

Purpose—1931 c 1: "The purpose of this act is to authorize the establishment of public utility districts to conserve the water and power resources of the State of Washington for the benefit of the people thereof, and to supply public utility service, including water and electricity for all uses." [1931 c 1 § 1.]

Severability—Construction—1931 c 1: "Adjudication of invalidity of any section, clause or part of a section of this act shall not

Chapter 54.04

GENERAL PROVISIONS

Sections

- 54.04.010 Definitions.
- 54.04.020 Districts authorized.
- 54.04.030 Restrictions on invading other municipalities.
- 54.04.035 Annexation of territory.
- 54.04.037 Annexation of territory—Coordination among county officials.
- 54.04.040 Utilities within a city or town—Restrictions.
- 54.04.050 Group employee insurance—Annuities—Retirement income policies.
- 54.04.055 Employee benefits—District may continue to pay premiums after employee retires.
- 54.04.060 District elections.

impair or otherwise affect the validity of the act as a whole or any other part thereof.

The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended.

When this act comes in conflict with any provision, limitation or restriction in any other law, this act shall govern and control." [1931 c 1 § 11.]

54.04.030 Restrictions on invading other municipalities. *This act shall not be deemed or construed to repeal or affect any existing act, or any part thereof, relating to the construction, operation and maintenance of public utilities by irrigation or water districts or other municipal corporations, but shall be supplemental thereto and concurrent therewith. No public utility district created hereunder shall include therein any municipal corporation, or any part thereof, where such municipal corporation already owns or operates all the utilities herein authorized: *Provided*, that in case it does not own or operate all such utilities it may be included within such public utility district for the purpose of establishing or operating therein such utilities as it does not own or operate: *Provided, further*, That no property situated within any irrigation or water districts or other municipal corporations shall ever be taxed or assessed to pay for any utility, or part thereof, of like character to any utility, owned or operated by such irrigation or water districts or other municipal corporations. [1931 c 1 § 12; RRS § 11616.]

*Reviser's note: "This act," see note following RCW 54.04.020.

Irrigation districts: Title 87 RCW.

Municipal utilities: RCW 80.04.500, 81.04.490 and chapter 35.92 RCW.

Water districts: Title 57 RCW.

54.04.035 Annexation of territory. In addition to other powers authorized in Title 54 RCW, public utility districts may annex territory as provided in this section.

The boundaries of a public utility district may be enlarged and new contiguous territory added pursuant to the procedures for annexation by cities and towns provided in RCW 35.13.015 through 35.13.110. The provisions of these sections concerning community municipal corporations, review boards, and comprehensive plans, however, do not apply to public utility district annexations. For purposes of conforming with such procedures, the public utility district is deemed to be the city or town and the board of commissioners is deemed to be the city or town legislative body.

Annexation procedures provided in this section may only be used to annex territory that is both: (1) Contiguous to the annexing public utility district; and (2) located within the service area of the annexing public utility district. As used in this section, a public utility district's "service area" means those areas whether located within or outside of the annexing public utility district's boundaries that were generally served with electrical energy by the annexing public utility district on January 1, 1987. Such service area may, or may not, have been recognized in an agreement made under chapter 54.48 RCW, but no area may be included within such service area that was generally served with

electrical energy on January 1, 1987, by another public utility as defined in RCW 54.48.010. An area proposed to be annexed may be located in the same or a different county as the annexing public utility district.

If an area proposed to be annexed is located within the boundaries of another public utility district, annexation may be initiated only upon petition of registered voters residing in the area in accordance with RCW 35.13.020 and adoption by the boards of commissioners of both districts of identical resolutions stating (a) the boundaries of the area to be annexed, (b) a determination that annexation is in the public interest of the residents of the area to be annexed as well as the public interest of their respective districts, (c) approval of annexation by the board, (d) the boundaries of the districts after annexation, (e) the disposition of any assets of the districts in the area to be annexed, (f) the obligations to be assumed by the annexing district, (g) apportionment of election costs, and (h) that voters in the area to be annexed will be advised of lawsuits that may impose liability on the annexed territory and the possible impact of annexation on taxes and utility rates.

If annexation is approved, the area annexed shall cease to be a part of the one public utility district at the same time that it becomes a part of the other district. The annexing public utility district shall assume responsibility for providing the area annexed with the services provided by the other public utility district in the area annexed. [1987 c 292 § 2; 1983 c 101 § 1.]

Consolidation and annexation: Chapter 54.32 RCW.

54.04.037 Annexation of territory—Coordination among county officials. When territory has been added to a public utility district in accordance with RCW 54.04.035, the supervisor of elections and other officers of the county in which the public utility district first operated shall coordinate elections, the levy and collection of taxes, and other necessary duties with the appropriate county officials of the other county. [1987 c 292 § 3.]

54.04.040 Utilities within a city or town—Restrictions. A district shall not construct any property to be utilized by it in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale, on the streets, alleys, or public places within a city or town without the consent of the governing body of the city or town and approval of the plan and location of the construction, which shall be made under such reasonable terms as the city or town may impose. All such properties shall be maintained and operated subject to such regulations as the city or town may prescribe under its police power. [1957 c 278 § 9. Prior: (i) 1941 c 245 § 3a; Rem. Supp. 1941 § 11616-4. (ii) 1941 c 245 § 1, part; Rem. Supp. 1941 § 11616-1.]

54.04.050 Group employee insurance—Annuities—Retirement income policies. (1) Any public utility district engaged in the operation of electric or water utilities may enter into contracts of group insurance for the benefit of its employees, and pay all or any part of the premiums for such insurance. Such premiums shall

be paid out of the revenues derived from the operation of such properties: *Provided*, That if the premium is to be paid by the district and employees jointly, and the benefits of the policy are offered to all eligible employees, not less than seventy-five percent of such employees may be so insured.

(2) A public utility district whose employees or officials are not members of the state retirement system engaged in the operation of electric or water utilities may contract for individual annuity contracts, retirement income policies or group annuity contracts, including prior service, to provide a retirement plan, or any one or more of them, and pay all or any part of the premiums therefor out of the revenue derived from the operation of its properties. [1984 c 15 § 1; 1959 c 233 § 1; 1941 c 245 § 8; Rem. Supp. 1941 § 11616-6.]

Severability—1941 c 245: "If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid." [1941 c 245 § 11.]

Group insurance: Chapters 48.21 and 48.24 RCW.

54.04.055 Employee benefits—District may continue to pay premiums after employee retires. Any public utility district which provides for the coverage of any of its employees under any plan for individual annuity contracts, retirement income policies, group annuity contracts, group insurance for the benefit of its employees, or any other contract for the benefit of its employees, and pays all or any part of the premiums or other payments required therefor, is hereby authorized to continue to make such payments for such employees after their retirement from employment. Such payments agreed to by the public utility district shall be considered as deferred compensation. Such payments shall not be retroactive but shall only be available for those employees employed on or after August 6, 1965 provided that such payments for retired employees shall not exceed those being paid for regular employees. [1965 ex.s. c 149 § 1.]

54.04.060 District elections. The supervisor of elections or other proper officer of the county shall give notice of all elections held under this title, for the time and in the manner and form provided for city, town, school district, and port district elections. When the supervisor or other officer deems an emergency exists, and is requested so to do by a resolution of the district commission, he may call a special election at any time in the district, and he may combine or divide precincts for the purpose of holding special elections, and special elections shall be conducted and notice thereof given in the manner provided by law.

The supervisor or other officer shall provide polling places, appoint the election officers, provide their compensation, provide ballot boxes, and ballots or voting machines, poll books and tally sheets, and deliver them to the election officers at the polling places, publish and post notices of the elections in the manner provided by law, and apportion to the district its share of the expense of the election.

The manner of conducting and voting at the elections, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as for the election of state and county officers, except as otherwise provided herein.

The district commission shall certify to the supervisor a list of offices to be filled at a district election and the commission, if it desires to submit to the voters of the district a proposition, shall require the secretary of the commission to certify it at the time and in the manner and form provided for certifying propositions by the governing board of cities, towns, and port districts. [1951 c 207 § 1; 1941 c 245 § 5; 1931 c 1 § 5; RRS § 11609.]

Certification of measures: RCW 29.27.060.

Notice of election: RCW 29.27.080.

54.04.070 Contracts for work or materials—Notice—Emergency purchases. Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of five thousand dollars, exclusive of sales tax shall be by contract: *Provided*, That a district may make purchases of the same kind of items of materials, equipment and supplies not exceeding five thousand dollars in any calendar month without a contract, purchasing any excess thereof over five thousand dollars by contract. Any work ordered by a district commission, the estimated cost of which is in excess of ten thousand dollars exclusive of sales tax, shall be by contract, except that a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. Prudent utility management means performing work with regularly employed personnel utilizing material of a worth not exceeding thirty thousand dollars in value without a contract: *Provided*, That such limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment purchased or acquired and used as one unit of a project. Before awarding such a contract, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least twenty days before the letting of the contract, inviting sealed proposals for the work or materials; plans and specifications of which shall at the time of the publication be on file at the office of the district subject to public inspection: *Provided*, That any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the

sworn affidavit of one member of the commission and may consider such price as a bid without a deposit or bond: *Provided*, That where an emergency arises endangering the public safety, or threatening property damage, the commission may purchase materials or order work performed by others in addition to regularly employed personnel in any amount necessary without calling for bids after having taken precautions to secure the lowest price practicable under the circumstances. [1971 ex.s. c 220 § 4; 1955 c 124 § 2. Prior: 1951 c 207 § 2; 1931 c 1 § 8, part; RRS § 11612, part.]

Contracts with state department of transportation: RCW 47.01.210.

Emergency public works: Chapter 39.28 RCW.

Prevailing wages on public works: Chapter 39.12 RCW.

Public purchase preferences: Chapter 39.24 RCW.

54.04.080 Bids—Deposit—Contract—

Bond—Definitions. Any notice inviting sealed bids shall state generally the work to be done, or the material to be purchased and shall call for proposals for furnishing it, to be sealed and filed with the commission on or before the time named therein. Each bid shall be accompanied by a certified or cashier's check, payable to the order of the commission, for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond unless he enters into a contract in accordance with his bid and furnishes the performance bond herein mentioned within ten days from the date on which he is notified that he is the successful bidder. At the time and place named, the bids shall be publicly opened and read, and the commission shall canvass the bids, and may let the contract to the lowest responsible bidder upon the plans and specifications on file, or to the best bidder submitting his own plans or specifications; or if the contract to be let is to construct or improve electrical facilities, the contract may be let to the lowest bidder prequalified according to the provisions of RCW 54.04.085 upon the plans and specifications on file, or to the best bidder submitting his own plans and specifications: *Provided*, That no contract shall be let for more than fifteen percent in excess of the estimated cost of the materials or work. The commission may reject all bids and readvertise, and in such case all checks shall be returned to the bidders. The commission may procure materials in the open market, have its own personnel perform the work or negotiate a contract for such work to be performed by others, in lieu of readvertising, if it receives no bid. If the contract is let, all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract is entered into and a bond to perform the work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of the contract price, in accordance with the bid. If the bidder fails to enter into the contract and furnish the bond within ten days from the date at which he is notified that he is the successful bidder, his

check and the amount thereof shall be forfeited to the district.

The commission shall, by resolution, define the term "same kind of materials, equipment, and supplies" with respect to purchase of items under the provisions of RCW 54.04.070.

The term "construction or improvement of any electrical facility" as used in this section and in RCW 54.04.085, shall mean the construction, the moving, maintenance, modification, or enlargement of facilities primarily used or to be used for the transmission or distribution of electricity at voltages above seven hundred fifty volts, including structures directly supporting transmission or distribution conductors but not including site preparation, housing, or protective fencing associated with but not included in a contract for such construction, moving, modification, maintenance, or enlargement of such facilities.

The commission shall be the final authority with regard to whether a bid is responsive to the call for bids and as to whether a bidder is a responsible bidder under the conditions of his bid. No award of contract shall be invalidated solely because of the failure of any prospective bidder to receive an invitation to bid. [1972 ex.s. c 41 § 1; 1971 ex.s. c 220 § 3; 1955 c 124 § 3. Prior: 1951 c 207 § 3; 1931 c 1 § 8, part; RRS § 11612, part.]

54.04.082 Alternative bid procedure—Telephone and/or written quotations of price. For the awarding of a contract to purchase any item, or items of the same kind of materials, equipment, or supplies in an amount exceeding five thousand dollars, but less than fifteen thousand dollars, exclusive of sales tax, the commission may, in lieu of the procedure described in RCW 54.04.070 and 54.04.080 requiring public notice to invite sealed proposals for such materials, equipment, or supplies, authorize by commission resolution a staff procedure for securing telephone and/or written quotations from enough vendors to assure establishment of a competitive price and for awarding such contracts for purchase of materials, equipment, or supplies to the lowest responsible bidder. Immediately after the award is made, the bid quotations obtained shall be recorded and shall be posted or otherwise made available at the office of the commission or any other officially designated location. Waiver of the deposit or bid bond required under RCW 54.04.080 may be authorized by the commission in securing such bid quotations. [1977 ex.s. c 116 § 1.]

54.04.085 Electrical facility construction or improvement—Bid proposals—Contract proposal forms—Conditions for issuance—Appeals. A district shall require that bid proposals upon any construction or improvement of any electrical facility shall be made upon contract proposal form supplied by the district commission, and in no other manner. The district commission shall, before furnishing any person, firm or corporation desiring to bid upon any electrical work with a contract proposal form, require from such person, firm or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including

a complete statement of the financial ability and experience of such person, firm, or corporation in performing electrical work. Such questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds, and shall be submitted once a year and at such other times as the district commission may require. Whenever the district commission is not satisfied with the sufficiency of the answers contained in such questionnaire and financial statement or whenever the district commission determines that such person, firm, or corporation does not meet all of the requirements hereinafter set forth it may refuse to furnish such person, firm or corporation with a contract proposal form and any bid proposal of such person, firm or corporation must be disregarded. In order to obtain a contract proposal form, a person, firm or corporation shall have all of the following requirements:

- (1) Adequate financial resources, or the ability to secure such resources;
- (2) The necessary experience, organization, and technical qualifications to perform the proposed contract;
- (3) The ability to comply with the required performance schedule taking into consideration all of its existing business commitments;
- (4) A satisfactory record of performance, integrity, judgment and skills; and
- (5) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Such refusal shall be conclusive unless appeal therefrom to the superior court of the county where the utility district is situated or Thurston county be taken within fifteen days, which appeal shall be heard summarily within ten days after the same is taken and on five days' notice thereof to the district commission. [1971 ex.s. c 220 § 2.]

54.04.090 Minimum wages. Each contractor and subcontractor performing work for a public utility district or a local utility district within a public utility district shall pay or cause to be paid to its employees on the work or under the contract or subcontract, not less than the minimum scale fixed by the resolution of the commission prior to the notice and call for bids on the work. The commission, in fixing the minimum scale of wages, shall fix them as nearly as possible to the current prevailing wages within the district for work of like character. [1955 c 124 § 4. Prior: 1931 c 1 § 8, part; RRS § 11612, part.]

Prevailing wages on public works: Chapter 39.12 RCW.

54.04.092 Application of RCW 54.04.070 through 54.04.090 to certain service provider agreements under chapter 70.150 RCW. RCW 54.04.070 through 54.04.090 shall not apply to agreements entered into under authority of chapter 70.150 RCW provided there is compliance with the procurement procedure under RCW 70.150.040. [1986 c 244 § 14.]

Severability—1986 c 244: See RCW 70.150.905.

54.04.100 Wholesale power—Procedure as to rate filing—Definition—Duty to furnish to district.

Whenever a decree of public use and necessity heretofore has been or hereafter shall be entered in condemnation proceedings conducted by a public utility district for the acquisition of electrical distribution properties, or whenever it has executed a contract for the purchase of such properties, the district may cause to be filed with the utilities and transportation commission a copy of such contract or a certified copy of the decree, together with a petition requesting that the commission cause a rate to be filed with it for the sale of wholesale power to the district. Thereupon the utilities and transportation commission shall order that a rate be filed with the commission forthwith for the sale of wholesale power to such district. The term "wholesale power" means electric energy sold for purposes of resale. The commission shall have authority to enter such order as to any public service corporation which owns or operates the electrical distribution properties being condemned or purchased or as to any such corporation which owns or operates transmission facilities within a reasonable distance of such distribution properties and which engages in the business of selling wholesale power, pursuant to contract or otherwise. The rate filed shall be for the period of service specified by the district, or if the district does not specify a particular period, such rate shall apply from the commencement of service until the district terminates same by thirty days' written notice.

Upon reasonable notice, any such public service corporation shall furnish wholesale power to any public utility district owning or operating electrical distribution properties. Whenever a public service corporation shall furnish wholesale power to a district and the charge or rate therefor is reviewed by the commission, such reasonable rate as the commission finally may fix shall apply as to power thereafter furnished and as to that previously furnished under such charge or rate from the time that the complaint concerning the same shall have been filed by the commission or the district, as the case may be. [1983 c 4 § 5; 1945 c 130 § 2; Rem. Supp. 1945 § 10459–12. Formerly RCW 54.04.010, 54.04.100 and 54.04.110.]

Purpose—1945 c 130: "The legislature has found that the public utility districts of this state, including several which at the present moment are completing the acquisition of electrical properties and the sale of revenue bonds, have immediate need for this act, in order to effectuate timely arrangements for their wholesale power requirements, clarify their condemnation procedure, and plan their operations." [1945 c 130 § 1.]

Severability—1945 c 130: "If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid." [1945 c 130 § 5.]

54.04.120 Planning powers. In order that the commissioners of a public utility district may be better able to plan for the marketing of power and for the development of resources pertaining thereto, they shall have the same powers as are vested in a board of county commissioners as provided in *chapter 44, Laws of 1935 (sections 9322–2 to 9322–4, both inclusive, and 9322–10 to 9322–11 inclusive, Remington's Revised Statutes, also Pierce's Perpetual Code 776–3 to –7, 776–19 and –21),

entitled: "An Act relating to city, town, county and regional planning and the creation, organization, duties and powers of planning commissions." For the purposes of such act, the president of a public utility district shall have the powers of the chairman of the board of county commissioners, and a planning commission created hereunder shall have the same powers, enumerated in the above sections, with reference to a public utility district as a county planning commission has with reference to a county. However, this section shall not be construed to grant the power to adopt, regulate, or enforce comprehensive plans, zoning, land use, or building codes. [1985 c 95 § 1; 1945 c 130 § 4; Rem. Supp. 1945 § 10459-14.]

*Reviser's note: The portions of chapter 44, Laws of 1935 compiled as RRS §§ 9322-2 to 9322-4 and 9322-10 to 9322-11 are codified in RCW 35.63.020 through 35.63.070.

Purpose—Severability—1945 c 130: See notes following RCW 54.04.100.

54.04.130 Employee benefit plans when private utility acquired—Rights, powers and duties as to existing private employee benefit plans. Whenever any municipal corporation acquires by condemnation or otherwise any utility which at the time of acquisition is in private ownership and the employees of such private utility have been for at least two years and are at the time of acquisition covered by any plan for individual annuity contracts, retirement income policies, group annuity contracts, group insurance for the benefit of employees, or any other contract for the benefit of employees, such district shall, when the personnel is retained by the district, assume all of the obligations and liabilities of the private utility acquired with relation to such plan and the employees covered thereby at the time of acquisition; or the municipal corporation may by agreement with a majority of the employees affected substitute a plan or contract of the same or like nature. The municipal corporations acquiring such private utility shall proceed in such manner as is necessary so as not to reduce or impair any benefits or privileges which such employees would have received or be entitled to had such acquisition not been effected. The district may pay all or any part of the premiums or other payments required therefor out of the revenue derived from the operation of its properties. [1961 c 139 § 1.]

54.04.140 Employee benefit plans when private utility acquired—Admission to district's employee plan—Service credit—Contributions—Benefits. Any person affected by RCW 54.04.130 who was employed by the private utility at the time of acquisition may, at his option, apply to the district and/or appropriate officers, for admission to any plan available to other employees of the district. Every such person who was covered at the time of acquisition by a plan with the private utility shall have added and accredited to his period of employment his period of immediately preceding continuous service with such private utility if he remains in the service of the municipal corporation until such plan for which he seeks admission becomes applicable to him.

No such person shall have added and accredited to his period of employment his period of service with said private utility unless he or a third party shall pay to the appropriate officer or fund of the plan to which he requests admission his contribution for the period of such service with the private utility at the rate provided in or for such plan to which he desires admission, or if he shall be entitled to any private benefits, as a result of such private service, unless he agrees at the time of his employment with the district to accept a reduction in the payment of any benefits payable under the plan to which he requests entry that are based in whole or in part on such added and accredited service by the amount of benefits received. For the purposes of contributions, the date of entry of service shall be deemed the date of entry into service with the private utility, which service is accredited by this section, and the amount of contributions for the period of accredited service shall be based on the wages or salary of such person during that added and accredited period of service with the private utility.

The district may receive such payments from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable it to assume its obligations.

After such contributions have been made and such service added and accredited such employee shall be established in the plan to which he seeks admission with all rights, benefits and privileges that he would have been entitled to had he been a member of the plan from the beginning of his immediately preceding continuous employment with the private utility or of his eligibility. [1961 c 139 § 2.]

54.04.150 Employee benefit plans when private utility acquired—Agreements and contracts—Prior rights preserved. The municipal corporation may enter into any agreements and contracts necessary to carry out the powers and duties prescribed by RCW 54.04.130 and 54.04.140, but nothing in RCW 54.04.130 through 54.04.160 shall be so construed as requiring without consent the modification of the obligation of any contract or as requiring any third party to modify the rights, privileges or obligations acquired or incurred under a prior agreement. [1961 c 139 § 3.]

54.04.160 Assumption of obligations of private pension plan when urban transportation system acquired. Any municipal corporation which has heretofore or shall hereafter acquire from a private owner any urban transportation system which at the time of such acquisition has or had in effect any pension or retirement system for its employees, shall assume all such obligations with respect to continued contributions to and/or administration of, such retirement system, as the private owner bore or shall bear at such time, insofar as shall be necessary to discharge accrued obligations under such retirement system to beneficiaries who are not thereafter made members of a municipal or state retirement system. [1961 c 139 § 4.]

54.04.170 Collective bargaining authorized for employees. Employees of public utility districts are hereby authorized and entitled to enter into collective bargaining relations with their employers with all the rights and privileges incident thereto as are accorded to similar employees in private industry. [1963 c 28 § 1.]

54.04.180 Collective bargaining authorized for districts. Any public utility district may enter into collective bargaining relations with its employees in the same manner that a private employer might do and may agree to be bound by the result of such collective bargaining. [1963 c 28 § 2.]

Chapter 54.08

FORMATION—DISSOLUTION—ELECTIONS

Sections

- 54.08.001 Actions subject to review by boundary review board.
- 54.08.010 Districts including entire county or less—Procedure.
- 54.08.041 Formation election expenses.
- 54.08.050 Validity of district, questioning of.
- 54.08.060 Special election for formation of district and first commissioners—Terms.
- 54.08.070 Construction or acquisition of electric facilities for generation, transmission, or distribution of power—When voter approval required—Election.
- 54.08.080 Dissolution.

54.08.001 Actions subject to review by boundary review board. Actions taken under chapter 54.08 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 47.]

54.08.010 Districts including entire county or less—Procedure. At any general election held in an even-numbered year, the county legislative authority of any county in this state may, or, on petition of ten percent of the qualified electors of the county based on the total vote cast in the last general county election held in an even-numbered year, shall, by resolution, submit to the voters of the county the proposition of creating a public utility district which shall be coextensive with the limits of the county as now or hereafter established. A form of petition for the creation of a public utility district shall be submitted to the county auditor within ten months prior to the election at which the proposition is to be submitted to the voters. Petitions shall be filed with the county auditor not less than four months before the election and the county auditor shall within thirty days examine the signatures thereof and certify to the sufficiency or insufficiency thereof. If the petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed the petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor: *Provided*, That each signature shall be dated and that no signature dated prior to the date on which the form of petition was

submitted to the county auditor shall be valid. Whenever the petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the county legislative authority which shall submit the proposition to the voters of the county at the next general election in an even-numbered year occurring forty-five days after submission of the proposition to the legislative authority. The notice of the election shall state the boundaries of the proposed public utility district and the object of such election, and shall in other respects conform to the requirements of the general laws of the state of Washington, governing the time and manner of holding elections. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot substantially in the following terms:

Public Utility District No. YES
Public Utility District No. NO

Any petition for the formation of a public utility district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed the county legislative authority shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when the petition will be heard. The publication, and all other publications required by *this act, shall be in a newspaper of general circulation in the county in which the district is situated. The hearing on the petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the county legislative authority shall find that any lands have been unjustly or improperly included within the proposed public utility district and will not be benefited by inclusion therein, it shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the public welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public utility district: *Provided*, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of those lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public utility district including an entire county, except that the petition and election shall be confined solely to the lesser public utility district.

No public utility district created after September 1, 1979, shall include any other public utility district within its boundaries: *Provided*, That this paragraph shall not alter, amend, or modify provisions of chapter 54.32 RCW. [1985 c 469 § 55; 1979 ex.s. c 240 § 1; 1977 c 53 § 1; 1931 c 1 § 3; RRS § 11607. Formerly RCW 54.08.010 and 54.08.020.]

***Reviser's note:** For translation of "this act," see note following RCW 54.04.020.

Elections: Title 29 RCW.

54.08.041 Formation election expenses. All expenses of elections for the formation of such public utility districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the public utility district, if formed. [1969 c 106 § 2.]

Construction—1969 c 106: "The rule of strict construction shall have no application to this act. The act shall be liberally construed, in order to carry out the purposes and objectives for which this act is intended." [1969 c 106 § 8.]

Severability—1969 c 106: "If any provision of this act, or its application to any person or circumstance, is held invalid, the remainder of this act, or the application to other persons or circumstances, is not affected." [1969 c 106 § 9.]

54.08.050 Validity of district, questioning of. The existence of any public utility district now or hereafter formed under *chapter 1, Laws of 1931, cannot hereafter be legally questioned by any person except the state of Washington in an appropriate court action brought within six months from the date that the county election board shall have canvassed the returns of the election held on the proposition of creating such district. If the existence of a district is not challenged within the period above specified, by the filing and service of petition or complaint in the action aforesaid, the state of Washington thereafter shall be barred forever from questioning the legal existence and validity of such district by reason of any defect in the organization thereof, and the same shall be deemed duly and regularly organized under the laws of this state. [1941 c 245 § 10; Rem. Supp. 1941 § 11616-7.]

*Reviser's note: For the codification of chapter 1, Laws of 1931, see note following RCW 54.04.020.

54.08.060 Special election for formation of district and first commissioners—Terms. Whenever a proposition for the formation of a public utility district is to be submitted to voters in any county, the county legislative authority may by resolution call a special election, and at the request of petitioners for the formation of such district contained in the petition shall do so and shall provide for holding the same at the earliest practicable time. If the boundaries of the proposed district embrace an area less than the entire county, such election shall be confined to the area so included. The notice of such election shall state the boundaries of the proposed district and the object of such election; in other respects, such election shall be held and called in the same manner as provided by law for the holding and calling of general elections: *Provided*, That notice thereof shall be given for not less than ten days nor more than thirty days prior to such special election. In submitting the said proposition to the voters for their approval or rejection, such proposition shall be expressed on the ballots in substantially the following terms:

Public Utility District No. YES
Public Utility District No. NO

At the same special election on the proposition to form a public utility district, there shall also be an election for three public utility district commissioners: *Provided*, That the election of such commissioners shall be null and void if the proposition to form the public utility district does not receive approval by a majority of the voters voting on the proposition. Nomination for and election of public utility district commissioners shall conform with the provisions of RCW 54.12.010 as now or hereafter amended, except for the day of such election and the term of office of the original commissioners. The commissioners first to be elected at such special election shall hold office from the first day of the month following the commissioners' election for the terms as specified in this section which terms shall be computed from the first day in January next following the election. If such special election was held in an even-numbered year, the commissioners residing in commissioner district number one shall hold office for the term of six years, the commissioner residing in commissioner district number two shall hold office for the term of four years, and the commissioner residing in commissioner district number three shall hold office for the term of two years. If such special election was held in an odd-numbered year, the commissioner residing in commissioner district number one shall hold office for the term of five years, the commissioner residing in commissioner district number two shall hold office for the term of three years, and the commissioner residing in commissioner district number three shall hold office for the term of one year.

The term "general election" as used herein means biennial general elections at which state and county officers are elected. [1979 ex.s. c 126 § 36; 1951 c 207 § 5.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).
Elections: Title 29 RCW.

54.08.070 Construction or acquisition of electric facilities for generation, transmission, or distribution of power—When voter approval required—Election. Any district which does not own or operate electric facilities for the generation, transmission or distribution of electric power on March 25, 1969, or any district which hereafter does not construct or acquire such electric facilities within ten years of its creation, shall not construct or acquire any such electric facilities without the approval of such proposal by the voters of such district: *Provided*, That a district shall have the power to construct or acquire electric facilities within ten years following its creation by action of its commission without voter approval of such action.

At any general election held in an even-numbered year, the proposal to construct or acquire electric facilities may be submitted to the voters of the district by resolution of the public utility district commission or shall be submitted to the voters of the district by the county legislative authority on petition of ten percent of the qualified electors of such district, based on the total vote cast in the last general county election held in an even-numbered year. A form of petition for the construction or acquisition of electric facilities by the public utility district shall be submitted to the county auditor

within ten months prior to the election at which such proposition is to be submitted to the voters. Petitions shall be filed with the county auditor not less than four months before such election and the county auditor shall within thirty days examine the signatures thereof and certify to the sufficiency or insufficiency thereof. If such petition is found to be insufficient, it shall be returned to the persons filing the same, who may amend and add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor: *Provided*, That each signature shall be dated and that no signature dated prior to the date on which the form of petition was submitted to the county auditor shall be valid. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the county legislative authority which shall submit such proposition to the voters of said district at the next general election in an even-numbered year occurring forty-five days after submission of the proposition to said legislative authority. The notice of the election shall state the object of such election, and shall in other respects conform to the requirements of the general laws of Washington, governing the time and manner of holding elections.

The proposal submitted to the voters for their approval or rejection, shall be expressed on the ballot substantially in the following terms:

Shall Public Utility District No. _____ of _____ County construct or acquire electric facilities for the generation, transmission or distribution of electric power?

Yes
 No

Within ten days after such election, the election board of the county shall canvass the returns, and if at such election a majority of the voters voting on such proposition shall vote in favor of such construction or acquisition of electric facilities, the district shall be authorized to construct or acquire electric facilities. [1979 ex.s. c 240 § 2; 1969 c 106 § 3.]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.08.080 Dissolution. Any district now or hereafter created under the laws of this state may be dissolved, as hereinafter provided, by a majority vote of the qualified electors of such district at any general election upon a resolution of the district commission, or upon petition being filed and such proposition for dissolution submitted to said electors in the same manner provided by chapter 54.08 RCW for the creation of public utility districts. The returns of the election on such proposition for dissolution shall be canvassed and the results declared in the same manner as is provided by RCW 54.08.010: *Provided, however*, That any such proposition to

dissolve a district shall not be submitted to the electors if within five years prior to the filing of such petition or resolution such district has undertaken any material studies or material action relating to the construction or acquisition of any utility properties or if such district at the time of the submission of such proposition is actually engaged in the operation of any utility properties.

If a majority of the votes cast at the election favor dissolution, the commission of the district shall petition, without any filing fee, the superior court of the county in which such district is located for an order authorizing the payment of all indebtedness of the district and directing the transfer of any surplus funds or property to the general fund of the county in which such district is organized. [1969 c 106 § 4.]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

**Chapter 54.12
 COMMISSIONERS**

Sections	
54.12.010	When district formed—Commissioners—Election—Terms—District boundaries change, etc.
54.12.080	Compensation and expenses—Waiver of compensation—Group insurance.
54.12.090	President—Secretary—Rules—Seal—Minutes.
54.12.100	Oath or affirmation.
54.12.110	Electrical utilities—Civil immunity of commissioners and employees for good faith mistakes and errors of judgment.

Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on, request for review of, certification, remand—Sanctions when review request frivolous: RCW 29.70.100.

54.12.010 When district formed—Commissioners—Election—Terms—District boundaries change, etc. Within ten days after such election, the county canvassing board shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the canvassing board shall so declare in its canvass of the returns of such election, and such public utility district shall then be and become a municipal corporation of the state of Washington, and the name of such public utility district shall be Public Utility District No. _____ of _____ County. The powers of the public utility district shall be exercised through a commission consisting of three members in three commissioner districts, and five members in five commissioner districts. When the public utility district is coextensive with the limits of such county, then, at the first election of commissioners and until any change shall have been made in the boundaries of public utility district commissioner districts, one public utility district commissioner shall be chosen from each of the three county commissioner districts of the county in which the public utility district is located if the county is not operating under a "Home Rule" charter. When the public utility district

comprises only a portion of the county, with boundaries established in accordance with chapter 54.08 RCW, or when the public utility district is located in a county operating under a "Home Rule" charter, three public utility district commissioner districts, numbered consecutively, having approximately equal population and boundaries, following ward and precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, which shall be subject to appropriate change by the county legislative authority if and when they change the boundaries of the proposed public utility district, and one commissioner shall be elected from each of said public utility district commissioner districts. In all five commissioner districts an additional commissioner at large shall be chosen from each of the two at large districts. No person shall be eligible to be elected to the office of public utility district commissioner for a particular district commissioner district unless he is a registered voter of the public utility district commissioner district or at large district from which he is elected.

Except as otherwise provided, the term of office of each public utility district commissioner other than the commissioners at large shall be six years, and the term of each commissioner at large shall be four years. Each term shall be computed in accordance with RCW 29.04.170 following the commissioner's election. One commissioner at large and one commissioner from a commissioner district shall be elected at each general election held in an even-numbered year for the term of four years and six years respectively. All candidates shall be voted upon by the entire public utility district.

When a public utility district is formed, three public utility district commissioners shall be elected at the same election at which the proposition is submitted to the voters as to whether such public utility district shall be formed. If the general election adopting the proposition to create the public utility district was held in an even-numbered year, the commissioner residing in commissioner district number one shall hold office for the term of six years; the commissioner residing in commissioner district number two shall hold office for the term of four years; and the commissioner residing in commissioner district number three shall hold office for the term of two years. If the general election adopting the proposition to create the public utility district was held in an odd-numbered year, the commissioner residing in commissioner district number one shall hold office for the term of five years, the commissioner in district two shall hold office for the term of three years, and the commissioner in district three shall hold office for the term of one year. The commissioners first to be elected as above provided shall hold office from the first day of the month following the commissioners' election and their respective terms of office shall be computed from the first day of January next following the election.

All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with

RCW 29.04.170. A filing for nomination for public utility district commissioner shall be accompanied by a petition signed by one hundred registered voters of the public utility district which shall be certified by the county auditor to contain the required number of registered voters, and shall otherwise be filed in accord with the requirements of RCW 29.21.060. At the time of filing such nominating petition, the person so nominated shall execute and file a declaration of candidacy subject to the provisions of RCW 29.21.060, as now or hereafter amended. The petition and each page of the petition shall state whether the nomination is for a commissioner from a particular commissioner district or for a commissioner at large and shall state the districts; otherwise it shall be void. A vacancy in the office of public utility district commissioner shall occur by death, resignation, removal, conviction of a felony, nonattendance at meetings of the public utility district commission for a period of sixty days unless excused by the public utility district commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. In the event of a vacancy in said office, such vacancy shall be filled at the next general election held in an even-numbered year, the vacancy in the interim to be filled by appointment by the remaining commissioners. If more than one vacancy exists at the same time in a three commissioner district, or more than two in a five commissioner district, a special election shall be called by the county canvassing board upon the request of the remainder, or, that failing, by the county election board, such election to be held not more than forty days after the occurring of such vacancies.

A majority of the persons holding the office of public utility district commissioner at any time shall constitute a quorum of the commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted, except in usual and ordinary course, unless there are in office at least a majority of the full number of commissioners fixed by law.

The boundaries of the public utility district commissioners' district may be changed only by the public utility district commission, and shall be examined every ten years to determine substantial equality of population, but said boundaries shall not be changed oftener than once in four years, and only when all members of the commission are present. Whenever territory is added to a public utility district under RCW 54.04.035, the boundaries of the public utility commissioners' districts shall be changed to include such additional territory. The proposed change of the boundaries of the public utility district commissioners' district must be made by resolution and after public hearing. Notice of the time of a public hearing thereon shall be published for two weeks prior thereto. Upon a referendum petition signed by ten percent of the qualified voters of the public utility district being filed with the county auditor, the county legislative authority shall submit such proposed change of boundaries to the voters of the public utility district for their approval or rejection. Such petition must be

filed within ninety days after the adoption of resolution of the proposed action. The validity of said petition shall be governed by the provisions of chapter 54.08 RCW. [1987 c 292 § 1; 1979 ex.s. c 126 § 37; 1977 ex.s. c 36 § 8; 1977 c 53 § 2; 1969 c 106 § 1; 1959 c 265 § 9; 1941 c 245 § 4; 1931 c 1 § 4; Rem. Supp. 1941 § 11608. Formerly RCW 54.08.030, 54.08.040, 54.12.010 through 54.12.070.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Construction—**Severability**—1969 c 106: See notes following RCW 54.08.041.

54.12.080 Compensation and expenses—Waiver of compensation—Group insurance. (1) Each public utility district commissioner of a district operating utility properties shall receive a salary during a calendar year which shall depend upon the total gross revenue of the district from its distribution system and its generating system, if any, for the fiscal year ending June 30th prior to such calendar year, based upon the following schedule:

REVENUE	SALARY
OVER \$15 million	\$500 per month
\$2 to 15 million	\$350 per month

Commissioners of other districts shall serve without salary unless the district provides by resolution for the payment thereof, which however shall not exceed two hundred dollars per month for each commissioner. In addition to salary, all districts may provide by resolution for the payment of per diem compensation to each commissioner at a rate not exceeding fifty dollars for each day or major part thereof devoted to the business of the district, and days upon which he attends meetings of the commission of his district or meetings attended by one or more commissioners of two or more districts called to consider business common to them, but such compensation paid during any one year to a commissioner shall not exceed seven thousand dollars. Per diem compensation shall not be paid for services of a ministerial or professional nature.

(2) Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

(3) Each district commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his subsistence and lodging and travel while away from his place of residence.

(4) Any district providing group insurance for its employees, covering them, their immediate family and dependents, may provide insurance for its commissioner with the same coverage. [1985 c 330 § 4; 1977 ex.s. c 157 § 1; 1969 c 106 § 5; 1967 c 161 § 1; 1957 c 140 § 2; 1955 c 124 § 5; 1951 c 207 § 4. Prior: (i) 1931 c 1 § 8,

part; RRS § 11612, part. (ii) 1941 c 245 § 6; Rem. Supp. 1941 § 11616–5.]

Construction—**Severability**—1969 c 106: See notes following RCW 54.08.041.

54.12.090 President—Secretary—Rules—Seal—Minutes. The commission shall elect from its members, a president and secretary, and shall, by resolution, adopt rules governing the transaction of district business, and adopt an official seal. All proceedings of the commission shall be by motion or resolution, recorded in its minute books, which shall be public records.

A majority of the members shall constitute a quorum of the commission for the transaction of business. The concurrence of a majority of the whole commission in office at the time shall be necessary for the passage of any resolution, and no business shall be transacted, except in usual and ordinary course, unless there are in office at least a majority of the full number of commissioners as fixed by law.

The commission may create and fill such positions and fix salaries and bonds thereof as it may provide by resolution. [1955 c 124 § 6. Prior: 1931 c 1 § 8, part; RRS § 11612, part.]

54.12.100 Oath or affirmation. Each commissioner before he enters upon the duties of his office shall take and subscribe an oath or affirmation that he will faithfully and impartially discharge the duties of his office to the best of his ability. This oath, or affirmation, shall be administered and certified by an officer of the county in which the district is situated, who is authorized to administer oaths, without charge therefor. The oath or affirmation shall be filed with the county auditor. [1986 c 167 § 23; 1959 c 265 § 10.]

Severability—1986 c 167: See note following RCW 29.01.055.

54.12.110 Electrical utilities—Civil immunity of commissioners and employees for good faith mistakes and errors of judgment. Commissioners and employees of public utility districts shall be immune from civil liability for mistakes and errors of judgment in the good faith performance of acts within the scope of their official duties involving the exercise of judgment and discretion which relate solely to their responsibilities for electrical utilities. This grant of immunity shall not be construed as modifying the liability of the public utility district. [1983 1st ex.s. c 48 § 2.]

Severability—1983 1st ex.s. c 48: See note following RCW 35.21.415.

**Chapter 54.16
POWERS**

Sections	
54.16.010	Surveys, plans, investigations, or studies.
54.16.020	Acquisition of property and rights—Eminent domain.
54.16.030	Water and irrigation works.
54.16.032	Authority to assist customers in the acquisition of water conservation equipment—Limitations.

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- 54.16.250 Sewage system works—Ballot proposition—Canvass.
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- 54.16.280 Energy conservation plan—Financing authorized for energy conservation projects in structures or equipment—Limitations.
- 54.16.285 Limitations on termination of utility service for residential heating—Expiration of section.
- 54.16.286 Report to legislature—Expiration of section—1986 c 245.
- 54.16.300 Combined utility functions.

Deferral of special assessments: Chapter 84.38 RCW.

54.16.010 Surveys, plans, investigations, or studies. A district may make surveys, plans, investigations or studies for generating electric energy by water power, steam,

or other methods, and for systems and facilities for the generation, transmission or distribution thereof, and for domestic and industrial water supply and irrigation, and for matters and purposes reasonably incidental thereto, within or without the district, and compile comprehensive maps and plans showing the territory that can be most economically served by the various resources and utilities, the natural order in which they should be developed, and how they may be joined and coordinated to make a complete and systematic whole. [1969 c 106 § 6; 1955 c 390 § 2. Prior: 1945 c 143 § 1(a); 1931 c 1 § 6(a); Rem. Supp. 1945 § 11610(a).]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.16.020 Acquisition of property and rights—Eminent domain. A district may construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop, and regulate all lands, property, property rights, water, water rights, dams, ditches, flumes, aqueducts, pipes and pipe lines, water power, leases, easements, rights of way, franchises, plants, plant facilities, and systems for generating electric energy by water power, steam, or other methods; plants, plant facilities, and systems for developing, conserving, and distributing water for domestic use and irrigation; buildings, structures, poles and pole lines, and cables and conduits and any and all other facilities; and may exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of such property and rights, or property of any kind appurtenant thereto, and for the purpose of acquiring the right to make physical connection with plants and plant facilities of all persons and municipalities. The right of eminent domain shall be exercised pursuant to resolution of the commission and conducted in the same manner and by the same procedure as is provided for the exercise of that power by cities and towns of the state in the acquisition of like property and property rights. It shall be no defense to a condemnation proceeding that a portion of the electric current generated or sold by the district will be applied to private purposes, if the principal uses intended are public: *Provided*, That no public utility owned by a city or town shall be condemned, and none shall be purchased without submission of the question to the voters of the utility district. In a condemnation proceeding, the court shall submit to the jury the values placed upon the property by the taxing authority for taxation purposes, and in respect to property, plants, and facilities of persons using public highways for furnishing public service without franchises, shall consider in determining the value thereof the fact that the property, plants, and facilities are subject to be removed from the highways by reason of being so operated without a franchise. [1955 c 390 § 3. Prior: 1945 c 143 § 1(b); 1931 c 1 § 6(b); Rem. Supp. 1945 § 11610(b).]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by cities: Chapter 8.12 RCW.

54.16.030 Water and irrigation works. A district may construct, purchase, condemn and purchase, acquire, add to, maintain, conduct, and operate water works and irrigation plants and systems, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof, and any other persons including public and private corporations within or without its limits, with an ample supply of water for all purposes, public and private, including water power, domestic use, and irrigation, with full and exclusive authority to sell and regulate and control the use, distribution, and price thereof. [1955 c 390 § 4. Prior: 1945 c 143 § 1(c); 1931 c 1 § 6(c); Rem. Supp. 1945 § 11610(c).]

54.16.032 Authority to assist customers in the acquisition of water conservation equipment—Limitations. (Effective if the proposed amendment to Article VIII of the state Constitution is approved by the voters at the November 1989 general election.) Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the district if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the district to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge

or separately. Loans shall not exceed one hundred twenty months in length. [1989 c 421 § 4.]

Intent—Contingent effective date—1989 c 421: See notes following RCW 35.92.017.

54.16.035 Provision of water service beyond district subject to review by boundary review board. The provision of water service beyond the boundaries of a public utility district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 48.]

54.16.040 Electric energy. A district may purchase, within or without its limits, electric current for sale and distribution within or without its limits, and construct, condemn and purchase, purchase, acquire, add to, maintain, conduct, and operate works, plants, transmission and distribution lines and facilities for generating electric current, operated either by water power, steam, or other methods, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof and any other persons, including public and private corporations, within or without its limits, with electric current for all uses, with full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges, and price thereof, free from the jurisdiction and control of the utilities and transportation commission, in all things, together with the right to purchase, handle, sell, or lease motors, lamps, transformers and all other kinds of equipment and accessories necessary and convenient for the use, distribution, and sale thereof: *Provided*, That the commission shall not supply water to a privately owned utility for the production of electric energy, but may supply, directly or indirectly, to an instrumentality of the United States government or any publicly or privately owned public utilities which sell electric energy or water to the public, any amount of electric energy or water under its control, and contracts therefor shall extend over such period of years and contain such terms and conditions for the sale thereof as the commission of the district shall elect; such contract shall only be made pursuant to a resolution of the commission authorizing such contract, which resolution shall be introduced at a meeting of the commission at least ten days prior to the date of the adoption of the resolution: *Provided further*, That it shall first make adequate provision for the needs of the district, both actual and prospective. [1955 c 390 § 5. Prior: 1945 c 143 § 1(d); 1931 c 1 § 6(d); Rem. Supp. 1945 § 11610(d).]

Joint operating agency: RCW 43.52.360.

Reduced utility rates for low-income senior citizens and low-income disabled citizens: RCW 74.38.070.

Right of city or town to acquire electrical distribution property from P.U.D.: RCW 35.92.054.

54.16.045 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

54.16.047 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities,

towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

54.16.050 Water rights. A district may take, condemn and purchase, purchase and acquire any public and private property, franchises and property rights, including state, county, and school lands, and property and littoral and water rights, for any of the purposes aforesaid, and for railroads, tunnels, pipe lines, aqueducts, transmission lines, and all other facilities necessary or convenient, and, in connection with the construction, maintenance, or operation of any such utilities, may acquire by purchase or condemnation and purchase the right to divert, take, retain, and impound and use water from or in any lake or watercourse, public or private, navigable or nonnavigable, or held, owned, or used by the state, or any subdivision thereof, or by any person for any public or private use, or any underflowing water within the state; and the district may erect, within or without its limits, dams or other works across any river or watercourse, or across or at the outlet of any lake, up to and above high water mark; and, for the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing, retaining, and distributing water, or for any other purpose authorized hereunder, the district may occupy and use the beds and shores up to the high water mark of any such lake, river, or watercourse, and acquire by purchase or by condemnation and purchase, or otherwise, any water, water rights, easements, or privileges named herein or necessary for any of such purposes, and a district may acquire by purchase, or condemnation and purchase, or otherwise, any lands, property, or privileges necessary to protect the water supply of the district from pollution: *Provided*, That should private property be necessary for any of its purposes, or for storing water above high water mark, the district may condemn and purchase, or purchase and acquire such private property. [1955 c 390 § 6. Prior: 1945 c 143 § 1(e), part; 1931 c 1 § 6(e), part; Rem. Supp. 1945 § 11610(e), part.]

Water rights: Title 90 RCW.

54.16.060 Intertie lines. A district may build and maintain intertie lines connecting its power plant and distribution system with the power plant and distribution system owned by any other public utility district, or municipal corporation, or connect with the power plants and distribution systems owned by any municipal corporation in the district, and from any such intertie line, sell electric energy to any person, public utility district, city, town or other corporation, public or private, and, by means of transmission or pole lines, conduct electric energy from the place of production to the point of distribution, and construct and lay aqueducts, pipe or pole lines, and transmission lines along and upon public highways, roads, and streets, and condemn and purchase, purchase or acquire, lands, franchises, and rights of way necessary therefor. [1955 c 390 § 7. Prior: 1945 c 143 § 1(e), part; 1931 c 1 § 6(e), part; Rem. Supp. 1945 § 11610(e), part.]

[Title 54 RCW—p 14]

54.16.070 May borrow money, contract indebtedness, issue bonds or obligations—Guaranty fund. (1) A district may contract indebtedness or borrow money for any corporate purpose on its credit or on the revenues of its public utilities, and to evidence such indebtedness may issue general obligation bonds or revenue obligations; may issue and sell local utility district bonds of districts created by the commission, and may purchase with surplus funds such local utility district bonds, and may create a guaranty fund to insure prompt payment of all local utility district bonds. The general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(2) Notwithstanding subsection (1) of this section, such revenue obligations and local utility district bonds may be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 44; 1983 c 167 § 144; 1959 c 218 § 1; 1955 c 390 § 8. Prior: 1945 c 143 § 1(f); 1931 c 1 § 6(f); Rem. Supp. 1945 § 11610(f).]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.16.080 Levy and collection of taxes—Tax anticipation warrants. A district may raise revenue by the levy of an annual tax on all taxable property within the district, not exceeding forty-five cents per thousand dollars of assessed value in any one year, exclusive of interest and redemption for general obligation bonds. The commission shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file it in its records, on or before the first Monday in September. Notice of the filing of the proposed budget and the date and place of hearing thereon shall be published for at least two consecutive weeks in a newspaper printed and of general circulation in the county. On the first Monday in October, the commission shall hold a public hearing on the proposed budget at which any taxpayer may appear and be heard against the whole or any part thereof. Upon the conclusion of the hearing, the commission shall, by resolution, adopt the budget as finally determined, and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper officer of the county in which the district is located in the same manner as provided for the certification and collection of port district taxes. The commission may, prior to the receipt of taxes raised by levy, borrow money or issue warrants of the district in anticipation of the revenue to be derived from the levy or taxes for district purposes, and the warrants shall be redeemed from the first money available from such taxes. The warrants shall not exceed the anticipated revenue of one year, and shall bear interest at a rate determined by the commission. [1981 c 156 § 18; 1973 1st ex.s. c 195 § 60; 1955 c 390 § 9. Prior: 1945 c 143 § 1(g); 1931 c 1 § 6(g); Rem. Supp. 1945 § 11610(g).]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Collection of taxes by port districts: RCW 53.36.020.

Forty mill limit not applicable to power district: RCW 84.52.050.

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59).

54.16.085 Interfund loans. A public utility district may make and repay interfund loans between its funds. [1987 c 18 § 2.]

54.16.090 Contracts with other agencies or utilities—Gifts, etc.—Employees and experts—Advancements. A district may enter into any contract or agreement with the United States, or any state, municipality, or other utility district, or any department of those entities, or with any cooperative, mutual, consumer-owned utility, or with any investor-owned utility or with an association of any of such utilities, for carrying out any of the powers authorized by this title.

It may acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for its purposes, or for any local district therein.

It may make contracts, employ engineers, attorneys, and other technical or professional assistance; print and publish information or literature; advertise or promote the sale and distribution of electricity or water and do all other things necessary to carry out the provisions of this title.

It may advance funds, jointly fund or jointly advance funds for surveys, plans, investigations, or studies as set forth in RCW 54.16.010, including costs of investigations, design and licensing of properties and rights of the type described in RCW 54.16.020, including the cost of technical and professional assistance, and for the advertising and promotion of the sale and distribution of electricity or water. [1969 c 106 § 7; 1955 c 390 § 10. Prior: 1945 c 143 § 1(h), (i), (j), part; 1931 c 1 § 6(h), (i), (j), part; Rem. Supp. 1945 § 11610(h), (i), (j), part.]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.16.092 Employment interview expenses. When a district commission finds that a vacancy for a technical or managerial position requires special qualifications or entails responsibilities and duties of such a nature that substantial benefits will accrue to the district from personal interviews of candidates for such a vacancy to be held in the district, the district commission, by resolution adopted at a regular meeting, may authorize the payment of actual necessary travel and living expenses of such candidates incurred while in travel status. [1975 1st ex.s. c 140 § 1.]

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

54.16.095 Liability insurance for officials and employees. The board of commissioners of each public utility district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 5.]

54.16.096 Liability insurance for officers and employees authorized. See RCW 36.16.138.

54.16.097 Actions against officer, employee, or agent—Defense and costs provided by public utility district—Exception. Whenever any action, claim or proceeding is instituted against any person who is or was an officer, employee, or agent of a public utility district established under this title arising out of the performance or failure of performance of duties for, or employment with any such district, the commission of the district may grant a request by such person that the attorney of the district's choosing be authorized to defend said claim, suit or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the district's funds: *Provided*, That costs of defense and/or judgment or settlement against such person shall not be paid in any case where the court has found that such person was not acting in good faith or within the scope of his employment with or duties for the district. [1975 c 60 § 2.]

54.16.100 Manager—Appointment—Salary—Duties. The commission, by resolution introduced at a regular meeting and adopted at a subsequent regular meeting, shall appoint and may remove at will a district manager, and shall, by resolution, fix his salary.

The manager shall be the chief administrative officer of the district, in control of all administrative functions and shall be responsible to the commission for the efficient administration of the affairs of the district placed in his charge. He shall be an experienced executive with administrative ability. In the absence or temporary disability of the manager, he shall, with the approval of the president of the commission, designate some competent person as acting manager.

The manager may attend all meetings of the commission and its committees, and take part in the discussion of any matters pertaining to the duties of his department, but shall have no vote.

The manager shall carry out the orders of the commission, and see that the laws pertaining to matters within the functions of his department are enforced; keep the commission fully advised as to the financial condition and needs of the districts; prepare an annual estimate for the ensuing fiscal year of the probable expenses of his department, and recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made during the ensuing fiscal year, with an estimate of the costs of the development work, extensions, and additions; certify to the commission all bills, allowances, and payrolls, including claims due contractors of public works; recommend to the commission salaries of the employees of his office, and a scale of salaries or wages to be paid for the different classes of service required by the district; hire and discharge employees under his direction; and perform such other duties as may be imposed upon him by resolution of the commission. It is unlawful for him to make any contribution of money in aid of or in opposition to the election of any candidate

for public utility commissioner or to advocate or oppose any such election. [1955 c 390 § 11. Prior: 1945 c 143 § 1(j), part; 1931 c 1 § 6(j), part; Rem. Supp. 1945 § 11610(j), part.]

54.16.110 May sue and be sued—Claims. A district may sue in any court of competent jurisdiction, and may be sued in the county in which its principal office is located or in which it owns or operates facilities. No suit for damages shall be maintained against a district except on a claim filed with the commission complying in all respects with the terms and requirements for claims for damages filed against cities of the second class. [1979 ex.s. c 240 § 3; 1955 c 390 § 12. Prior: 1945 c 143 § 1(k); 1931 c 1 § 6(k); Rem. Supp. 1945 § 11610(k).]

Claims against cities of the second class: RCW 35.31.040.

54.16.120 Local utility districts authorized. A district may, by resolution, establish and define the boundaries of local assessment districts to be known as local utility district No. _____, for distribution, under the general supervision and control of the commission, of water for domestic use, irrigation, and electric energy, and for providing street lighting, or any of them, and in like manner provide for the purchasing, or otherwise acquiring, or constructing and equipping and maintaining and operating distribution systems for such purposes, and for extensions and betterments thereof, and may levy and collect in accordance with the special benefits conferred thereon, special assessments and reassessments on property specially benefited thereby, for paying the cost and expense thereof, or any portions thereof, as herein provided, and issue local improvement bonds or warrants or both to be repaid wholly or in part by collection of local improvement assessments. [1975 c 46 § 1; 1955 c 390 § 13. Prior: 1951 c 209 § 1; 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

54.16.125 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

54.16.130 Local districts—Procedure—Financing. The commission shall by resolution establish the method of procedure in all matters relating to local utility districts. A public utility district may determine by resolution what work shall be done or improvements made at the expense, in whole or in part, of the property specially benefited thereby; and adopt and provide the manner, machinery and proceedings in any way relating to the making and collecting of assessments therefor in pursuance thereof. Except as herein otherwise provided or as may hereafter be set forth by resolution, all matters and proceedings relating to the local utility district, the levying and collection of assessments, the issuance and redemption of local improvement warrants and bonds, and the enforcement of local assessment liens hereunder, shall be governed, as nearly as may be, by the laws relating to local improvements for cities and

towns: *Provided*, That no protest against a local utility district improvement shall be received after twelve o'clock noon of the day set for hearing. Such bonds and warrants may be in any form, including bearer bonds or bearer warrants, or registered warrants or registered bonds as provided in RCW 39.46.030. Such bonds and warrants may also be issued and sold in accordance with chapter 39.46 RCW.

The commission may determine to finance the project by bonds or warrants secured by assessments against the property within the local utility district: Or it may finance the project by revenue bonds, in which case no bonds or warrants shall be issued by the local utility district, but assessments shall be levied upon the taxable property therein on the basis of special benefits up to, but not exceeding the total cost of the improvement and in such cases the entire principal and interest of such assessments shall be paid into a revenue bond fund of the district, to be used for the sole purpose of the payment of revenue bonds. [1983 c 167 § 145; 1955 c 390 § 14. Prior: 1951 c 209 § 2; 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Local improvement

*first class cities: Chapters 35.43 through 35.56 RCW.
guaranty fund: RCW 54.24.200 through 54.24.260.*

54.16.140 Petition or resolution for local district—Hearing—Notice. Any such improvement shall be ordered by resolution of the commission either upon petition or resolution therefor. When a petition, signed by ten percent of the owners of land in the district to be therein described, is filed with the commission, asking that the plan or improvement therein set forth be adopted and ordered, and defining the boundaries of a local improvement district to be assessed in whole or in part to pay the cost thereof, the commission shall fix the date of hearing thereon, and give not less than two weeks notice thereof by publication. The commission may deny the petition or order the improvement, unless a majority of the owners of lands in the district file prior to twelve o'clock noon of the day of the hearing, with the secretary a petition protesting against the improvement. If the commission orders the improvement, it may alter the boundaries of the proposed local district and prepare and adopt detail plans of the local improvement, declare the estimated cost thereof, what proportion thereof shall be borne by the local improvement district, and what proportion, if any shall be borne by the entire public utility district. [1955 c 390 § 15. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

54.16.142 Local utility districts—Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local utility district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to

the increased true and fair value the improvement, or street lighting, adds to the property. [1989 c 243 § 9.]

54.16.145 Local utility districts—Sanitary sewer or potable water facilities—Notice to certain property owners. Whenever it is proposed that a local utility district finance sanitary sewers or potable water facilities, additional notice of the public hearing on the proposed local utility district shall be mailed to the owners of any property located outside of the proposed local utility district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the local utility district. The notice shall include information about this restriction. [1987 c 315 § 4.]

54.16.150 Procedure when petition is signed by majority of landowners. When a petition signed by a majority of the landowners in a proposed local improvement district is filed with the commission, asking that the improvement therein described be ordered, the commission shall forthwith fix a date for hearing thereon after which it shall, by resolution, order the improvement, and may alter the boundaries of the proposed district; prepare and adopt the improvement; prepare and adopt detail plans thereof; declare the estimated cost thereof, what proportion of the cost shall be borne by the local district, and what proportion, if any, shall be borne by the entire public utility district, and provide the general funds thereof to be applied thereto, if any; acquire all lands and other properties therefor; pay all damages caused thereby; and commence in the name of the public utility district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards necessary to entitle the district to proceed with the work, and shall thereafter proceed with the work, and shall file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property in the local improvement district in proportion to the special benefits to be derived by the property in the local district from the improvement: *Provided, however,* No such improvement shall be ordered unless the same appears to the commission to be financially and economically feasible: *And provided further,* That the commission may require as a condition to ordering such improvement or to making its determination as to the financial and economic feasibility, that all or a portion of such engineering, legal or other costs incurred or to be incurred by the commission in determining financial and economic feasibility shall be borne or guaranteed by the petitioners of the proposed local improvement district under such rules as the commission may adopt. No person shall withdraw his name from the petition after the same has been filed with the commission. [1959 c 142 § 3; 1955 c 390 § 16. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

54.16.160 Assessment roll—Hearing—Appellate review—Expenses. Before approval of the roll, a notice

shall be published once each week for two successive weeks in a newspaper of general circulation in the county, stating that the roll is on file and open to inspection in the office of the secretary, and fixing a time not less than fifteen nor more than thirty days from the date of the first publication of the notice, within which protests must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing shall be held by the commission on the protests. After the hearing the commission may alter any and all assessments shown on the roll and may, by resolution, approve it, but if an assessment is raised, a new notice, similar to the first, shall be given, and a hearing had thereon, after which final approval of the roll may be made. Any person aggrieved by the assessments shall perfect an appeal to the superior court of the county within ten days after the approval, in the manner provided for appeals from assessments levied by cities of the first class. In the event such an appeal shall be taken, the judgment of the court shall confirm the assessment insofar as it affects the property of the appellant unless the court shall find from the evidence that such assessment is founded upon a fundamentally wrong basis and/or the decision of the commission thereon was arbitrary or capricious; in which event the judgment of the court shall correct, change, modify, or annul the assessment insofar as it affects the property of the appellant. In the same manner as provided with reference to cities of the first class appellate review of the judgment of the superior court may be sought, as in other cases, within fifteen days after the date of the entry of the judgment in the superior court. Engineering, office, and other expenses necessary or incident to the improvement shall be borne by the public utility district: *Provided,* That when a municipal corporation included in the public utility district already owns or operates a utility of a character like that for which the assessments are levied hereunder, all such engineering and other expenses shall be borne by the local assessment district. [1988 c 202 § 51; 1971 c 81 § 123; 1959 c 142 § 4; 1955 c 390 § 17. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 c 11610(l), part.]

Severability—1988 c 202: See note following RCW 2.24.050.

Procedure on appeal from assessments levied by cities of the first class: RCW 35.44.200 through 35.44.270.

54.16.165 Segregation of assessments. Whenever any land against which there has been levied any special assessment by any public utility district shall have been sold in part or subdivided, the board of commissioners of such public utility district shall have the power to order a segregation of the assessment.

Any person owning any part of the land involved in a special assessment and desiring to have such special assessment against the tracts of land segregated to apply to smaller parts thereof shall apply in writing to the board of commissioners of the public utility district which levied the assessment. If the commissioners determine that a segregation should be made they shall do so as nearly as possible on the same basis as the original assessment was levied and the total of the segregated

parts of the assessment shall equal the assessment before segregation.

The commission shall then send notice thereof by mail to the several owners interested in the tract, as shown on the general tax rolls. If no protest is filed within twenty days from date of mailing said notice, the commission shall then by resolution approve said segregation. If a protest is filed, the commission shall have a hearing thereon, after mailing to the several owners at least ten days notice of the time and place thereof. After the hearing, the commission may by resolution approve said segregation, with or without change. Within ten days after the approval, any person aggrieved by the segregation may perfect an appeal to the superior court of the county wherein the property is situated and thereafter seek appellate review, all as provided for appeals from assessments levied by cities of the first class. The resolution approving said segregation shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part, and shall order the county treasurer to make segregation on the original assessment roll as directed in the resolution. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to make the segregation ordered. The board of commissioners may require as a condition to the order of segregation that the person seeking it pay the public utility district the reasonable engineering and clerical costs incident to making the segregation. Unless otherwise provided in said resolution, the county treasurer shall apportion amounts paid on the original assessment in the same proportion as the segregated assessments bear to the original assessment. Upon segregation being made by the county treasurer, as aforesaid, the lien of the special assessment shall apply to the segregated parcels only to the extent of the segregated part of such assessment. [1988 c 202 § 52; 1971 c 81 § 124; 1959 c 142 § 1.]

Severability—1988 c 202: See note following RCW 2.24.050.

54.16.170 Apportionment of cost of improvement.

When an improvement is ordered hereunder, payment for which shall be made in part from assessments against property specially benefited, not more than fifty percent of the cost thereof shall ever be borne by the entire public utility district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed such amount, unless a majority of the electors of the district consent to or ratify the making of such expenditure. [1955 c 390 § 18. Prior: 1945 c 143 § 1(1), part; 1931 c 1 § 6(1), part; Rem. Supp. 1945 § 11610(1), part.]

54.16.180 Sale, lease, disposition of properties—

Procedure—Acquisition, operation of sewage system by districts in certain counties. A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as

provided for the lease or disposition of like properties and facilities owned by cities and towns: *Provided*, That the affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale, shall be necessary to authorize such sale: *Provided further*, That a district may sell, convey, lease or otherwise dispose of all or any part of the property owned by it, located outside its boundaries, to another public utility district, city, town or other municipal corporation without the approval of the voters; or may sell, convey, lease, or otherwise dispose of to any person or public body, any part, either within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, without the approval of the voters: *Provided further*, That a public utility district located within a county of the first class may sell and convey to a city of the first class, which owns its own water system, all or any part of a water system owned by said public utility district where a portion of it is located within the boundaries of such city, without approval of the voters upon such terms and conditions as the district shall determine: *Provided further*, That a public utility district located in a fifth class county and bordered by the Columbia river may, separately or in connection with the operation of a water system, or as part of a plan for acquiring or constructing and operating a water system, or in connection with the creation of another or subsidiary local utility district, may provide for the acquisition or construction, additions or improvements to, or extensions of, and operation of a sewage system within the same service area as in the judgment of the district commission is necessary or advisable in order to eliminate or avoid any existing or potential danger to the public health by reason of the lack of sewerage facilities or by reason of the inadequacy of existing facilities: *And provided further*, That a public utility district located within a county of the first class bordering on Puget Sound may sell and convey to any city of the third class or town all or any part of a water system owned by said public utility district without approval of the voters upon such terms and conditions as the district shall determine. Public utility districts are municipal corporations for the purposes of this section and the commission shall be held to be the legislative body and the president and secretary shall have the same powers and perform the same duties as the mayor and city clerk and the resolutions of the districts shall be held to be ordinances within the meaning of the statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns. [1977 ex.s. c 31 § 1; 1963 c 196 § 1; 1959 c 275 § 1; 1955 c 390 § 19. Prior: 1945 c 143 § 1(m); 1931 c 1 § 6(m); Rem. Supp. 1945 § 11610(m).]

54.16.190 General resolutions. The commission of a district may adopt general resolutions to carry out the purposes, objects, and provisions of this title. [1955 c 390 § 20. Prior: 1945 c 143 § 1(n); 1931 c 1 § 6(n); Rem. Supp. 1945 § 11610(n).]

54.16.200 Joint exercise of powers and joint acquisition of properties. Any two or more public utility districts organized under the provisions of the laws of this state shall have the power, by mutual agreement, to exercise jointly all powers granted to each individual district, and in the exercise of such powers shall have the right and power to acquire jointly all or any part of any electric utility properties which, at *the time of the passage of this act, constitutes an interconnected and physically integrated electric utility system, whether entirely within or partly within and partly without such districts: *Provided*, That any two or more districts so acting jointly, by mutual agreement, shall not acquire any electric utility distribution properties in any other public utility district without the consent of such district, and shall not exercise jointly the power to condemn any privately owned utility property or any public utility owned by a municipality, to levy taxes or, to create subdistricts. [1949 c 227 § 2; Rem. Supp. 1949 § 10459–15.]

*Reviser's note: As to "the time of the passage of this act," the legislative history of chapter 227, Laws of 1949 is as follows: Passed the house March 8, 1949; passed the senate March 7, 1949; approved by the governor March 22, 1949.

Joint operating agency: RCW 43.52.360.

54.16.210 Joint acquisition, operation, etc., with city of electrical utility properties. See chapter 35.92 RCW.

54.16.220 Columbia river hydroelectric projects—Grant back of easements to former owners. Notwithstanding any other provision of law, every public utility district acquiring privately owned lands, real estate or property for reservoir purposes of a hydroelectric power project dam on the Columbia river, upon acquisition of title to said lands, whether acquired by purchase or condemnation, shall grant back to the former owners of the lands acquired upon their request therefor, whether prior to conveyance of title to the district or within sixty days thereafter, a perpetual easement appurtenant to the adjoining property for such occupancy and use and improvement of the acquired lands as will not be detrimental to the operation of the hydroelectric project and not be in violation of the required conditions of the district's Federal Power Commission license for the project: *Provided*, That said former owners shall not thereafter erect any structure or make any extensive physical change thereon except under a permit issued by the public utility district: *Provided further*, That said easement shall include a provision that any shorelands thereunder shall be open to the public, and shall be subject to cancellation upon sixty days notice to the owners by the district that such lands are to be conveyed to another public agency for game or game fish purposes or public recreational use, in which event the owners shall remove any structures they may have erected thereon within a reasonable time without cost to the district. The provisions of this section shall not be applicable with respect to: (1) lands acquired from an owner who does not desire an easement for such occupancy and use; (2)

lands acquired from an owner where the entire estate has been acquired; (3) lands acquired for, and reasonably necessary for, project structures (including borrow areas) or for relocation of roads, highways, railroads, other utilities or railroad industrial sites; and (4) lands heretofore acquired or disposed of by sale or lease by a public utility district for whatsoever purpose. [1965 ex.s. c 118 § 1.]

54.16.230 Sewage system works—Acquire, construct, operate, etc.—Authorizing election—Procedure. A public utility district may acquire, construct, operate, maintain, and add to sewage systems, subject to and in compliance with the county comprehensive plan, under the general powers of Title 54 RCW or through the formation of local utility districts as provided in RCW 54.16.120 through 54.16.170: *Provided*, That prior to engaging in any sewage system works as authorized by this section, the voters of the public utility district shall first approve by majority vote a referendum proposition authorizing such district to exercise the powers set forth in this section, which proposition shall be presented at a general election. [1975 1st ex.s. c 57 § 1.]

54.16.240 Sewage system works—Resolution or petition—Voter approval or rejection. The commission of a public utility district, by resolution may, or on petition in the same manner as provided for the creation of a district under RCW 54.08.010 shall, submit to the voters for their approval or rejection the proposal that said public utility district be authorized to exercise the powers set forth in RCW 54.16.230. [1975 1st ex.s. c 57 § 2.]

54.16.250 Sewage system works—Ballot proposition—Canvass. The legislative authority of the county in which the public utility district is located, upon receipt of the resolution of the public utility district commission or petition as provided for in RCW 54.08.010, shall submit such proposal to the voters of the district at the next general election in substantially the following terms:

Shall Public Utility District No. _____ of _____ County be authorized to acquire, construct, operate, maintain, and add to sewage systems?

Yes

No

Within ten days after such election, the election board of the county shall canvass the returns, and if at such election a majority of voters voting on the proposition shall vote in favor of such authority, the district shall have the powers set forth in RCW 54.16.230. [1975 1st ex.s. c 57 § 3.]

54.16.260 Sewage system works—Accounts and funding. Accounts and funding for any sewage system or systems shall be kept as provided in RCW 43.09.210. [1975 1st ex.s. c 57 § 4.]

54.16.270 Sewage system works—Existing authority not affected. Nothing contained in RCW 54.16.230 through 54.16.260 shall change or alter the present authority of certain public utility districts as regards sewage systems and as provided in RCW 54.16.180. [1975 1st ex.s. c 57 § 5.]

54.16.280 Energy conservation plan—Financing authorized for energy conservation projects in structures or equipment—Limitations. Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the district if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the district could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in existing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another. Except where otherwise authorized, such assistance shall be limited to:

(1) Providing an inspection of the structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;

(2) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the district, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards.

(3) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

(5) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [1989 c 268 § 2; 1979 ex.s. c 239 § 3.]

Legislative declaration—Effective date—Contingency—1979 ex.s. c 239: See RCW 35.92.355 and note following RCW 35.92.360.

54.16.285 Limitations on termination of utility service for residential heating—Expiration of section. (1)

A district providing utility service for residential space heating shall not terminate such utility service between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice shall be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(2) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area; and

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this section. Customers who qualify for payment plans under

this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected.

(3) All districts providing utility service for residential space heating shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(4) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter.

(5) This section shall expire June 30, 1990. [1986 c 245 § 3; 1985 c 6 § 19; 1984 c 251 § 2.]

54.16.286 Report to legislature—Expiration of section—1986 c 245. Until 1990, districts distributing electricity shall report annually to the legislature: (1) The extent to which chapter 245, Laws of 1986 benefits low income persons, and (2) the costs and benefits to other customers.

This section shall expire June 30, 1990. [1986 c 245 § 4; 1984 c 251 § 6.]

Reviser's note: For codification of 1986 c 245, see Codification Tables, Volume 0.

54.16.300 Combined utility functions. A public utility district by resolution may combine two or more of its separate utility functions into a single utility and combine its related funds or accounts into a single fund or account. The separate utility functions include electrical energy systems, domestic water systems, irrigation systems, sanitary sewer systems, and storm sewer systems. All powers granted to public utility districts to acquire, construct, maintain, and operate such systems may be exercised in the joint acquisition, construction, maintenance, and operation of such combined systems. The establishment, maintenance, and operation of the combined system shall be governed by the public utility district statutes relating to one of the utility systems that is being combined, as specified in the resolution combining the utility systems. [1987 c 18 § 1.]

Chapter 54.20

CONDEMNATION PROCEEDINGS

Sections

54.20.010 Statement of operations—Decree of appropriation—Retirement of properties—Accounting—Limitation on new proceedings.

54.20.010 Statement of operations—Decree of appropriation—Retirement of properties—Accounting—Limitation on new proceedings. In any condemnation proceeding heretofore or hereafter instituted or conducted by a public utility district for the acquisition of properties, the district may serve upon the condemnee's attorneys of record and file with the court a notice of its intention to present a decree of appropriation together with a demand for a verified statement showing in reasonable detail the following information with respect to the operation of the properties since the date of verdict, if the case was tried by jury, or since the date of the judgment fixing compensation, if the case was tried by the court, namely: the cost of any improvements and betterments to the properties which were reasonably necessary and prudently made; the gross income received from the properties, betterments and improvements; the actual reasonable expense, exclusive of depreciation, incurred in the operation thereof. If the condemnee fails to serve and file the statement within fifteen days after service of the demand therefor, it may be compelled to do so by contempt proceedings, and the time during which such proceedings are pending shall not be considered in computing the time within which the district may exercise its right of appropriation. After the statement is filed, the district may pay the amount of the verdict or judgment plus (1) accrued interest thereon less the net income before allowance for depreciation, and (2) the cost of such improvements and betterments, all as shown by the sworn statement, and concurrently obtain its decree of appropriation. The condemnee may retire from use after the verdict or judgment such items of the properties as may be reasonably necessary in the ordinary and usual course of operation thereof, in which case it shall show in its statement the reasonable value of such items retired, and the district may deduct such value from the sum otherwise payable by it. If the condemnee fails to file the statement within fifteen days after service of the demand therefor, the district at its option may pay the full amount of the judgment or verdict plus accrued interest thereon and concurrently obtain a decree of appropriation.

After payment has been made and the decree of appropriation entered as provided in this section, the district or the condemnee shall be entitled to an accounting in the condemnation proceedings to determine the true amount of each item required to be furnished in the above statement, and to payment of any balance found due in such accounting.

Whenever any such condemnation proceedings have been, or hereafter may be abandoned, no new proceedings for the acquisition of the same or substantially similar properties shall be instituted until the expiration of one year from the date of such abandonment, but such proceedings may be instituted at any time thereafter. [1945 c 130 § 3; Rem. Supp. 1945 § 10459-13. Formerly RCW 54.20.010 through 54.20.050.]

Purpose—Severability—1945 c 130: See notes following RCW 54.04.100.

Chapter 54.24
FINANCES

Sections

GENERAL PROVISIONS

- 54.24.010 Treasurer—Bond—Duties—Funds—
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LOCAL IMPROVEMENT GUARANTY FUND

- 54.24.200 Local improvement guaranty fund.
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GENERAL PROVISIONS

54.24.010 Treasurer—Bond—Duties—Funds—Depositaries. The treasurer of the county in which a utility district is located shall be ex officio treasurer of the district: *Provided*, That the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the utility district. The commission may, and if the treasurer is not the county treasurer it shall, require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

All district funds shall be paid to the treasurer and shall be disbursed by him only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public utility district fund, into which shall be paid all

district funds, and he shall maintain such special funds as may be created by the commission, into which he shall place all money as the commission may, by resolution, direct.

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries; if the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in *RCW 36.48.020 for deposit of county funds.

Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

All interest collected on district funds shall belong to the district and be deposited to its credit in the proper district funds.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district: *Provided*, That the district pays the premium thereon. [1959 c 218 § 2; 1957 c 140 § 1; 1955 c 124 § 7. Prior: (i) 1931 c 1 § 9; RRS §-11613. (ii) 1931 c 1 § 8, part; RRS § 11612, part.]

*Reviser's note: RCW 36.48.020 was repealed by 1984 c 177 § 21.

54.24.012 Destruction of canceled or paid revenue obligations and interest coupons. After any revenue obligations or interest coupons have been canceled or paid they may be destroyed as directed by the district, any provisions of chapter 40.14 RCW notwithstanding: *Provided*, That a certificate of destruction giving full descriptive reference to the documents destroyed shall be made by the person or persons authorized to perform such destruction and one copy of the certificate shall be filed with the treasurer of the district. [1959 c 218 § 15.]

BONDS OR WARRANTS—1931 ACT

54.24.018 Acquisition of property—Adoption of plan—Bonds or warrants—Special funds. (1) Whenever the commission shall deem it advisable that the public utility district purchase, purchase and condemn, acquire, or construct any such public utility, or make any additions or betterments thereto, or extensions thereof, the commission shall provide therefor by resolution, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof, as near as may be, and specify whether general or utility indebtedness is to be incurred, the amount of such indebtedness, the amount of interest and the time in which all general bonds (if any) shall be paid, not to exceed thirty years. In the event the proposed general indebtedness to be incurred will bring the nonvoter approved indebtedness of the public utility district to an amount exceeding three-fourths of one percent of the value of the taxable

property of the public utility district, as the term "value of the taxable property" is defined in RCW 39.36.015, the proposition of incurring such indebtedness and the proposed plan or system shall be submitted to the qualified electors of said public utility district for their approval or rejection at the next general election held in such public utility district. Elections shall be held as provided in RCW 39.36.050.

Whenever the commission (or a majority of the qualified voters of such public utility district, voting at said election, when it is necessary to submit the same to said voters) shall have adopted a system or plan for any such public utility, as aforesaid, and shall have authorized indebtedness therefor by a three-fifths vote of the qualified voters of such district, voting at said election, general or public utility bonds may be used as hereinafter provided. The principal and interest of such general bonds shall be paid from the revenue of such public utility district after deducting costs of maintenance, operation, and expenses of the public utility district, and any deficit in the payment of principal and interest of said general bonds shall be paid by levying each year a tax upon the taxable property within said district sufficient to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. Said bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(2) All bonds and warrants issued under the authority of this chapter shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys.

(3) When the commission shall not desire to incur a general indebtedness in the purchase, condemnation and purchase, acquisition, or construction of any such public utility, or addition or betterment thereto, or extension thereof, it shall have the power to create a special fund or funds for the sole purpose of defraying the cost of such public utility, or addition or betterment thereto, or extension thereof, into which special fund or funds it may obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of such public utility, or any fixed amount out of, and not exceeding a fixed proportion of, such revenues, or a fixed amount without regard to any fixed proportion, and to issue and sell revenue bonds or warrants bearing interest at such rate or rates, payable semiannually, executed in such manner, and payable at such times and places as the commission shall determine, but such bonds or warrants and the interest thereon, shall be payable only out of such special fund or funds. In creating any such special fund or funds, the commission shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to, and to any proportion or part of the revenues previously pledged as a fund for the payment of bonds or warrants, and shall not set aside into such special fund or funds a greater amount or proportion of the revenues and proceeds than, in its judgment, will be available over and above such cost of

maintenance and operation and the amount or proportion, if any, of the revenues so previously pledged. Any such bonds or warrants, and interest thereon, issued against any such fund, as herein provided, shall be a valid claim of the owner thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such district within the meaning of the constitutional provisions and limitations. Each such bond or warrant shall state on its face that it is payable from a special fund, naming such fund and the resolution creating it. Said bonds and warrants shall be sold in such manner as the commission shall deem for the best interests of the district. The commission may provide in any contract for the construction and acquisition of a proposed improvement or utility that payment therefor shall be made only in such bonds or warrants at the par value thereof. In all other respects, the issuance of such utility bonds or warrants and payment therefor shall be governed by the public utility laws for cities and towns. The revenue or utility bonds or warrants may be in any form, including bearer bonds or bearer warrants, or registered bonds or registered warrants as provided in RCW 39.46.030.

(4) Notwithstanding subsection (3) of this section, any of such revenue bonds and revenue warrants may be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 45; 1983 c 167 § 146; 1971 c 12 § 1. Prior: 1970 ex.s. c 56 § 77; 1970 ex.s. c 42 § 33; 1969 ex.s. c 232 § 14; 1931 c 1 § 7; RRS § 11611. Formerly RCW 54.24.130 through 54.24.160.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Municipal utilities: Chapter 35.92 RCW.

BONDS—REVENUE OBLIGATIONS—1941 ACT

54.24.020 General obligation bonds, revenue obligations for cost of utilities. Whenever the commission of a public utility district, organized pursuant to *chapter 1 of the Laws of 1931 (sections 11605 et seq. of Remington's Revised Statutes) shall deem it advisable that the district purchase, purchase and condemn, acquire or construct any public utility, or make any additions or betterments thereto or extensions thereof, the commission shall provide therefor by resolution, which shall specify and adopt the system or plan proposed and declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for working capital for the operation of such public utility by the district and for the payment of the expenses incurred in the acquisition or construction thereof, and shall specify whether general obligation bonds or revenue obligations are to be issued to defray such cost and the amount of such general obligation bonds or revenue obligations.

The commissioners may provide in such resolution that any additional works, plants, or facilities subsequently acquired or constructed by the district for the same uses, whether or not physically connected therewith, shall be deemed additions or betterments to or extensions of such public utility. [1959 c 218 § 3; 1941 c 182 § 1; Rem. Supp. 1941 § 11611-1.]

***Reviser's note:** For translation of "chapter 1 of the Laws of 1931," see note following RCW 54.04.020.

Severability—1941 c 182: "If any section or provision of this act shall be adjudged to be invalid such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid." [1941 c 182 § 12.]

Revenue obligations defined: RCW 54.04.010.

54.24.030 Revenue obligations—Special fund—Form, term, payment, etc.—Resolution of authority, contents—Contracts for future sale. (1) Whenever the commission shall deem it advisable to issue revenue obligations for the purpose of defraying the cost or part of the cost of such public utility or any additions or betterments thereto or extensions thereof, it shall have power as a part of such plan and system to create a special fund or funds for the purpose of defraying the cost of such public utility, or additions or betterments thereto or extensions thereof, into which special fund or funds it may obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of such public utility, and all additions or betterments thereto or extensions thereof, or any fixed amount out of, and not exceeding a fixed proportion of such revenues, or a fixed amount without regard to any fixed proportion, or an amount of such revenues equal to a fixed percentage of the aggregate principal amount of revenue obligations at any time issued against the special fund or funds, and to issue and sell revenue obligations payable as to both principal and interest only out of such fund or funds.

Such revenue obligations shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, as provided in RCW 39.46.030, or both, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as the commission shall by resolution determine.

Any resolution or resolutions authorizing the issuance of any revenue obligations maturing in not exceeding six years from the date thereof (hereinafter in this section referred to as "short term obligations") may contain, in addition to all other provisions authorized by this title, and as an alternate method for the payment thereof, provisions which shall be a part of the contract with the holders of the short term obligations thereby authorized as to:

(a) Refunding the short term obligations at or prior to maturity and, if so provided, outstanding bonds by the issuance of revenue bonds of the district either by the sale of bonds and application of the proceeds to the payment of the short term obligations and outstanding bonds or by the exchange of bonds for the short term obligations;

(b) Satisfying, paying, or discharging the short term obligations at the election of the district by the tender or delivery of revenue bonds of the district in exchange therefor: *Provided*, That the aggregate principal amount of bonds shall not exceed by more than five percent the aggregate principal amount of the short term obligations, to satisfy, pay, or discharge said short term obligations for which the bonds are tendered or delivered;

(c) Exchanging or converting the short term obligations at the election of the owner thereof for or into the bonds of the district: *Provided*, That the aggregate principal amount of the bonds shall not exceed by more than five percent the aggregate principal amount of the short term obligations to be exchanged for or converted into bonds;

(d) Pledging bonds of the district as collateral to secure payment of the short term obligations and providing for the terms and conditions of the pledge and the manner of enforcing the pledge, which terms and conditions may provide for the delivery of the bonds in satisfaction of the short term obligations: *Provided*, That the aggregate principal amount of the bonds pledged shall not exceed by more than five percent the aggregate principal amount of the short term obligations to secure said short term obligations for which they are pledged;

(e) Depositing bonds in escrow or in trust with a trustee or fiscal agent or otherwise providing for the issuance and disposition of the bonds as security for carrying out any of the provisions in any resolution adopted pursuant to this section and providing for the powers and duties of the trustee, fiscal agent, or other depository and the terms and conditions upon which the bonds are to be issued, held and disposed of;

(f) Any other matters of like or different character which relate to any provision or provisions of any resolution adopted pursuant to this section.

A district shall have power to make contracts for the future sale from time to time of revenue obligations by which the purchasers shall be committed to purchase such revenue obligations from time to time on the terms and conditions stated in such contract; and a district shall have power to pay such consideration as it shall deem proper for such commitments.

(2) Notwithstanding subsection (1) of this section, such revenue obligations may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 147; 1959 c 218 § 4; 1941 c 182 § 2; Rem. Supp. 1941 § 11611-2.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.24.040 Considerations in creating special fund—Status of claims against fund—When lien attaches. In creating any special fund for the payment of revenue obligations, the commission shall have due regard to the cost of operation and maintenance of the plant or system constructed or added to, and to any proportion or amount of the revenues previously pledged as a fund for the payment of revenue obligations, and shall not set aside into such special fund or funds a greater amount or proportion of the revenues and proceeds than

in its judgment will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenues so previously pledged. Any such revenue obligations and interest thereon issued against any such fund as herein provided shall be a valid claim of the owner thereof only as against such special fund and the proportion or amount of the revenues pledged to such fund, but shall constitute a prior charge over all other charges or claims whatsoever, including the charge or lien of any general obligation bonds against such fund and the proportion or amount of the revenues pledged thereto. Such revenue obligations shall not constitute an indebtedness of such district within the meaning of the constitutional provisions and limitations. Each revenue obligation shall state on its face that it is payable from a special fund, naming such fund and the resolution creating it, or shall describe such alternate method for the payment thereof as shall be provided by the resolution authorizing same.

It is the intention hereof that any pledge of the revenues or other moneys or obligations made by a district shall be valid and binding from the time that the pledge is made; that the revenues or other moneys or obligations so pledged and thereafter received by a district shall immediately be subject to the lien of such pledge without any physical delivery or further act, and that the lien of any such pledge shall be valid and binding as against any parties having claims of any kind in tort, contract, or otherwise against a district irrespective of whether such parties have notice thereof. Neither the resolution or other instrument by which a pledge is created need be recorded. [1983 c 167 § 148; 1959 c 218 § 5; 1941 c 182 § 5; Rem. Supp. 1941 § 11611-5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.24.050 Covenants to secure owners of revenue obligations. Any resolution creating any such special fund or authorizing the issue of revenue obligations payable therefrom, or by such alternate method of payment as may be provided therein, shall specify the title of such revenue obligations as determined by the commission and may contain covenants by the district to protect and safeguard the security and the rights of the owners thereof, including covenants as to, among other things:

(1) The purpose or purposes to which the proceeds of sale of such obligations may be applied and the use and disposition thereof;

(2) The use and disposition of the gross revenues of the public utility, and any additions or betterments thereto or extensions thereof, the cost of which is to be defrayed with such proceeds, including the creation and maintenance of funds for working capital to be used in the operation of the public utility and for renewals and replacements to the public utility;

(3) The amount, if any, of additional revenue obligations payable from such fund which may be issued and the terms and conditions on which such additional revenue obligations may be issued;

(4) The establishment and maintenance of adequate rates and charges for electric energy, water, and other

services, facilities, and commodities sold, furnished, or supplied by the public utility;

(5) The operation, maintenance, management, accounting, and auditing of the public utility;

(6) The terms and prices upon which such revenue obligations or any of them may be redeemed at the election of the district;

(7) Limitations upon the right to dispose of such public utility or any part thereof without providing for the payment of the outstanding revenue obligations; and

(8) The appointment of trustees, depositaries, and paying agents to receive, hold, disburse, invest, and reinvest all or any part of the income, revenues, receipts, and profits derived by the district from the operation, ownership, and management of its public utility. [1983 c 167 § 149; 1959 c 218 § 6; 1945 c 143 § 2; 1941 c 182 § 3; Rem. Supp. 1945 § 11611-3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.24.060 Sale, delivery of revenue obligations. (1) Such utility revenue obligations shall be sold and delivered in such manner, at such rate or rates of interest and for such price or prices and at such time or times as the commission shall deem for the best interests of the district. The commission may, if it deem it to the best interest of the district, provide in any contract for the construction or acquisition of the public utility, or the additions or betterments thereto or extensions thereof, that payment therefor shall be made only in such revenue obligations at the par value thereof.

(2) Notwithstanding subsection (1) of this section, such obligations may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 150; 1970 ex.s. c 56 § 78; 1969 ex.s. c 232 § 83; 1959 c 218 § 7; 1941 c 182 § 4; Rem. Supp. 1941 § 11611-4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Effective date—Purpose—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

54.24.070 Prima facie validity of revenue obligations. The state auditor need not register, certify, nor sign revenue obligations after July 26, 1981. These obligations shall be held in every action, suit, or proceeding in which their validity is or may be brought into question prima facie valid and binding obligations of the districts in accordance with their terms, notwithstanding any defects or irregularities in the proceedings for the organization of the district and the election of the commissioners thereof or for the authorization and issuance of such revenue obligations or in the sale, execution, or delivery thereof. [1981 c 37 § 1; 1959 c 218 § 8; 1941 c 182 § 6; Rem. Supp. 1941 § 11611-6.]

54.24.080 Rates and charges. The commission of each district which shall have revenue obligations outstanding shall have the power and shall be required to

establish, maintain, and collect rates or charges for electric energy and water and other services, facilities, and commodities sold, furnished, or supplied by the district which shall be fair and nondiscriminatory and adequate to provide revenues sufficient for the payment of the principal of and interest on such revenue obligations for which the payment has not otherwise been provided and all payments which the district is obligated to set aside in any special fund or funds created for such purpose, and for the proper operation and maintenance of the public utility and all necessary repairs, replacements, and renewals thereof. [1959 c 218 § 9; 1941 c 182 § 7; Rem. Supp. 1941 § 11611-7.]

54.24.090 Funding, refunding revenue obligations. Whenever any district shall have outstanding any utility revenue obligations, the commission shall have power by resolution to provide for the issuance of funding or refunding revenue obligations with which to take up and refund such outstanding revenue obligations or any part thereof at the maturity thereof or before maturity if the same be by their terms or by other agreement subject to call for prior redemption, with the right in the commission to include various series and issues of such outstanding revenue obligations in a single issue of funding or refunding revenue obligations, and to issue refunding revenue obligations to pay any redemption premium payable on the outstanding revenue obligations being funded or refunded. Such funding or refunding revenue obligations shall be payable only out of a special fund created out of the gross revenues of such public utility, and shall only be a valid claim as against such special fund and the amount of the revenues of such utility pledged to such fund. Such funding or refunding revenue obligations shall in the discretion of the commission be exchanged at par for the revenue obligations which are being funded or refunded or shall be sold in such manner, at such price and at such rate or rates of interest as the commission shall deem for the best interest of the district. Said funding or refunding [revenue] obligations shall except as specifically provided in this section, be issued in accordance with the provisions with respect to revenue obligations in *this act set forth. [1970 ex.s. c 56 § 79; 1969 ex.s. c 232 § 84; 1959 c 218 § 10; 1941 c 182 § 8; Rem. Supp. 1941 c 11611-8.]

***Reviser's note:** "This act" [1941 c 182] is codified as RCW 54.24.020 through 54.24.120.

Effective date—Purpose—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

54.24.100 Execution of revenue obligations—Signatures. (1) All revenue obligations, including funding and refunding revenue obligations, shall be executed in such manner as the commission may determine: *Provided*, That warrants may be signed as provided in RCW 54.24.010. Any interest coupons attached to any revenue obligations may be executed with facsimile or lithographed signatures, or otherwise, as the commission may determine.

(2) Notwithstanding subsection (1) of this section, such obligations may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 151; 1981 c 37 § 2; 1959 c 218 § 11; 1941 c 182 § 9; Rem. Supp. 1941 § 11611-9.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Facsimile signatures: RCW 39.44.100 through 39.44.102.

54.24.110 Laws and resolutions as contract. The provisions of *this act and the provisions of **chapter 1, Laws of 1931, not hereby superseded, and of any resolution or resolutions providing for the issuance of any revenue obligations as herein set forth shall constitute a contract with the holder or holders of such revenue obligations and the agreements and covenants of the district and its commission under said acts and any such resolution or resolutions shall be enforceable by any revenue obligation holder by mandamus or any other appropriate suit or action in any court of competent jurisdiction. [1959 c 218 § 12; 1941 c 182 § 10; Rem. Supp. 1941 § 11611-10.]

Reviser's note: *(1) For translation of "this act," see note following RCW 54.24.090.

** (2) For translation of "chapter 1, Laws of 1931," see note following RCW 54.04.020.

Mandamus: RCW 7.16.150 through 7.16.280.

54.24.120 Obligations as lawful securities and investments. All bonds, warrants, and revenue obligations issued under the authority of *chapter 1, Laws of 1931 and **this act shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county, city, or town treasurer, as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys and shall constitute legal investments for trustees and other fiduciaries other than corporations doing a trust business in this state and for savings and loan associations, banks, and insurance companies doing business in this state. All such bonds, warrants, and revenue obligations and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the negotiable instruments law of this state. [1959 c 218 § 13; 1941 c 182 § 11; Rem. Supp. 1941 § 11611-11.]

Reviser's note: *(1) For translation of "chapter 1, Laws of 1931," see note following RCW 54.04.020.

** (2) For translation of "this act," see note following RCW 54.24.090.

Investment securities: Article 62A.8 RCW.

LOCAL IMPROVEMENT GUARANTY FUND

54.24.200 Local improvement guaranty fund. Every public utility district in the state is hereby authorized, by resolution, to create a fund for the purpose of guaranteeing, to the extent of such fund, and in the manner hereinafter provided, the payment of such of its local improvement bonds and/or warrants as the commission may determine issued to pay for any local improvement within any local utility district established within the

boundaries of the public utility district. Such fund shall be designated "local improvement guaranty fund, public utility district No. -----". For the purpose of maintaining such fund the public utility district shall set aside and pay into it such proportion as the commissioners may direct by resolution of the monthly gross revenues of its public utilities for which local improvement bonds and/or warrants have been issued and guaranteed by said fund: *Provided, however,* That any obligation to make payments into said fund as herein provided shall be junior to any pledge of said gross revenues for the payment of any outstanding or future general obligation bonds or revenue bonds of the district. The proportion may be varied from time to time as the commissioners deem expedient: *Provided, further,* That under the existence of the conditions set forth in subdivisions (1) and (2), hereunder, and when consistent with the covenants of a public utility district securing its bonds, the proportion shall be as therein specified, to wit:

(1) When bonds and/or warrants of a local utility district have been guaranteed and are outstanding and the guaranty fund does not have a cash balance equal to twenty percent of all bonds and/or warrants originally guaranteed hereunder, excluding bonds and/or warrants which have been retired in full, then twenty percent of the gross monthly revenues from each public utility for which such bonds and/or warrants have been issued and are outstanding but not necessarily from users in other parts of the public utility district as a whole, shall be set aside and paid into the guaranty fund: *Provided,* That when, under the requirements of this subdivision, the cash balance accumulates so that it is equal to twenty percent of the total original guaranteed bonds and/or warrants, exclusive of any issue of bonds and/or warrants of a local utility district which issue has been paid and/or redeemed in full, or equal to the full amount of all bonds and/or warrants guaranteed, outstanding and unpaid, which amount might be less than twenty percent of the original total guaranteed, then no further revenue need be set aside and paid into the guaranty fund so long as such condition continues;

(2) When warrants issued against the guaranty fund remain outstanding and uncalled, for lack of funds, for six months from date of issuance, or when bonds, warrants, or any coupons or interest payments guaranteed hereunder have been matured for six months and have not been redeemed, then twenty percent of the gross monthly revenue, or such portion thereof as the commissioners determine will be sufficient to retire the warrants or redeem the coupons, interest payments, bonds and/or warrants in the ensuing six months, derived from all the users of the public utilities for which such bonds and/or warrants have been issued and are outstanding in whole or in part, shall be set aside and paid into the guaranty fund: *Provided,* That when under the requirements of this subdivision all warrants, coupons, bonds and/or warrants specified in this subdivision have been redeemed and interest payments made, no further income need be set aside and paid into the guaranty fund under the requirements of this subdivision unless other warrants remain outstanding and unpaid for six months or

other coupons, bonds and/or warrants default or interest payments are not made: *Provided, further, however,* That no more than a total of twenty percent of the gross monthly revenue shall be required to be set aside and paid into the guaranty fund by these subdivisions (1) and (2). [1983 c 167 § 152; 1957 c 150 § 1.]

Liberal construction—Severability—1983 c 167: See RCW 39-.46.010 and note following.
Local utility districts: RCW 54.16.120.

54.24.210 Local improvement guaranty fund—Duties of the district. To comply with the requirements of setting aside and paying into the local improvement guaranty fund a proportion of the monthly gross revenues of the public utilities of a district, for which guaranteed local improvement bonds and/or warrants have been issued and are outstanding, the district shall bind and obligate itself so long as economically feasible to maintain and operate the utilities and establish, maintain and collect such rates for water and/or electric energy, as the case may be, as will produce gross revenues sufficient to maintain and operate the utilities, and make necessary provision for the guaranty fund. The district shall alter its rates for water and/or electric energy, as the case may be, from time to time and shall vary them in different portions of its territory to comply with such requirements. [1957 c 150 § 2.]

54.24.220 Local improvement guaranty fund—Warrants to meet liabilities. When a bond, warrant, or any coupon or interest payment guaranteed by the guaranty fund matures and there are not sufficient funds in the local utility district bond redemption fund to pay it, the county treasurer shall pay it from the local improvement guaranty fund of the public utility district; if there are not sufficient funds in the guaranty fund to pay it, it may be paid by issuance and delivery of a warrant upon the local improvement guaranty fund.

When the cash balance in the local improvement guaranty fund is insufficient for the required purposes, warrants drawing interest at a rate determined by the commission may be issued by the district auditor, against the fund to meet any liability accrued against it and shall issue them upon demand of the owners of any matured coupons, bonds, interest payments, and/or warrants guaranteed hereby, or to pay for any certificate of delinquency for delinquent installments of assessments as provided hereinafter. Guaranty fund warrants shall be a first lien in their order of issuance upon the guaranty fund. [1983 c 167 § 153; 1981 c 156 § 19; 1957 c 150 § 3.]

Liberal construction—Severability—1983 c 167: See RCW 39-.46.010 and note following.

54.24.230 Local improvement guaranty fund—Certificates of delinquency—Contents, purchase, payment, issuance, sale. Within twenty days after the date of delinquency of any annual installment of assessments levied for the purpose of paying the local improvement bonds and/or warrants of a district guaranteed hereunder, the county treasurer shall compile a statement of all

installments delinquent together with the amount of accrued interest and penalty appurtenant to each installment, and shall forthwith purchase, for the district, certificates of delinquency for all such delinquent installments. Payment for the certificates shall be made from the local improvement guaranty fund and if there is not sufficient money in that fund to pay for the certificates, the county treasurer shall accept the local improvement guaranty fund warrants in payment therefor. All certificates shall be issued in the name of the local improvement guaranty fund and all guaranty fund warrants issued in payment therefor shall be issued in the name of the appropriate local utility district fund. When a market is available and the commissioners direct, the county treasurer shall sell any certificates belonging to the local improvement guaranty fund, for not less than face value thereof plus accrued interest from date of issuance to date of sale.

The certificates shall be issued by the county treasurer, shall bear interest at the rate of ten percent per year, shall each be for the face value of the delinquent installment, plus accrued interest to date of issuance, plus a penalty of five percent of the face value, and shall set forth the:

- (1) Description of property assessed;
- (2) Date the installment of assessment became delinquent; and
- (3) Name of the owner or reputed owner, if known. [1957 c 150 § 4.]

54.24.240 Local improvement guaranty fund—Certificates of delinquency—Redemption, foreclosure. The certificates of delinquency may be redeemed by the owner of the property assessed at any time up to two years from the date of foreclosure of the certificate.

If a certificate is not redeemed on the second occurring first day of January, after its issuance, the county treasurer shall foreclose the certificate in the manner specified for the foreclosure of the lien of local improvement assessments in cities, and if no redemption is made within the succeeding two years, from date of the decree of foreclosure, shall execute and deliver unto the public utility district, as trustee for the fund, a deed conveying fee simple title to the property described in the foreclosed certificate. [1957 c 150 § 5.]

54.24.250 Local improvement guaranty fund—Subrogation of district as trustee of fund, effect on fund, disposition of proceeds. When there is paid out of a guaranty fund any sum on the principal or interest upon local improvement bonds, and/or warrants, or on the purchase of certificates of delinquency, the public utility district, as trustee, for the fund, shall be subrogated to all rights of the owner of the bonds, and/or warrants, any interest coupons, or delinquent assessment installments so paid; and the proceeds thereof, or of the assessment underlying them, shall become a part of the guaranty fund. There shall also be paid into the guaranty fund the interest received from the bank deposits of the fund, as well as any surplus remaining in the local utility district funds guaranteed hereunder, after the

payment of all outstanding bonds and/or warrants payable primarily out of such local utility district funds. As among the several issues of bonds and/or warrants guaranteed by the fund, no preference shall exist, but defaulted interest coupons and bonds and/or warrants shall be purchased out of the fund in the order of their presentation.

The commissioners shall prescribe, by resolution, appropriate rules for the guaranty fund consistent herewith. So much of the money of a guaranty fund as is necessary and not required for other purposes hereunder may be used to purchase property at county tax foreclosure sales or from the county after foreclosure in cases where the property is subject to unpaid local improvement assessments securing bonds and/or warrants guaranteed hereunder and such purchase is deemed necessary for the purpose of protecting the guaranty fund. In such cases the funds shall be subrogated to all rights of the district. After so acquiring title to real property, the district may lease or resell and convey it in the same manner that county property may be leased or resold and for such prices and on such terms as may be determined by resolution of the commissioners. All proceeds resulting from such resales shall belong to and be paid into the guaranty fund. [1983 c 167 § 154; 1957 c 150 § 6.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

54.24.260 Local improvement guaranty fund—Rights and remedies of bond or warrant holder which shall be printed on bond or warrant—Disposition of balance of fund. Neither the holder nor the owner of local improvement bonds and/or warrants guaranteed hereunder shall have a claim therefor against the public utility district, except for payment from the special assessment made for the improvement for which the bonds and/or warrants were issued, and except as against the guaranty fund. The district shall not be liable to any holder or owner of such local improvement bonds and/or warrants for any loss to the guaranty fund occurring in the lawful operation thereof by the district. The remedy of the holder of a local improvement bond and/or warrant shall be confined to the enforcement of the assessment and to the guaranty fund. A copy of the foregoing part of this section shall be plainly written, printed, or engraved on each local improvement bond and/or warrant guaranteed hereby. The establishment of a guaranty fund shall not be deemed at variance from any comprehensive plan heretofore adopted by a district.

If a guaranty fund at any time has balance therein in cash, and the obligations guaranteed thereby have all been paid off, the balance may be transferred to such other fund of the district as the commissioners shall, by resolution, direct. [1957 c 150 § 7.]

Chapter 54.28 PRIVILEGE TAXES

Sections
54.28.010 Definitions.

- 54.28.011 "Gross revenue" defined.
- 54.28.020 Tax imposed—Rates—Additional tax imposed.
- 54.28.025 Tax imposed with respect to thermal electric generating facilities—Rate—Additional tax imposed.
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- 54.28.070 Municipal taxes—May be passed on.
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- 54.28.090 Deposit of funds to credit of certain taxing districts.
- 54.28.100 Use of moneys received by taxing district.
- 54.28.110 Voluntary payments by district to taxing entity for removal of property from tax rolls.
- 54.28.120 Amount of tax if district acquires electric utility property from public service company.

54.28.010 Definitions. As used in this chapter:

- (1) "Operating property" means all of the property utilized by a public utility district in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale;
- (2) "Taxing districts" means counties, cities, towns, school districts, and road districts;
- (3) "Distributes to consumers" means the sale of electric energy to ultimate consumers thereof, and does not include sales of electric energy for resale by the purchaser;
- (4) "Wholesale value" means all costs of a public utility district associated with the generation and transmission of energy from its own generation and transmission system to the point or points of inter-connection with a distribution system owned and used by a district to distribute such energy to consumers, or in the event a distribution system owned by a district is not used to distribute such energy, then the term means the gross revenues derived by a district from the sale of such energy to consumers;
- (5) "Thermal electric generating facility" means a steam-powered electrical energy producing facility utilizing nuclear or fossil fuels;
- (6) "Placed in operation" means delivery of energy into a transmission or distribution system for use or sale in such a manner as to establish a value accruing to the power plant operator, except operation incidental to testing or startup adjustments;
- (7) "Impacted area" for a thermal electric generating facility on a federal reservation means that area in the state lying within thirty-five statute miles of the most commonly used entrance of the federal reservation and which is south of the southern boundary of township fifteen north. [1977 ex.s. c 366 § 1; 1967 ex.s. c 26 § 22; 1959 c 274 § 1; 1957 c 278 § 7. Prior: (i) 1941 c 245 § 1, part; Rem. Supp. 1941 § 11616-1, part. (ii) 1949 c 227 § 1(f); Rem. Supp. 1949 § 11616-2(f).]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

54.28.011 "Gross revenue" defined. "Gross revenue" shall mean the amount received from the sale of electric

energy excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070. [1957 c 278 § 12.]

54.28.020 Tax imposed—Rates—Additional tax imposed. (1) There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, except with respect to thermal electric generating facilities taxed under RCW 54.28.025, such tax shall be the sum of the following amounts: (a) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district; (b) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district; (c) five percent of the first four mills per kilowatt-hour of revenue obtained by the district from the sale of self-generated energy for resale.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 8; 1982 1st ex.s. c 35 § 18; 1977 ex.s. c 366 § 2; 1959 c 274 § 2; 1957 c 278 § 2. Prior: 1949 c 227 § 1(a); 1947 c 259 § 1(a); 1941 c 245 § 2(a); Rem. Supp. 1949 § 11616-2(a).]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—1947 c 259: "If any section, subsection, clause, sentence or phrase of this act be for any reason adjudged unconstitutional, such adjudication shall not invalidate the remaining portions of this act, and the legislature hereby declares that it would have enacted this act notwithstanding the omission of the portion so adjudicated invalid." [1947 c 259 § 2.]

54.28.025 Tax imposed with respect to thermal electric generating facilities—Rate—Additional tax imposed. (1) There is hereby levied and there shall be collected from every district operating a thermal electric generating facility, as defined in RCW 54.28.010 as now or hereafter amended, having a design capacity of two hundred fifty thousand kilowatts or more, located on a federal reservation, which is placed in operation after September 21, 1977, a tax for the act or privilege of engaging within the state in the business of generating electricity for use or sale, equal to one and one-half percent of wholesale value of energy produced for use or sale, except energy used in the operation of component parts of the power plant and associated transmission facilities under control of the person operating the power plant.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 9; 1982 1st ex.s. c 35 § 19; 1977 ex.s. c 366 § 6.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

54.28.030 Districts' report to department of revenue.

On or before the fifteenth day of March of each year, each district subject to this tax shall file with the department of revenue a report verified by the affidavit of its manager or secretary on forms prescribed by the department of revenue. Such report shall state (1) the gross revenues derived by the district from the sale of all distributed energy to consumers and the respective amounts derived from such sales within each county; (2) the gross revenues derived by the district from the sale of self-generated energy for resale; (3) the amount of all generated energy distributed from each of the facilities subject to taxation by a district from its own generating facilities, the wholesale value thereof, and the basis on which the value is computed; (4) the total cost of all generating facilities and the cost of acquisition of land and land rights for such facilities or for reservoir purposes in each county; and (5) such other and further information as the department of revenue reasonably may require in order to administer the provisions of this chapter. In case of failure by a district to file such report, the department may proceed to determine the information, which determination shall be contestable by the district only for actual fraud. [1977 ex.s. c 366 § 3; 1975 1st ex.s. c 278 § 30; 1959 c 274 § 3; 1957 c 278 § 3. Prior: 1949 c 227 § 1(b); 1947 c 259 § 1(b); 1941 c 245 § 2(b); Rem. Supp. 1949 § 11616-2(b).]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

54.28.040 Tax computed—Payment—Disposition. Prior to May 1st, the department of revenue shall compute the tax imposed by this chapter for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before the following June 1st. Upon receipt of the amount of each tax imposed the department of revenue shall deposit the same with the state treasurer, who shall deposit four percent of the revenues received under RCW 54.28.020(1) and 54.28.025(1) and all revenues received under RCW 54.28.020(2) and 54.28.025(2) in the general fund of the state and shall distribute the remainder in the manner hereinafter set forth. The state treasurer shall send a duplicate copy of each transmittal to the department of revenue. [1982 1st ex.s. c 35 § 20; 1975 1st ex.s. c 278 § 31; 1957 c 278 § 4. Prior: 1949 c 227 § 1(c); 1947 c 259 § 1(c); 1941 c 245 § 2(c); Rem. Supp. 1949 § 11616-2(c).]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

54.28.050 Distribution of tax. After computing the tax imposed by RCW 54.28.020(1), the department of revenue shall instruct the state treasurer, after placing thirty-seven and six-tenths percent in the state general fund to be dedicated for the benefit of the public schools, to distribute the balance collected under RCW

54.28.020(1)(a) to each county in proportion to the gross revenue from sales made within each county; and to distribute the balance collected under RCW 54.28.020(1) (b) and (c) as follows: If the entire generating facility, including reservoir, if any, is in a single county then all of the balance to the county where such generating facility is located. If any reservoir is in more than one county, then to each county in which the reservoir or any portion thereof is located a percentage equal to the percentage determined by dividing the total cost of the generating facilities, including adjacent switching facilities, into twice the cost of land and land rights acquired for any reservoir within each county, land and land rights to be defined the same as used by the federal power commission. If the powerhouse and dam, if any, in connection with such reservoir are in more than one county, the balance shall be divided sixty percent to the county in which the owning district is located and forty percent to the other county or counties or if said powerhouse and dam, if any, are owned by a joint operating agency organized under chapter 43.52 RCW, or by more than one district or are outside the county of the owning district, then to be divided equally between the counties in which such facilities are located. If all of the powerhouse and dam, if any, are in one county, then the balance shall be distributed to the county in which the facilities are located.

The provisions of this section shall not apply to the distribution of taxes collected under RCW 54.28.025. [1982 1st ex.s. c 35 § 21; 1980 c 154 § 8; 1977 ex.s. c 366 § 4; 1975 1st ex.s. c 278 § 32; 1959 c 274 § 4; 1957 c 278 § 5. Prior: 1949 c 227 § 1(d); 1947 c 259 § 1(d); 1941 c 245 § 2(d); Rem. Supp. 1949 § 11616-2(d).]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82-.45 RCW digest.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Effective date—1959 c 274: "The effective date of section 4 of this 1959 amendatory act shall be January 1, 1960." [1959 c 274 § 6.]

54.28.055 Distribution of tax proceeds from thermal electric generating facilities. (1) After computing the tax imposed by RCW 54.28.025(1), the department of revenue shall instruct the state treasurer to distribute the amount collected as follows:

(a) Fifty percent to the state general fund for the support of schools; and

(b) Twenty-two percent to the counties, twenty-three percent to the cities, three percent to the fire protection districts, and two percent to the library districts.

(2) Each county, city, fire protection district and library district shall receive a percentage of the amount for distribution to counties, cities, fire protection districts and library districts, respectively, in the proportion that the population of such district residing within the impacted area bears to the total population of all such districts residing within the impacted area. For the purposes of this chapter, the term "library district" includes only regional libraries as defined in RCW 27.12.010(4),

rural county library districts as defined in RCW 27.12.010(5), intercounty rural library districts as defined in RCW 27.12.010(6), and island library districts as defined in RCW 27.12.010(7). The population of a library district, for purposes of such a distribution, shall not include any population within the library district and the impact area that also is located within a city or town.

(3) If any distribution pursuant to subsection (1)(b) of this section cannot be made, then that share shall be prorated among the state and remaining local districts.

(4) All distributions directed by this section to be made on the basis of population shall be calculated in accordance with data to be provided by the office of financial management. [1986 c 189 § 1; 1982 1st ex.s. c 35 § 22; 1979 c 151 § 165; 1977 ex.s. c 366 § 7.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

54.28.060 Interest. Interest at the rate of six percent per annum shall be added to the tax hereby imposed after the due date. The tax shall constitute a debt to the state and may be collected as such. [1957 c 278 § 6. Prior: 1949 c 227 § 1(e); 1947 c 259 § 1(e); 1941 c 245 § 2(e); Rem. Supp. 1949 § 11616-2(e).]

54.28.070 Municipal taxes—May be passed on. Any city or town in which a public utility district operates works, plants or facilities for the distribution and sale of electricity shall have the power to levy and collect from such district a tax on the gross revenues derived by such district from the sale of electricity within the city or town, exclusive of the revenues derived from the sale of electricity for purposes of resale. Such tax when levied shall be a debt of the district, and may be collected as such. Any such district shall have the power to add the amount of such tax to the rates or charges it makes for electricity so sold within the limits of such city or town. [1941 c 245 § 3; Rem. Supp. 1941 § 11616-3.]

54.28.080 Additional tax for payment on bonded indebtedness of school districts. Whenever any district acquires an operating property from any private person, firm, or corporation and a portion of the operating property is situated within the boundaries of any school district and at the time of such acquisition there is an outstanding bonded indebtedness of the school district, then the public utility district shall, in addition to the tax imposed by this chapter, pay directly to the school district a proportion of all subsequent payments by the school district of principal and interest on said bonded indebtedness, said additional payments to be computed and paid as follows: The amount of principal and interest required to be paid by the school district shall be multiplied by the percentage which the assessed value of the property acquired bore to the assessed value of the total property in the school district at the time of such acquisition. Such additional amounts shall be paid by the public utility district to the school district not less than fifteen days prior to the date that such principal and interest payments are required to be paid by the

school district. In addition, any public utility district which acquires from any private person, firm, or corporation an operating property situated within a school district, is authorized to make voluntary payments to such school district for the use and benefit of the school district. [1957 c 278 § 8. Prior: 1949 c 227 § 1(g); 1941 c 245 § 2; Rem. Supp. 1949 § 11616-2(g).]

54.28.090 Deposit of funds to credit of certain taxing districts. The county legislative authority of each county shall direct the county treasurer to deposit funds to the credit of each taxing district in the county, other than school districts, according to the manner they deem most equitable; except not less than an amount equal to three-fourths of one percent of the gross revenues obtained by a district from the sale of electric energy within any incorporated city or town shall be remitted to such city or town. Information furnished by the district to the county legislative authority shall be the basis for the determination of the amount to be paid to such cities or towns.

The provisions of this section shall not apply to the distribution of taxes collected under RCW 54.28.025. [1980 c 154 § 9; 1977 ex.s. c 366 § 5; 1957 c 278 § 10.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82-.45 RCW digest.

54.28.100 Use of moneys received by taxing district. All moneys received by any taxing district shall be used for purposes for which state taxes may be used under the provisions of the state constitution. [1957 c 278 § 11.]

Revenue and taxation: State Constitution Art. 7.

54.28.110 Voluntary payments by district to taxing entity for removal of property from tax rolls. Whenever, hereafter, property is removed from the tax rolls as a result of the acquisition of operating property or the construction of a generating plant by a public utility district, such public utility district may make voluntary payments to any municipal corporation or other entity authorized to levy and collect taxes in an amount not to exceed the amount of tax revenues being received by such municipal corporation or other entity at the time of said acquisition or said construction and which are lost by such municipal corporation or other entity as a result of the acquisition of operating property or the construction of a generating plant by the public utility district: *Provided*, That this section shall not apply to taxing districts as defined in RCW 54.28.010, and: *Provided further*, That in the event any operating property so removed from the tax rolls is dismantled or partially dismantled the payment which may be paid hereunder shall be correspondingly reduced. [1957 c 278 § 13.]

54.28.120 Amount of tax if district acquires electric utility property from public service company. In the event any district hereafter purchases or otherwise acquires electric utility properties comprising all or a portion of an electric generation and/or distribution system from a public service company, as defined in RCW 80.04.010,

the total amount of privilege taxes imposed under *this act to be paid by the district annually on the combined operating property within each county where such utility property is located, irrespective of any other basis of levy contained in this chapter, will be not less than the combined total of the ad valorem taxes, based on regular levies, last levied against the electric utility property constituting the system so purchased or acquired plus the taxes paid by the district for the same year on the revenues of other operating property in the same county under terms of this chapter. If all or any portion of the property so acquired is subsequently sold, or if rates charged to purchasers of electric energy are reduced, the amount of privilege tax required under this section shall be proportionately reduced. [1957 c 278 § 14.]

*Reviser's note: For codification of "this act" [1957 c 278], see Codification Tables, Volume 0.

Chapter 54.32

CONSOLIDATION AND ANNEXATION

Sections

- 54.32.001 Actions subject to review by boundary review board.
 54.32.010 Consolidation of districts—Property taxed—
 Boundaries enlarged.
 54.32.040 Right of county-wide utility district to acquire distribution properties.

Annexation of territory: RCW 54.04.035.

54.32.001 Actions subject to review by boundary review board. Actions taken under chapter 54.32 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 49.]

54.32.010 Consolidation of districts—Property taxed—Boundaries enlarged. Two or more contiguous public utility districts may become consolidated into one public utility district after proceedings had as required by *sections 8909, 8910 and 8911, of Remington's Compiled Statutes of Washington, *Provided*, That a ten percent petition shall be sufficient; and public utility districts shall be held to be municipal corporations within the meaning of said sections, and the commission shall be held to be the legislative body of the public utility district as the term legislative body is used in said sections: *Provided*, That any such consolidation shall in nowise affect or impair the title to any property owned or held by any such public utility district, or in trust therefor, or any debts, demands, liabilities or obligations existing in favor of or against either of the districts so consolidated, or any proceeding then pending: *Provided, further*, That no property within either of the former public utility districts shall ever be taxed to pay any of the indebtedness of either of the other such former districts.

The boundaries of any public utility district may be enlarged and new territory included therein, after proceedings had as required by **section 8894 of Remington's Compiled Statutes of Washington: *Provided*, That a ten percent petition shall be sufficient; and public utility districts shall be held to be municipal corporations

within the meaning of said section, and the commission shall be held to be the legislative body of the public utility district: *Provided*, That no property within such territory so annexed shall ever be taxed to pay any portion of any indebtedness of such public utility district contracted prior to or existing at the date of such annexation.

In all cases wherein public utility districts of less area than an entire county desire to be consolidated with a public utility district including an entire county, and in all cases wherein it is desired to enlarge a public utility district including an entire county, by annexing a lesser area than an entire county, no election shall be required to be held in the district including an entire county. [1931 c 1 § 10; RRS § 11614. Formerly RCW 54.32-.010 through 54.32.030.]

Reviser's note: *(1) Rem. Comp. Stat. §§ 8909, 8910, and 8911 relating to the consolidation of municipal corporations had been repealed and reenacted by 1929 c 64 at the time the above section was enacted. 1929 c 64 was compiled as RRS § 8909-1 through 8909-12; see chapter 35.10 RCW.

** (2) Rem. Comp. Stat. § 8894 became chapter 35.12 RCW. RCW 35.12.010, the only section in that chapter, was repealed by 1969 ex.s. c 89 § 18.

54.32.040 Right of county-wide utility district to acquire distribution properties. Upon the formation of a county-wide public utility district in any county such district shall have the right, in addition to any other right provided by law, to acquire by purchase or condemnation any electrical distribution properties in the county from any other public utility district or combination of public utility districts for a period of five years from the time of organization of said public utility district. [1951 c 272 § 2.]

Acquisition of electrical distribution property from public utility district by cities and towns: RCW 35.92.054.

Chapter 54.36

LIABILITY TO OTHER TAXING DISTRICTS

Sections

- 54.36.010 Definitions.
 54.36.020 Increased financial burden on school district—Determination of number of construction pupils.
 54.36.030 Compensation of school district for construction pupils—Computation.
 54.36.040 Compensation of school district for construction pupils—Amount to be paid.
 54.36.050 Compensation of school district for construction pupils—How paid when more than one project in the same school district.
 54.36.060 Power to make voluntary payments to school district for capital construction.
 54.36.070 Increased financial burden on county or other taxing district—Power to make payments.
 54.36.080 Funds received by school district—Equalization apportionment.

54.36.010 Definitions. As used in this chapter: "Public utility district" means public utility district or districts or a joint operating agency or agencies.

"Construction project" means the construction of generating facilities by a public utility district. It includes the relocation of highways and railroads, by whomever done, to the extent that it is occasioned by the overflowing of their former locations, or by destruction or burying incident to the construction.

"Base-year enrollment" means the number of pupils enrolled in a school district on the first of May next preceding the date construction was commenced.

"Subsequent-year enrollment" means the number of pupils enrolled in a school district on any first of May after construction was commenced.

"Construction pupils" means pupils who have a parent who is a full time employee on the construction project and who moved into the school district subsequent to the first day of May next preceding the day the construction was commenced.

"Nonconstruction pupils" means other pupils. [1975 1st ex.s. c 10 § 1; 1973 1st ex.s. c 154 § 99; 1957 c 137 § 1.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Operating agencies: Chapter 43.52 RCW.

54.36.020 Increased financial burden on school district—Determination of number of construction pupils. When as the result of a public utility district construction project a school district considers it is suffering an increased financial burden in any year during the construction project, it shall determine the number of construction pupils enrolled in the school district on the first of May of such year. [1957 c 137 § 2.]

54.36.030 Compensation of school district for construction pupils—Computation. If the subsequent-year enrollment exceeds one hundred and three percent of the base-year enrollment, the public utility district shall compensate the school district for a number of construction pupils computed as follows:

(1) If the subsequent-year enrollment of nonconstruction pupils is less than the base-year enrollment, compensation shall be paid for the total number of all pupils minus one hundred and three percent of the base-year enrollment.

(2) If the subsequent-year enrollment of nonconstruction pupils is not less than the base-year enrollment, compensation shall be paid for the total number of construction pupils minus three percent of the base-year enrollment. [1957 c 137 § 3.]

54.36.040 Compensation of school district for construction pupils—Amount to be paid. The compensation to be paid per construction pupils as computed in RCW 54.36.030 shall be one-third of the average per-pupil cost of the local school district, for the school year then current. [1957 c 137 § 4.]

54.36.050 Compensation of school district for construction pupils—How paid when more than one

project in the same school district. If more than one public utility district or joint operating agency is carrying on a construction project in the same school district, the number of construction pupils for whom the school district is to receive compensation shall be computed as if the projects were constructed by a single agency. The public utility districts or joint operating agencies involved shall divide the cost of such compensation between themselves in proportion to the number of construction pupils occasioned by the operations of each. [1957 c 137 § 5.]

54.36.060 Power to make voluntary payments to school district for capital construction. Public utility districts are hereby authorized to make voluntary payments to a school district for capital construction if their construction projects cause an increased financial burden for such purpose on the school district. [1957 c 137 § 6.]

54.36.070 Increased financial burden on county or other taxing district—Power to make payments. Public utilities are hereby authorized to make payments to a county or other taxing district in existence before the commencement of construction on the construction project which suffers an increased financial burden because of their construction projects, but such amount shall not be more than the amount by which the property taxes levied against the contractors engaged in the work on the construction project failed to meet said increased financial burden. [1957 c 137 § 7.]

54.36.080 Funds received by school district—Equalization apportionment. The funds paid by a public utility district to a school district under the provisions of this chapter shall not be considered a school district receipt by the superintendent of public instruction in determining equalization apportionments under *RCW 28.41.080. [1957 c 137 § 8.]

***Reviser's note:** RCW 28.41.080 was repealed by 1965 ex.s. c 154 § 12; as a part thereof said section concludes with the following proviso ". . . . *Provided,* That the provisions of such statutes herein repealed insofar as they are expressly or impliedly adopted by reference or otherwise referred to in or for the benefit of any other statutes, are hereby preserved for such purposes."

**Chapter 54.40
FIRST CLASS DISTRICTS**

Sections	
54.40.010	Five commissioner districts—Requirements—Three commissioner districts.
54.40.020	Existing districts—Qualifications—Voters' approval.
54.40.030	Transmittal of copies of federal hydroelectric license to county auditor.
54.40.040	Election to reclassify district as a five commissioner district—Ballot form—Vote required.
54.40.050	Petition for reclassification—Certificate of sufficiency—Election, date, notice.
54.40.060	Division of district into at large districts.
54.40.070	Election of commissioners from at large districts—Special election—Terms.

54.40.010 Five commissioner districts—Requirements—Three commissioner districts. A five commissioner public utility district is a district which shall have a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred and fifty million dollars, including interest during construction, and which shall have received the approval of the voters of the district to become a five commissioner district as provided herein. All other public utility districts shall be known as three commissioner districts. [1977 ex.s. c 36 § 1; 1959 c 265 § 2.]

54.40.020 Existing districts—Qualifications—Voters' approval. Every public utility district which on September 21, 1977, shall be in existence and have such a license shall be qualified to become a five commissioner district upon approval of the voters of said district, and every public utility district which on September 21, 1977, shall have become a first class district as previously provided by chapter 265, Laws of 1959 shall be a five commissioner district. [1977 ex.s. c 36 § 2; 1959 c 265 § 3.]

54.40.030 Transmittal of copies of federal hydroelectric license to county auditor. Within five days after a public utility district shall receive a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred and fifty million dollars, including interest during construction, or, in the case of a district which on September 21, 1977, is in existence and has such a license within five days of September 21, 1977, the district shall forward a true copy of said license, certified by the secretary of the district, to the county auditor of the county wherein said district is located. [1977 ex.s. c 36 § 3; 1959 c 265 § 4.]

54.40.040 Election to reclassify district as a five commissioner district—Ballot form—Vote required. A public utility district shall be classified as a five commissioner district only by approval of the qualified voters of the district. Such approval shall be by an election upon petition as hereinafter provided. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot in substantially the following terms:

Shall Public Utility District No. _____ be reclassified a Five Commissioner District for the purpose of increasing the number of commissioners to five YES
NO

Should a majority of the voters voting on the question approve the proposition, the district shall be declared a five commissioner district upon the completion of the canvass of the election returns. [1977 ex.s. c 36 § 4; 1959 c 265 § 5.]

54.40.050 Petition for reclassification—Certificate of sufficiency—Election, date, notice. The question of

reclassification of a public utility district as a five commissioner public utility district shall be submitted to the voters only upon filing a petition with the county auditor of the county in which said district is located, identifying the district by number and praying that an election be held to determine whether it shall become a five commissioner district. The petition must be signed by a number of qualified voters of the district equal to at least ten percent of the number of voters in the district who voted at the last general election. In addition to the signature of the voter, the petition must indicate each signer's residence address and further indicate whether he is registered in a precinct in an unincorporated area or a precinct in an incorporated area and if the latter, give the name of the city or town wherein he is registered. Said petition shall be presented to the county auditor for verification of the validity of the signatures. Within thirty days after receipt of the petition, the county auditor, in conjunction with the city clerks of the incorporated areas in which any signer is registered, shall determine the sufficiency of the petition. If the petition is found insufficient, the person who filed the same shall be notified by mail and he shall have an additional fifteen days from the date of mailing such notice within which to submit additional signatures, and the county auditor shall have an additional thirty days after the submission of such additional signatures to determine the validity of the entire petition. No signature may be withdrawn after the petition has been filed. If the petition, including these additional signatures if any, is found sufficient, the county auditor shall certify such fact to the public utility district and if the commissioners of the public utility district have theretofore certified to the county auditor the eligibility of the district for reclassification as provided in this chapter, the county auditor shall submit to the voters of the district the question of whether the district shall become a five commissioner district. Such election shall be held on a date fixed by the county auditor which date shall be held at the next general election after the date on which he certified the sufficiency of the petition. Notice of any election on the question shall be given in the manner prescribed for notice of an election on the formation of a public utility district. [1977 ex.s. c 36 § 5; 1959 c 265 § 6.]

54.40.060 Division of district into at large districts. If the reclassification to a five commissioner district is approved by the voters, the public utility district commission within ten days after the results of said election are certified shall divide the public utility district into two districts of as nearly equal population and area as possible, and shall designate such districts as At Large District A and At Large District B. [1977 ex.s. c 36 § 6; 1959 c 265 § 7.]

54.40.070 Election of commissioners from at large districts—Special election—Terms. Within thirty days after the public utility district commission shall divide the district into two at large districts, the county legislative authority shall call a special election, to be

held at the next scheduled special election called pursuant to RCW 29.13.010, or not more than ninety days after such call, at which time the initial commissioners to such at large districts shall be elected, the person receiving the largest number of votes to serve for four years, and the person receiving the next largest number of votes to serve an initial term of two years. [1977 ex.s. c 36 § 7; 1959 c 265 § 8.]

Chapter 54.44

NUCLEAR, THERMAL, ELECTRIC GENERATING POWER FACILITIES—JOINT DEVELOPMENT

Sections

54.44.010	Declaration of public purpose.
54.44.020	Authority to participate in and enter into agreements for operation of common facilities—Percentage of ownership—Expenses—Taxes—Payments.
54.44.030	Liability of city, joint operating agency, or public utility district—Extent—Limitations.
54.44.040	Authority to provide money and/or property, issue revenue bonds—Declaration of public purpose.
54.44.050	Depositories—Disbursement of funds.
54.44.060	Agreements to conform to applicable laws.
54.44.900	Liberal construction—Not to affect existing acts.
54.44.901	Severability—1973 1st ex.s. c 7.
54.44.910	Severability—1967 c 159.

54.44.010 Declaration of public purpose. It is declared to be in the public interest and for a public purpose that cities of the first class, public utility districts, joint operating agencies organized under chapter 43.52 RCW, regulated electrical companies and, rural electrical cooperatives including generation and transmission cooperatives be permitted to participate together in the development of nuclear and other thermal power facilities and transmission facilities as hereinafter provided as one means of achieving economies of scale and thereby promoting the economic development of the state and its natural resources to meet the future power needs of the state and all its inhabitants. [1975-'76 2nd ex.s. c 72 § 1; 1973 1st ex.s. c 7 § 1; 1967 c 159 § 1.]

Severability—1975-'76 2nd ex.s. c 72: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 72 § 3.]

Legislative finding—Emergency—1973 1st ex.s. c 7: "The legislature finds that the immediate planning, financing, acquisition and construction of electric generating and transmission facilities as provided in sections 1 through 6 of this 1973 amendatory act is a public necessity to meet the power requirements of the public utility districts, cities, joint operating agencies and regulated utilities referred to in sections 1 through 6 of this 1973 amendatory act and the inhabitants of this state; further that such public utility districts, cities, joint operating agencies and regulated utilities are ready, willing and able to undertake such planning, financing, acquisition and construction of said electric generating and transmission facilities immediately upon the passage of sections 1 through 6 of this 1973 amendatory act. This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1973 1st ex.s. c 7 § 7.] This applies to the amendments to RCW 54.44.010 through 54.44.060 by 1973 1st ex.s. c 7.

Energy facilities, site locations: Chapter 80.50 RCW.

Nuclear energy and radiation: Chapter 70.98 RCW.

54.44.020 Authority to participate in and enter into agreements for operation of common facilities—Percentage of ownership—Expenses—Taxes—Payments. In addition to the powers heretofore conferred upon cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, any such cities and public utility districts which operate electric generating facilities or distribution systems and any joint operating agency shall have power and authority to participate and enter into agreements with each other and with electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the public utility commissioner of Oregon, hereinafter called "regulated utilities", and with rural electric cooperatives, including generation and transmission cooperatives for the undivided ownership of any type of electric generating plants and facilities, including, but not limited to nuclear and other thermal power generating plants and facilities and transmission facilities including, but not limited to, related transmission facilities, hereinafter called "common facilities", and for the planning, financing, acquisition, construction, operation and maintenance thereof. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof and shall own and control a like percentage of the electrical output thereof.

Each participant shall defray its own interest and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition and construction of any common facility, or any additions or betterments thereto. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the common facility.

Each city, public utility district, joint operating agency, regulated utility, and cooperatives participating in the ownership or operation of a common facility shall pay all taxes chargeable to its share of the common facility and the electric energy generated thereby under applicable statutes as now or hereafter in effect, and may make payments during preliminary work and construction for any increased financial burden suffered by any county or other existing taxing district in the county in which the common facility is located, pursuant to agreement with such county or taxing district. [1975-'76 2nd ex.s. c 72 § 2; 1974 ex.s. c 72 § 1; 1973 1st ex.s. c 7 § 2; 1967 c 159 § 2.]

Severability—1975-'76 2nd ex.s. c 72: See note following RCW 54.44.010.

54.44.030 Liability of city, joint operating agency, or public utility district—Extent—Limitations. In carrying out the powers granted in this chapter, each such city, public utility district, or joint operating agency shall be severally liable only for its own acts and not

jointly or severally liable for the acts, omissions or obligations of others. No money or property supplied by any such city, public utility district, or joint operating agency for the planning, financing, acquisition, construction, operation or maintenance of any common facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of any city, public utility district, or joint operating agency in any common facility be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon any public utility district, city, or joint operating agency unless authorized or approved by resolution or ordinance of its governing body. [1973 1st ex.s. c 7 § 3; 1967 c 159 § 3.]

54.44.040 Authority to provide money and/or property, issue revenue bonds—Declaration of public purpose. Any such city, public utility district, or joint operating agency participating in common facilities under this chapter, without an election, may furnish money and provide property, both real and personal, issue and sell revenue bonds pledging revenues of its electric system and its interest or share of the revenues derived from the common facilities and any additions and betterments thereto in order to pay its respective share of the costs of the planning, financing, acquisition and construction thereof. Such bonds shall be issued under the provisions of applicable laws authorizing the issuance of revenue bonds for the acquisition and construction of electric public utility properties by cities, public utility districts, or joint operating agencies as the case may be. All moneys paid or property supplied by any such city, public utility district, or joint operating agency for the purpose of carrying out the powers conferred herein are declared to be for a public purpose. [1973 1st ex.s. c 7 § 4; 1967 c 159 § 4.]

54.44.050 Depositories—Disbursement of funds. All moneys belonging to cities, public utility districts, and joint operating agencies in connection with common facilities shall be deposited in such depositories as qualify for the deposit of public funds and shall be accounted for and disbursed in accordance with applicable law. [1973 1st ex.s. c 7 § 5; 1967 c 159 § 5.]

54.44.060 Agreements to conform to applicable laws. Any agreement with respect to work to be done or material furnished by any such city, public utility district, or joint operating agency in connection with the construction, maintenance and operation of the common facilities, and any additions and betterments thereto shall be in conformity, as near as may be, with applicable laws now or hereafter in effect relating to public utility districts or cities of the first class. [1973 1st ex.s. c 7 § 6; 1967 c 159 § 6.]

54.44.900 Liberal construction—Not to affect existing acts. The provisions of this chapter shall be liberally construed to effectuate the purposes thereof. This

chapter shall not be construed to affect any existing act or part thereof relating to the construction, operation or maintenance of any public utility. [1967 c 159 § 7.]

54.44.901 Severability—1973 1st ex.s. c 7. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 7 § 8.]

54.44.910 Severability—1967 c 159. If any provisions of this act or its application to any person or circumstance shall be held invalid or unconstitutional, the remainder of this act or its application to other persons or circumstances shall not be affected. [1967 c 159 § 8.]

Chapter 54.48

AGREEMENTS BETWEEN ELECTRICAL PUBLIC UTILITIES AND COOPERATIVES

Sections	
54.48.010	Definitions.
54.48.020	Legislative declaration of policy.
54.48.030	Agreements between public utilities and cooperatives authorized—Boundaries—Extension procedures—Purchase or sale—Approval.
54.48.040	Cooperatives not to be classified as public utilities or under authority of utilities and transportation commission.

54.48.010 Definitions. When used in this chapter:

(1) "Public utility" means any privately owned public utility company engaged in rendering electric service to the public for hire, any public utility district engaged in rendering service to residential customers and any city or town engaged in the electric business.

(2) "Cooperative" means any cooperative having authority to engage in the electric business. [1969 c 102 § 1.]

54.48.020 Legislative declaration of policy. The legislature hereby declares that the duplication of the electric lines and service of public utilities and cooperatives is uneconomical, may create unnecessary hazards to the public safety, discourages investment in permanent underground facilities, and is unattractive, and thus is contrary to the public interest and further declares that it is in the public interest for public utilities and cooperatives to enter into agreements for the purpose of avoiding or eliminating such duplication. [1969 c 102 § 2.]

54.48.030 Agreements between public utilities and cooperatives authorized—Boundaries—Extension procedures—Purchase or sale—Approval. In aid of the foregoing declaration of policy, any public utility and any cooperative is hereby authorized to enter into agreements with any one or more other public utility or one or more other cooperative for the designation of the boundaries of adjoining service areas which each such public utility or each such cooperative shall observe, for the establishment of procedures for orderly extension of

service in adjoining areas not currently served by any such public utility or any such cooperative and for the acquisition or disposal by purchase or sale by any such public utility or any such cooperative of duplicating utility facilities, which agreements shall be for a reasonable period of time not in excess of twenty-five years: *Provided*, That the participation in such agreement of any public utility which is an electrical company under RCW 80.04.010, excepting cities and towns, shall be approved by the Washington utilities and transportation commission. [1969 c 102 § 3.]

54.48.040 Cooperatives not to be classified as public utilities or under authority of utilities and transportation commission. Nothing herein shall be construed to classify a cooperative having authority to engage in the electric business as a public utility or to include cooperatives under the authority of the Washington utilities and transportation commission. [1969 c 102 § 4.]

Chapter 54.52

VOLUNTARY CONTRIBUTIONS TO ASSIST LOW-INCOME CUSTOMERS

Sections

- 54.52.010 Voluntary contributions to assist low-income residential customers—Administration.
 54.52.020 Disbursal of contributions—Quarterly report.
 54.52.030 Contributions not considered commingling of funds.

54.52.010 Voluntary contributions to assist low-income residential customers—Administration. A public utility district may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their electricity bills. All funds received by the district in response to such requests shall be transmitted to the grantee of the department of community development which administers federally funded energy assistance programs for the state in the district's service area or to a charitable organization within the district's service area. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their electricity bills. The grantee or charitable organization shall be responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified. [1985 c 6 § 20; 1984 c 59 § 1.]

54.52.020 Disbursal of contributions—Quarterly report. All assistance provided under this chapter shall be disbursed by the grantee or charitable organization. Where possible the public utility district will be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check will be issued jointly payable to the customer and the public utility district. The availability of funds for assistance to a district's low-income customers as a result of voluntary contributions shall not reduce

the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community development within the district's service area. The grantee or charitable organization shall provide the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance. [1985 c 6 § 21; 1984 c 59 § 2.]

54.52.030 Contributions not considered commingling of funds. Contributions received under a program implemented by a public utility district in compliance with this chapter shall not be considered a commingling of funds. [1984 c 59 § 3.]

Title 55

SANITARY DISTRICTS

Chapter

55.04 Formation and dissolution.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Chapter 55.04

FORMATION AND DISSOLUTION

Sections

55.04.050 Dissolution.

55.04.060 Disincorporation of district located in class A or AA county and inactive for five years.

Elections: Title 29 RCW.

55.04.050 Dissolution. See port districts, chapter 53-.48 RCW.

55.04.060 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

Title 56

SEWER DISTRICTS

Chapters

- 56.02** General provisions.
- 56.04** Formation and dissolution.
- 56.08** Powers—Comprehensive plan.
- 56.12** Commissioners.
- 56.16** Finances.
- 56.20** Utility local improvement districts.
- 56.22** Contracts for sewer extensions.
- 56.24** Annexation of territory.
- 56.28** Withdrawal of territory.
- 56.32** Consolidation or merger of districts—
Transfer of part of district.
- 56.36** Merger of water districts into sewer district—
Merger of sewer districts into water district.

Annexation of district territory to cities and towns: Chapter 35.13A RCW.

Aquifer protection areas: Chapter 36.36 RCW.

Assumption of jurisdiction over district or territory by city or town: Chapter 35.13A RCW.

Boundary review board, extension of permanent sewer service outside corporate boundaries to go before: RCW 36.93.090.

City and town sewerage systems, authority, elections: Chapter 35.67 RCW.

City sewerage, drainage, and water supply: RCW 35.21.210.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

County sewerage systems, authority, procedure: Chapter 36.94 RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Metropolitan municipal corporations: Chapter 35.58 RCW.

Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.

Port district may provide sewer and water utilities in adjacent areas: RCW 53.08.040.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Sewerage improvement districts: Title 85 RCW.

Water district may establish and operate sewer systems: RCW 57.08.065.

- 56.02.055 Districts comprising territory in more than one county—Delegation of duties—Exceptions.
- 56.02.060 Sewer district activities to be approved—Criteria for approval by county legislative authority.
- 56.02.070 Approval by county legislative authority final, when—Boundary review board approval.
- 56.02.080 Formation of districts validated.
- 56.02.100 Sewer districts desiring to merge into irrigation districts—Procedure.
- 56.02.110 Board of commissioners may notify property owners about petitions under chapter 56.20 or 56.24 RCW—Review of petitions—Information.
- 56.02.120 Ratification of actions for the formation, annexation, consolidation, or merger of sewer districts prior to July 10, 1982.

56.02.010 Petition signatures of property owners—Rules governing. Wherever in Title 56 RCW petitions are required to be signed by the owners of property, the following rules shall govern the sufficiency thereof:

(1) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse.

(2) In the case of mortgaged property, the signature of the mortgagor shall be sufficient.

(3) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient.

(4) Any officer of a corporation owning land in the district duly authorized to execute deeds or encumbrances on behalf of the corporation may sign on behalf of such corporation, provided that there shall be attached to the petition a certified excerpt from the bylaws showing such authority.

(5) If any property in the district stands in the name of a deceased person or any person for whom a guardian has been appointed the signature of the executor, administrator or guardian, as the case may be, shall be equivalent to the signature of the owner of the property. [1953 c 250 § 26.]

56.02.020 Claims against districts. See chapter 4.96 RCW.

56.02.030 Validation—1959 c 103. All debts, contracts and obligations heretofore made or incurred by or in favor of any sewer district, all bonds, warrants, or other obligations issued by such districts, any connection or service charges made by such districts, any and all assessments heretofore levied in any utility local improvement districts of any sewer districts, and all other things and proceedings relating thereto done or taken by such sewer districts or by their respective officers are hereby declared to be legal and valid and of full force and effect from the date thereof: *Provided*, That nothing in this section shall apply to ultra vires acts or acts of

Chapter 56.02 GENERAL PROVISIONS

Sections

- 56.02.010 Petition signatures of property owners—Rules governing.
- 56.02.020 Claims against districts.
- 56.02.030 Validation—1959 c 103.
- 56.02.040 Title to be liberally construed.
- 56.02.050 Jurisdiction of elections in joint sewer districts—Filing of declarations of candidacy—Joint sewer district defined.

fraud committed by the officers or agents of said district. [1959 c 103 § 17.]

Severability—1959 c 103: See note following RCW 56.08.010.

56.02.040 Title to be liberally construed. The rule of strict construction shall have no application to this title, but the same shall be liberally construed to carry out the purposes and objects for which this title is intended. [1959 c 103 § 18.]

Severability—1959 c 103: See note following RCW 56.08.010.

56.02.050 Jurisdiction of elections in joint sewer districts—Filing of declarations of candidacy—Joint sewer district defined. (1) Jurisdiction of any general election or special election held on the same date as a general election in a joint sewer district shall rest with the county auditor of each of the counties in which the joint sewer district is located. Election returns of such elections shall be canvassed by the canvassing board of each county and the official results certified to the county auditor of the county in which fifty-one percent or more of the area of the joint sewer district is located. Such county auditor shall then combine the official results from each county in which the joint sewer district is located into a single official result.

(2) Jurisdiction of any special election held on a different date than a general election in a joint sewer district shall rest with the county auditor of the county in which fifty-one percent or more of the area of the joint sewer district is located. Election returns of such elections shall be canvassed by the canvassing board of such county and certified to the county auditor of such county as required by law.

(3) Elections referred to in subsections (1) and (2) of this section shall be conducted as provided by such subsections and by the general election laws not inconsistent therewith.

(4) Candidates for the office of sewer commissioner in a joint sewer district shall file declarations of candidacy with the county auditor of the county in which fifty-one percent or more of the area of the joint sewer district is located and their election shall be conducted as provided by this section and by the general election laws not inconsistent herewith. The candidate receiving the greatest number of votes for each sewer commissioner position shall be declared elected.

For the purposes of this section, "joint sewer district" means any sewer district composed of territory lying in more than one county. [1971 ex.s. c 272 § 12.]

56.02.055 Districts comprising territory in more than one county—Delegation of duties—Exceptions. Whenever the boundaries or proposed boundaries of a sewer district include or are proposed to include by means of formation, annexation, consolidation, or merger (including merger with a water district) territory in more than one county, all duties delegated by Title 56 RCW to officers of the county in which the district is located shall be delegated to the officers of the county in which the largest land area of the district is located, except that elections shall be conducted pursuant to RCW

56.02.050, actions subject to review and approval under RCW 56.02.060 and 56.02.070 shall be reviewed and approved by only the officers or boards in the county in which such actions are proposed to occur, verification of electors' signatures shall be conducted by the county election officer of the county in which such signators reside, and comprehensive plan review and approval or rejection by the respective county legislative authorities under RCW 56.08.020 shall be limited to that part of such plans within the respective counties. [1982 1st ex.s. c 17 § 1.]

56.02.060 Sewer district activities to be approved—Criteria for approval by county legislative authority. Notwithstanding any provision of law to the contrary, no sewer district shall be formed or reorganized under chapter 56.04 RCW, nor shall any sewer district annex territory under chapter 56.24 RCW, nor shall any sewer district withdraw territory under chapter 56.28 RCW, nor shall any sewer district consolidate or be merged under chapter 56.32 RCW, nor shall any water district be merged into a sewer district under chapter 56.36 RCW, unless such proposed action shall be approved as provided for in RCW 56.02.070.

The county legislative authority shall within thirty days after receiving notice of the proposed action, approve such action or hold a hearing on such action. In addition, a copy of such proposed action shall be mailed to the state department of ecology and to the state department of social and health services.

The county legislative authority shall decide within sixty days of a hearing whether to approve or not approve such proposed action. In approving or not approving the proposed action, the county legislative authority shall consider the following criteria:

(1) Whether the proposed action in the area under consideration is in compliance with the development program which is outlined in the county comprehensive plan and its supporting documents; and/or

(2) Whether the proposed action in the area under consideration is in compliance with the basinwide water and/or sewage plan as approved by the state department of ecology and the state department of social and health services; and/or

(3) Whether the proposed action is in compliance with the policies expressed in the county plan for water and/or sewage facilities.

If the proposed action is inconsistent with subsections (1), (2), or (3) of this section, the county legislative authority shall not approve it. If such action is consistent with all such subsections, the county legislative authority shall approve it unless it finds that utility service in the area under consideration will be most appropriately served by the county itself under the provisions of chapter 36.94 RCW, by a city, town, or municipality, or by another existing special purpose district rather than by the proposed action under consideration. If there has not been adopted for the area under consideration a plan under any one of subsections (1), (2) or (3) of this section, the proposed action shall not be found inconsistent with such subsection.

Where a sewer district is proposed to be formed, and where no boundary review board has been established, the petition described in RCW 56.04.030 shall serve as the notice of proposed action under this section, and the hearing provided for in RCW 56.04.040 shall serve as the hearing provided for in this section and in RCW 56.02.070. [1988 c 162 § 5; 1971 ex.s. c 139 § 1.]

56.02.070 Approval by county legislative authority final, when—Boundary review board approval. In any county where a boundary review board, as provided in chapter 36.93 RCW, has not been established, the approval of the proposed action shall be by the county legislative authority pursuant to RCW 56.02.060 and 57.02.040, and shall be final and the procedures required to adopt such proposed action shall be followed as provided by law.

In any county where a boundary review board, as provided in chapter 36.93 RCW, has been established, notice of intention of the proposed action shall be filed with the board as required by RCW 36.93.090 and a copy thereof with the legislative authority. The latter shall transmit to the board a report of its approval or disapproval of the proposed action together with its findings and recommendations thereon under the provisions of RCW 56.02.060 and 57.02.040. If the county legislative authority has approved of the proposed action, such approval shall be final and the procedures required to adopt such proposal shall be followed as provided by law, unless the board reviews the action under the provisions of RCW 36.93.100 through 36.93.180. If the county legislative authority has not approved the proposed action, the board shall review the action under the provisions of RCW 36.93.150 through 36.93.180. Action of the board after review of the proposed action shall supersede approval or disapproval by the county legislative authority.

Where a water or sewer district is proposed to be formed, and where no boundary review board has been established, the hearings provided for in RCW 56.04.040 and 57.04.030 shall serve as the hearing provided for in this section, in RCW 56.02.060, and in RCW 57.02.040. [1988 c 162 § 6; 1971 ex.s. c 139 § 3.]

1988 validation: RCW 57.06.180.

56.02.080 Formation of districts validated. The existence of all sewer districts formed in counties without a boundary review board in compliance with the requirements of chapter 56.04 RCW, whether or not the requirements of RCW 56.02.060 and 56.02.070 were satisfied, is validated and such districts shall be deemed to be legally formed. [1988 c 162 § 8.]

56.02.100 Sewer districts desiring to merge into irrigation districts—Procedure. The procedure and provisions of RCW 85.08.830 through 85.08.890, which are applicable to drainage improvement districts, joint drainage improvement districts, or consolidated drainage

improvement districts which desire to merge into an irrigation district, shall also apply to sewer districts organized, or reorganized, under this title which desire to merge into irrigation districts.

The authority granted by this section shall be cumulative and in addition to any other power or authority granted by law to any sewer district. [1977 ex.s. c 208 § 3.]

Merger of irrigation district with drainage, joint drainage, consolidated drainage improvement, or sewer district: RCW 87.03.720, 87.03.725.

56.02.110 Board of commissioners may notify property owners about petitions under chapter 56.20 or 56.24 RCW—Review of petitions—Information. (1) The board of commissioners of a sewer district may notify the owner or reputed owner of any tract, parcel of land, or other property located within the area included in a petition for a local improvement district being circulated under chapter 56.20 RCW or in a petition for annexation being circulated under chapter 56.24 RCW.

(2) Upon the request of any person, the board of commissioners of a sewer district may:

(a) Review a proposed petition to check if the petition is properly drafted; and

(b) Provide information regarding the effects of the adoption of any proposed petition. [1979 c 35 § 3.]

56.02.120 Ratification of actions for the formation, annexation, consolidation, or merger of sewer districts prior to July 10, 1982. All actions taken in regard to the formation, annexation, consolidation, or merger of sewer districts prior to July 10, 1982, but consistent with this title, as amended, are hereby approved and ratified and shall be legal for all purposes. [1982 1st ex.s. c 17 § 2.]

Chapter 56.04

FORMATION AND DISSOLUTION

Sections

- 56.04.001 Actions subject to review by boundary review board.
- 56.04.020 Districts authorized—System of sewers defined.
- 56.04.030 Petition or resolution—Notice of hearing.
- 56.04.040 Hearing—Boundaries.
- 56.04.050 Election—Time—Notice—Ballots—Excess tax levy.
- 56.04.060 Canvass—District created—Name.
- 56.04.065 Alternative method of formation.
- 56.04.070 When two or more petitions are filed.
- 56.04.080 County election board to conduct elections—Expenses.
- 56.04.090 Dissolution.
- 56.04.100 Disincorporation of district located in class A or AA county and inactive for five years.
- 56.04.110 Sewer district activities to be approved—Criteria for approval by county legislative authority.
- 56.04.120 Sewerage improvement districts located in third class counties become sewer districts.
- 56.04.130 Sewerage improvement districts operating as sewer districts become sewer districts—Procedure.

Elections: Title 29 RCW.

56.04.001 Actions subject to review by boundary review board. Actions taken under chapter 56.04 RCW

may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 50.]

56.04.020 Districts authorized—System of sewers defined. Sewer districts for the acquirement, construction, maintenance, operation, development, reorganization, and regulation of a system of sewers, including treatment and disposal plants and all necessary appurtenances and providing for additions and betterments thereto, are hereby authorized to be established or reorganized in the various counties of this state. A system of sewers means and includes: Sanitary sewage disposal sewers, combined sanitary sewage disposal and storm or surface water sewers, storm or surface water sewers, outfalls for storm or sanitary sewage, and works, plants, and facilities for sanitary sewage treatment and disposal, or any combination of or part of any or all of such facilities. Such districts may include within their boundaries portions or all of one or more counties, incorporated cities, or towns or other political subdivisions: *Provided, however,* No portion or all of any incorporated city or town may be included without the consent by resolution of the city or town legislative authority: *Provided, however,* That such reorganization of any existing sewer district shall not affect the outstanding bonds, warrants or other indebtedness incurred by such district prior to its reorganization. [1974 ex.s. c 58 § 1; 1971 ex.s. c 272 § 1; 1945 c 140 § 1; 1943 c 74 § 1; 1941 c 210 § 1; Rem. Supp. 1945 § 9425–10.]

Severability—1941 c 210: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional." [1941 c 210 § 49.]

City sewerage, drainage, and water supply: RCW 35.21.210.

Power to regulate sanitary conditions: State Constitution Art. 11 § 11.

Sewerage system, operation, construction, by municipality: Chapter 35.67 RCW.

56.04.030 Petition or resolution—Notice of hearing. For the purpose of formation or reorganization of such sewer districts, a petition shall be presented to the board of county commissioners of the county in which said proposed sewer district is located, which petition shall set forth the object for the creation or reorganization of the said district, shall designate the boundaries thereof and set forth the further fact that the establishment or reorganization of said district will be conducive to the public health, convenience and welfare and will be of benefit to the property included therein. The petition shall specify the proposed property tax levy assessment, if any, which shall not exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district. Said petition shall be signed by at least twenty-five percent of the qualified electors residing within the district described in the said petition: *Provided,* If in the opinion of the county health officer the existing sewerage disposal facilities are inadequate in the district to be created only, and it is for the public welfare, then the board of county commissioners of such county may declare a sewerage disposal district a necessity, and such district shall be organized under

the provisions of this title, and all amendments thereto. The said petition or resolution shall be filed with the county auditor, who shall, within ten days examine the signatures thereof and certify to the sufficiency or insufficiency. For such purpose the county auditor shall have access to all registration books in the possession of the officers of any political subdivision in such proposed district. No person having signed such a petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. If such petition shall be found to contain a sufficient number of signatures, the county auditor shall transmit the same, together with his certificate of sufficiency attached thereto to the board of county commissioners. If such petition or resolution is certified to contain a sufficient number of signatures, or if in the opinion of the county health officer the existing sewerage disposal facilities are a menace to the health and convenience of the public, the board of county commissioners may, by resolution, and not otherwise, declare a sewerage district a necessity, then at a regular or special meeting of the board of county commissioners of such county, the said county commissioners shall cause to be published for at least once a week for two successive weeks in some newspaper printed and published in said county, and in case no such newspaper be printed or published in such county, then at least once a week for two successive weeks in some newspaper of general circulation therein, giving notice that such a petition has been presented, stating the time of the meeting at which the same shall be presented, and setting forth the boundaries of said proposed district. [1987 c 33 § 1; 1945 c 140 § 2; 1941 c 210 § 2; Rem. Supp. 1945 § 9425–11.]

Rules governing petition signatures of property owners: RCW 56.02.010.

56.04.040 Hearing—Boundaries. When such a petition or resolution is presented for hearing, the board of county commissioners shall hear the same or may adjourn said hearing from time to time not exceeding one month in all. Any person, firm or corporation may appear before the said board of county commissioners and make objections to the establishment or reorganization of the said district or the proposed boundary lines thereof. Upon a final hearing said board of county commissioners shall make such changes in the proposed or reorganized boundary lines as they deem to be proper and shall establish and define such boundaries and shall find whether the proposed sewer district will be conducive to the public health, welfare and convenience and be of special benefit to the land included within the said boundaries of said proposed district so established by the said board of county commissioners. No lands which will not, in the judgment of said board, be benefited by inclusion therein, shall be included within the boundaries of said district as so established and defined, and no change shall be made by the said board of county commissioners in said boundary lines to include any territory outside of the boundaries described in the said petition, except that the boundaries of any proposed district may be extended by the board of county commissioners at

such hearing to include other lands in said county upon a petition signed by the owners of all of the land within the proposed extension. [1945 c 140 § 3; 1941 c 210 § 3; Rem. Supp. 1945 § 9425-12.]

56.04.050 Election—Time—Notice—Ballots—Excess tax levy. Upon entry of the findings of the final hearing on the petition, if the commissioners find the proposed sewer system will be conducive to the public health, welfare, and convenience and be of special benefit to the land within the boundaries of the said proposed or reorganized district, they shall by resolution call a special election to be held not less than thirty days and not more than sixty days from the date thereof, and shall cause to be published a notice of such election at least once a week for four successive weeks in a newspaper of general circulation in the county, setting forth the hours during which the polls will be open, the boundaries of the proposed or reorganized district as finally adopted, and the object of the election, and the notice shall also be posted for ten days in ten public places in the proposed or reorganized district. The proposition shall be expressed on the ballots in the following terms:

- Sewer District YES
- Sewer District NO

or in the reorganization of a district, the proposition shall be expressed on the ballot in the following terms:

- Sewer District Reorganization YES
- Sewer District Reorganization NO

giving in each instance the name of the district as decided by the board.

At the same election the county commissioners shall submit a proposition to the voters, for their approval or rejection, authorizing the sewer district, if formed, to levy at the earliest time permitted by law on all property located in the district a general tax for one year, in excess of the tax limitations provided by law, in the amount specified in the petition to create the district, not to exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district, said proposition to be expressed on the ballots in the following terms:

- One year dollars and cents per thousand dollars of assessed value tax YES
- One year dollars and cents per thousand dollars of assessed value tax NO

Such proposition to be effective must be approved by a majority of at least three-fifths of the electors thereof voting on the proposition in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. [1987 c 33 § 2; 1973 1st ex.s. c 195 § 61; 1953 c 250 § 1; 1945 c 140 § 4; 1941 c 210 § 4; Rem. Supp. 1945 § 9425-13.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Levy of taxes: Chapter 84.52 RCW.

56.04.060 Canvass—District created—Name. If at such election a majority of the voters in each district voting upon such proposition shall vote in favor of the formation or reorganization of such district and/or districts, the county election board shall so declare in its canvass of the returns of such election, and such sewer district shall then be and become a municipal corporation of the state of Washington and the name of such sewer district shall be "..... Sewer District" (inserting the name appearing on the ballot). [1945 c 140 § 5; 1941 c 210 § 6; Rem. Supp. 1945 § 9425-15.]

56.04.065 Alternative method of formation. (1) As an alternative to the methods of formation under RCW 56.04.030 through 56.04.060, a sewer district may be formed by a petition signed by the owners of at least sixty percent of the property to be included in the proposed district. The petition shall propose the formation of the district, designate the boundaries thereof, and indicate the name of the district. The petition shall be filed with the county auditor, who shall within ten days examine the signatures thereof and certify to the sufficiency or insufficiency. For this purpose, the county auditor shall have access to all registration books in the possession of the officers of any political subdivision in the proposed district. No person having signed such a petition shall be allowed to withdraw his name therefrom after the filing of the petition with the county auditor. If the petition is found to contain a sufficient number of signatures, the county auditor shall forward the petition to the county legislative authority who shall hold a hearing pursuant to RCW 56.02.060. Approval or disapproval of the proposed district shall be as provided in RCW 56.02.070.

(2) The initial commissioners for a district formed under this section shall be elected pursuant to RCW 56.12.020 at the next election held under RCW 29.13.010 following by more than ninety days a determination by the county auditor that three or more registered voters reside within the boundaries of the district. [1983 c 88 § 1.]

56.04.070 When two or more petitions are filed. Whenever two or more petitions for the formation of a sewer district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060 and 36.94.420, as now or hereafter amended. [1985 c 141 § 2; 1981 c 45 § 3; 1941 c 210 § 5; Rem. Supp. 1941 § 9425-14.]

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 56.36.060.

56.04.080 County election board to conduct elections—Expenses. All elections held pursuant to this title, whether general or special, shall be conducted by the county election board of the county in which the

district is located. The expense of all such elections shall be paid for out of the funds of such sewer district. [1941 c 210 § 40; Rem. Supp. 1941 § 9425-49.]

56.04.090 Dissolution. Any sewer district organized, or reorganized, under this title may be disincorporated in the same manner (insofar as the same is applicable) as is provided in sections 8914 to 8931, inclusive, of Remington's Revised Statutes, also Pierce's Perpetual Code 395-1 to 395-35 [RCW 35.07.010 through 35.07-.220], for the disincorporation of the third and fourth class cities, except that the petition for disincorporation shall be signed by not less than twenty-five percent of the voters in the sewer district. [1945 c 140 § 16; 1941 c 210 § 47; Rem. Supp. 1945 § 9425-56.]

Dissolution: Chapter 53.48 RCW.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

56.04.100 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

56.04.110 Sewer district activities to be approved—Criteria for approval by county legislative authority. See RCW 56.02.060 and 56.02.070.

56.04.120 Sewerage improvement districts located in third class counties become sewer districts. (1) On and after March 16, 1979, any sewerage improvement districts created under Title 85 RCW and located in third class counties shall become sewer districts and shall be operated, maintained, and have the same powers as sewer districts created under Title 56 RCW, upon being so ordered by the board of county commissioners of the county in which such district is located after a hearing of which notice is given by publication in a newspaper of general circulation within the district and mailed to any known creditors, holders of contracts and obligees at least thirty days prior to such hearing. After such hearing if the board of county commissioners find the converting of such district to be in the best interest of that district, it shall order that such sewer improvement district shall become a sewer district and fix the date of such conversion. All debts, contracts and obligations created while attempting to organize or operate a sewerage improvement district and all other financial obligations and powers of the district to satisfy such obligations established under Title 85 RCW are legal and valid until they are fully satisfied or discharged under Title 85 RCW.

(2) The board of supervisors of a sewerage improvement district in a third class county shall act as the board of commissioners of the sewer district created under subsection (1) of this section until other members of the board of commissioners of the sewer district are elected and qualified. There shall be an election on the same date as the 1979 state general election and the seats of all three members of the governing authority of every entity which was previously known as a sewerage improvement district in a third class county shall be up for election. The election shall be held in the manner

provided for in RCW 56.12.020 for the election of the first board of commissioners of a sewer district. Thereafter, the terms of office of the members of the governing body shall be determined under RCW 56.12.020. [1979 c 35 § 1.]

56.04.130 Sewerage improvement districts operating as sewer districts become sewer districts—Procedure. Any sewerage improvement district which has been operating as a sewer district shall be a sewer district under this title as of March 16, 1979 upon being so ordered by the board of county commissioners of the county in which such district is located after a hearing of which notice is given by publication in a newspaper of general circulation within the district and mailed to any known creditors, holders of contracts and obligees at least thirty days prior to such hearing. After such hearing if the board of county commissioners finds that the sewerage improvement district was operating as a sewer district and that the converting of such district will be in the best interest of that district, it shall order that such sewer improvement district shall become a sewer district immediately upon the passage of the resolution containing such order. The debts, contracts and obligations of any sewerage improvement district which has been erroneously operating as a sewer district are recognized as legal and binding. The members of the government authority of any sewerage improvement district which has been operating as a sewer district and who were erroneously elected as sewer district commissioners shall be recognized as the governing authority of a sewer district. The members of the governing authority shall continue in office for the term for which they were elected. [1979 c 35 § 2.]

Chapter 56.08

POWERS—COMPREHENSIVE PLAN

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Lien for labor and materials on public works: Chapter 60.28 RCW.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

56.08.010 Power to acquire property and rights—Eminent domain—Construction and operation of system—Generation of electricity—Rates and charges. A sewer district may acquire by purchase or by condemnation and purchase all lands, property rights, water, and water rights, both within and without the district, necessary for its purposes. A sewer district may lease real or personal property necessary for its purposes for a term of years for which such leased property may reasonably be needed where in the opinion of the board of sewer commissioners such property may not be needed permanently or substantial savings to the district can be effected thereby. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities and towns, insofar as consistent with the provisions of this title, except that all assessments or reassessment rolls required to be filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the district, and the duties devolving upon the city treasurer shall be imposed upon the county treasurer for the purposes hereof. A sewer district may construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district and inhabitants thereof with an adequate system of sewers for all uses and purposes, public and private, including but not limited to on-site sewage disposal facilities, approved septic tanks or approved septic tank systems, other facilities and systems for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from wastewater and for the protection, preservation, and rehabilitation of surface and underground waters, facilities for the drainage of storm or surface

waters, public highways, streets, and roads with full authority to regulate the use and operation thereof and the service rates to be charged and may construct, acquire, or own buildings and other necessary district facilities. Such sewage facilities may include facilities which result in combined sewage disposal, treatment, or drainage and electric generation, provided that the electricity generated thereby is a byproduct of the system of sewers. Such electricity may be used by the sewer district or sold to any entity authorized by law to distribute electricity. Such electricity is a byproduct when the electrical generation is subordinate to the primary purpose of sewage disposal, treatment, or drainage. For such purposes a district may conduct sewage throughout the district and throughout other political subdivisions within the district, and construct and lay sewer pipe along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such sewer pipe. A district may erect sewage treatment plants, within or without the district, and may acquire by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution, from its sewers or its sewage treatment plant. For the purposes of sewage facilities which include facilities which result in combined sewage disposal, treatment, or drainage and electric generation where the electric generation is a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner. A district may charge property owners seeking to connect to the district system of sewers, as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that such property owners shall bear their equitable share of the cost of such system. For purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants.

The connection charge may include interest charges applied from the date of construction of the sewer system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the sewer system, or at the time of installation of the sewer lines to which the property owner is seeking to connect.

A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding

fifteen years. The county treasurer may charge and collect a fee of three dollars per parcel for each year for the treasurer's services. Such fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer. A district may compel all property owners within the sewer district located within an area served by the district system of sewers to connect their private drain and sewer systems with the district system under such penalty as the sewer commissioners shall prescribe by resolution. The district may for such purpose enter upon private property and connect the private drains or sewers with the district system and the cost thereof shall be charged against the property owner and shall be a lien upon property served.

Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule. [1989 c 389 § 2; 1989 c 308 § 1; 1987 c 449 § 1. Prior: 1985 c 444 § 5; 1985 c 250 § 1; 1981 c 190 § 4; 1974 ex.s. c 58 § 2; 1959 c 103 § 1; 1953 c 250 § 3; 1945 c 140 § 9; 1941 c 210 § 10; Rem. Supp. 1945 § 9425-19.]

Reviser's note: This section was amended by 1989 c 308 § 1 and by 1989 c 389 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Construction—Severability—1985 c 444: See notes following RCW 35.92.010.

Severability—1959 c 103: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1959 c 103 § 19.]

Eminent domain

cities: Chapter 8.12 RCW.

third class cities: RCW 35.24.310.

Evaluation of application to appropriate water for electric generation facility: RCW 90.54.170.

56.08.012 Public property subject to rates and charges for storm water control facilities. Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by sewer districts pursuant to RCW 56.08.010 or 56.16.090. In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property. [1986 c 278 § 59; 1983 c 315 § 5.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: See note following RCW 90.03.500.

Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.

Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 35.92.021, 36.89.085, and 36.94.145.

56.08.013 Authority to reduce pollutants in lakes, streams, ground water, and waterways. Where a sewer district contains within its borders, abuts, or is located adjacent to any lake, stream, ground water as defined by RCW 90.44.035; or other waterway within the state of Washington, by resolution the board of commissioners

may provide for the reduction, minimization, or elimination of pollutants from these waters in accordance with the district's comprehensive plan as provided in RCW 56.08.020, and may authorize the issuance of general obligation bonds within the limits prescribed by RCW 56.16.010, revenue bonds, local improvement district bonds, or utility local improvement bonds for the purpose of paying all or any part of the cost of reducing, minimizing, or eliminating the pollutants from these waters. [1985 c 98 § 1; 1977 ex.s. c 146 § 1.]

56.08.014 Authority to adjust or delay rates and charges for low-income persons—Notice. In addition to the authority of a sewer district to establish classifications for rates and charges and impose such rates and charges, as provided in RCW 56.08.010 and 56.16.090, a sewer district may adjust, or delay such rates and charges for low-income persons or classes of low-income persons, including but not limited to, poor handicapped persons and poor senior citizens. Other financial assistance available to poor persons shall be considered in determining charges and rates under this section. Notification of special rates or charges established under this section shall be provided to all persons served by the district annually and upon initiating service. Information on cost shifts caused by establishment of the special rates or charges shall be included in the notification. Any reduction in charges and rates granted to poor persons in one part of a service area shall be uniformly extended to poor persons in all other parts of the service area. [1983 c 198 § 1.]

Severability—1983 c 198: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 198 § 3.]

56.08.015 Change of name—Authorized—Procedure—Validation. Any sewer district heretofore or hereafter organized and existing may apply to change its name by filing with the county legislative authority in which was filed the original petition for the organization of the district, a certified copy of a resolution of its board of commissioners adopted by the majority vote of all the members of said board at a regular meeting thereof providing for such change of name. After approval of the new name by the county legislative authority, all proceedings of such district shall be had under such changed name, but all existing obligations and contracts of the district entered into under its former name shall remain outstanding without change and with the validity thereof unimpaired and unaffected by such change of name, and a change of name heretofore made by any existing sewer district in this state, substantially in the manner above provided is hereby ratified, confirmed and validated. [1984 c 147 § 6; 1969 c 119 § 1.]

56.08.020 General comprehensive plan—Approval of engineer, director of health, and city, town, or county—Amendments. The sewer commissioners before ordering any improvements hereunder or submitting to vote any proposition for incurring indebtedness shall

adopt a general comprehensive plan for a system of sewers for the district. They shall investigate all portions and sections of the district and select a general comprehensive plan for a system of sewers for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan shall provide for treatment plants and other methods for the disposal of sewage and industrial and other liquid wastes now produced or which may reasonably be expected to be produced within the district and shall, for such portions of the district as may then reasonably be served, provide for the acquisition or construction and installation of laterals, trunk sewers, intercepting sewers, syphons, pumping stations, or other sewage collection facilities. The general comprehensive plan shall provide the method of distributing the cost and expense of the sewer system provided therein against the district and against utility local improvement districts within the district, including any utility local improvement district lying wholly or partially within any other political subdivision included in the district; and provide whether the whole or some part of the cost and expenses shall be paid from sewer revenue bonds. The commissioners may employ such engineering and legal services as they deem necessary in carrying out the purposes hereof. The general comprehensive plan shall be adopted by resolution and submitted to an engineer designated by the legislative authority of the county in which fifty-one percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health. The general comprehensive plan shall be approved, conditionally approved, or rejected by the director of health within sixty days of the plan's receipt and by the designated engineer within sixty days of the plan's receipt.

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of the sewer district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of these county legislative authorities pursuant to the criteria in RCW 56.02.060 for approving the formation, reorganization, annexation, consolidation, or merger of sewer districts, and the resolution, ordinance, or motion of the legislative body which rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The legislative body may not impose requirements restricting the maximum size of the sewer system facilities provided for in the comprehensive plan: *Provided*, That nothing in this chapter shall preclude a county from rejecting a proposed plan because it is in conflict with the criteria in RCW 56.02.060. Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within

ninety days of the plan's submission to the county legislative authority: *Provided*, That the sewer commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section. If the district includes portions or all of one or more cities or towns, the general comprehensive plan shall be submitted also to, and approved by resolution of, the legislative authority of cities and towns before becoming effective. The general comprehensive plan shall be deemed approved by the city or town legislative authority if the city or town legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the city or town or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority.

Before becoming effective, any amendment to, alteration of, or addition to, a general comprehensive plan shall also be subject to such approval as if it were a new general comprehensive plan: *Provided*, That only if the amendment, alteration, or addition, affects a particular city or town, shall the amendment, alteration, or addition be subject to approval by such particular city or town legislative authority. [1982 c 213 § 1; 1979 c 23 § 1; 1977 ex.s. c 300 § 1; 1971 ex.s. c 272 § 2; 1959 c 103 § 2; 1953 c 250 § 4; 1947 c 212 § 2; 1945 c 140 § 10; 1943 c 74 § 2; 1941 c 210 § 11; Rem. Supp. 1947 § 9425-20.]

Severability—1959 c 103: See note following RCW 56.08.010.

Additions and betterments to original comprehensive plan: RCW 56.16.030.

Construction of sewerage system for municipality: Chapter 35.67 RCW.

56.08.030 Expenditures before plan adopted and approved. No expenditure for carrying on any part of such plan shall be made other than the necessary salaries of engineers, clerical, and office expenses of the district, and the cost of engineering, surveying, preparation, and collection of data necessary for making and adopting a general plan of improvements in the district, until the general plan of improvements has been adopted by the commissioners and approved as provided in RCW 56.08.020. [1953 c 250 § 5; 1941 c 210 § 12; Rem. Supp. 1941 § 9425-21.]

56.08.040 Additions and betterments to plan, for area annexed. Whenever an area has been annexed to a district after the adoption of the comprehensive plan, the commissioners shall have the right and duty to adopt by resolution a plan for additions and betterments to the original comprehensive plan to provide for the needs of the area annexed. [1953 c 250 § 6; 1951 c 129 § 1; 1943 c 74 § 3; 1941 c 210 § 13; Rem. Supp. 1943 § 9425-22.]

56.08.050 Commissioners to carry out plan. When the electors of a district have authorized the issuance of general obligation bonds of the district to carry out the general comprehensive plan, the commissioners may proceed with the improvement to the extent specified or referred to in the proposition or propositions to incur the

indebtedness and issue the bonds. In the event no general obligation bonds are authorized to be issued to carry out the general comprehensive plan, the commissioners may proceed with the improvement authorized in the general comprehensive plan after they have authorized, by resolution, the issuance of revenue bonds for the construction of such improvement. The amount of the revenue bonds to be issued shall be included in the resolution submitted. [1977 ex.s. c 300 § 2; 1953 c 250 § 7; 1941 c 210 § 15; Rem. Supp. 1941 § 9425–24.]

56.08.060 Contracts for acquisition, use, operation, etc., authorized—Service to areas in other districts. A sewer district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person, firm or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the sewer district and necessary or desirable to carry out the purposes of the sewer district, and a sewer district or a water district duly authorized to exercise sewer district powers may provide sewer service to property owners in areas within or without the limits of the district: *Provided*, That if any such area is located within another existing district duly authorized to exercise sewer district powers in such area, then sewer service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district. [1981 c 45 § 4; 1959 c 103 § 3; 1953 c 250 § 8; 1941 c 210 § 48; Rem. Supp. 1941 § 9425–57.]

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 56.36.060.

Severability—1959 c 103: See note following RCW 56.08.010.
Sewer districts and municipalities, joint agreements: RCW 35.67.300.

56.08.065 Provision of sewer service beyond district subject to review by boundary review board. The provision of sewer service beyond the boundaries of a sewer district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 51.]

56.08.070 Contracts for labor and materials—Call for bids—Small works roster—Award of contract—Requirements waived, when. (1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than fifty thousand dollars, may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The board of sewer commissioners may set up uniform procedures to pre-qualify contractors for inclusion on the small works roster. The board of sewer commissioners shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good

faith effort be made to request quotations from all contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year. All contract projects equal to or in excess of fifty thousand dollars shall be let by competitive bidding. Before awarding any competitive contract the board of sewer commissioners shall cause a notice to be published in a newspaper in general circulation where the district is located at least once, ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of sewer commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of sewer commissioners on or before the day and hour named therein.

(2) Each bid shall be accompanied by a bid proposal deposit in the form of a certified check, cashier's check, postal money order, or surety bond payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named such bids shall be publicly opened and read and the board of sewer commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications: *Provided*, That no contract shall be let in excess of the cost of said materials or work, or if in the opinion of the board of sewer commissioners all bids are unsatisfactory they may reject all of them and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of sewer commissioners in the full amount of the contract price between the bidder and the commission in accordance with bid. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said check, cash or bid bonds and the amount thereof shall be forfeited to the sewer district.

(3) In the event of an emergency when the public interest or property of the sewer district would suffer material injury or damage by delay, upon resolution of the board of sewer commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or the official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market

conditions, in which instances the purchase price may be best established by direct negotiation. [1989 c 105 § 1; 1987 c 309 § 1; 1985 c 154 § 1; 1983 c 38 § 1; 1979 ex.s. c 137 § 1; 1975 1st ex.s. c 64 § 1; 1971 ex.s. c 272 § 3; 1965 c 71 § 1; 1941 c 210 § 44; Rem. Supp. 1941 § 9425–53.]

56.08.075 Powers as to street lighting systems—

Establishment. (1) In addition to the powers given sewer districts by law, they also have power to acquire, construct, maintain, operate, and develop street lighting systems.

(2) To establish a street lighting system, the board of sewer commissioners shall adopt a resolution proposing a street lighting system and delineating the boundaries of the area to be served by the proposed street lighting system. The board shall conduct a public hearing on the resolution to create a street lighting system. Notice of the hearing shall be published at least once each week for two consecutive weeks in one or more newspapers of general circulation in the area to be served by the proposed street lighting system. Following the hearing, the board may by resolution establish the street lighting system.

(3) A street lighting system shall not be established if, within thirty days following the decision of the board, a petition opposing the street lighting system is filed with the board and contains the signatures of at least forty percent of the voters registered in the area to be served by the proposed system.

(4) The sewer district has the same powers of collection for delinquent street lighting charges as the sewer district has for collection of delinquent sewer service charges.

(5) Any street lighting system established by a sewer district prior to March 31, 1982, is declared to be legal and valid. [1987 c 449 § 2; 1982 c 105 § 2.]

56.08.080 Sale of unnecessary property authorized—

Notice. The board of commissioners of a sewer district may sell, at public or private sale, property belonging to the district if the board determines that the property is not and will not be needed for district purposes and if the board gives notice of intention to sell as in this section provided: *Provided*, That no notice of intention is required to sell personal property of less than five hundred dollars in value.

The notice of intention to sell shall be published once a week for three consecutive weeks in a newspaper of general circulation in the district. The last publication shall be at least twenty days but not more than thirty days before the date of sale. The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions thereof and shall reserve the right to reject any and all bids. [1989 c 308 § 5; 1984 c 172 § 1; 1953 c 51 § 1.]

56.08.090 Sale of unnecessary property authorized—Additional requirements for sale of realty. (1)

Subject to the provisions of subsection (2) of this section, no real property valued at five hundred dollars or more of the district shall be sold for less than ninety percent of the value thereof as established by a written appraisal made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state or professionally designated real estate appraisers as defined in RCW 74.46.020. The appraisal shall be signed by the appraisers and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the appraised value thereof: *Provided*, That there shall be no private sale of real property where the appraised value exceeds the sum of five hundred dollars.

(2) If no purchasers can be obtained for the property at ninety percent or more of its appraised value after one hundred eighty days of offering the property for sale, the board of commissioners of the sewer district may adopt a resolution stating that the district has been unable to sell the property at the ninety percent amount. The sewer district then may sell the property at the highest price it can obtain at public auction. A notice of intention to sell at public auction shall be published once a week for three consecutive weeks in a newspaper of general circulation in the sewer district. The last publication shall be at least twenty days but not more than thirty days before the date of sale. The notice shall describe the property, state the time and place at which it will be offered for sale and the terms of sale, and shall call for bids, fix the conditions thereof, and reserve the right to reject any and all bids. [1989 c 308 § 6; 1988 c 162 § 1; 1984 c 103 § 2; 1953 c 51 § 2.]

56.08.092 Application of sections to certain service provider agreements under chapter 70.150 RCW. RCW 56.08.070, 56.08.080 through 56.08.090, and 56.08.120 through 56.08.160 shall not apply to an agreement entered into under authority of chapter 70.150 RCW provided there is compliance with the procurement procedure under RCW 70.150.040. [1986 c 244 § 15.]

Severability—1986 c 244: See RCW 70.150.905.

56.08.100 Health care, group, life, and social security insurance contracts for employees' benefit—

Joint action with water district. A sewer district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance and/or social security insurance for the benefit of its employees and may pay all or any part of the cost thereof. Any two or more sewer districts or one or more sewer districts and one or more water districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of each participating sewer and/or water district may by appropriate resolution authorize their respective district to pay all or any portion

of the cost thereof. [1981 c 190 § 5; 1973 c 24 § 1; 1961 c 261 § 1.]

Joint health care, group insurance contracts with sewer districts: RCW 57.08.100.

56.08.105 Liability insurance for officials and employees. The board of commissioners of each sewer district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 6.]

56.08.107 Liability insurance for officers and employees authorized. See RCW 36.16.138.

56.08.110 Association of district commissioners—Purpose—Expenses—Personnel—Limitation on district's contribution—Audit by state division of municipal corporations. To improve the organization and operation of sewer districts, the commissioners of two or more such districts may form an association thereof, for the purpose of securing and disseminating information of value to the members of the association and for the purpose of promoting the more economical and efficient operation of the comprehensive plans of sewer systems in their respective districts. The commissioners of sewer districts so associated shall adopt articles of association, select such officers as they may determine, and employ and discharge such agents and employees as shall be deemed convenient to carry out the purposes of the association. Sewer district commissioners and their employees are authorized to attend meetings of the association. The expense of the association may be paid from the maintenance or general funds of the associated districts in such manner as shall be provided in the articles of association: *Provided*, That the aggregate contributions made to the association by the district in any calendar year shall not exceed the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property of the district. The financial records of such association shall be subject to audit by the Washington state division of municipal corporations of the state auditor. [1973 1st ex.s. c 195 § 62; 1970 ex.s. c 47 § 4; 1961 c 267 § 1.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

56.08.112 Association of district commissioners—Association to furnish information to legislature and governor. See RCW 44.04.170.

56.08.120 Lease of property not necessary for use of district—When. Within the limitations prescribed by RCW 56.08.130 through 56.08.160, a sewer district may lease out any real property held by it which is not necessary for its immediate use and purposes, and upon

such terms and conditions as the board of sewer district commissioners deems proper, when and only after:

In the case of real property, the board has by resolution declared the property, to be property for which there is a future need by the district and for which provision is made in the comprehensive plan of the sewer system of the district as it exists or may from time to time be revised, altered or amended. [1967 c 178 § 1.]

56.08.130 Proposed lease—Notice, contents, publication—Hearing. No lease shall be made until the sewer district has first caused notice thereof, with full description by name of the proposed lessees, the purpose for which the property is to be leased, the street address and location of the property, and a full legal description thereof as described in the records of the county auditor of the county wherein the property is located or situated, and the term for which the property is proposed to be leased, twice in a newspaper of general circulation within the sewer district. Such notice shall also include a date and place of hearing on the proposed lease, for the presentation by any and all persons interested therein of any legal objections thereto; and the first notice shall be published at least fifteen days prior to the execution of the lease, and the second at least seven days prior thereto. [1967 c 178 § 2.]

56.08.140 Performance bond—Conditions and terms—Duration of leases. No such lease shall be made unless secured by a bond conditioned on the performance of the terms of the lease, with surety satisfactory to the commissioners, in a penalty of not less than one-sixth of the term of the lease or for one year's rental, whichever is greater; and no such lease shall be made for a term longer than twenty-five years. [1967 c 178 § 3.]

56.08.150 Performance bond—Leases of more than five years. In cases involving leases of more than five years, the commissioners may in their discretion provide for and stipulate to acceptance of a bond conditioned on the performance of a part of the term for five years or more whenever it is further provided that the lessee must procure and deliver to the board of commissioners renewal bonds with like terms and conditions no more than two years prior nor less than one year prior to the expiration of each such bond during the entire term of the lease: *Provided*, That no such bond shall be construed to secure the furnishing of any other bond by the same surety or indemnity company. [1967 c 178 § 4.]

56.08.160 Performance bond—Surety—Security in lieu of bond—Additional bond security. The commissioners may accept as surety on any bond required by RCW 56.08.140 and 56.08.150 an approved surety company, or may accept in lieu thereof a secured interest in property of a value at least twice the amount of the bond required, conditioned further that in the event the commissioners determine that the value of the bond security has become or is about to become impaired, additional

security shall be required from the lessee. [1967 c 178 § 5.]

56.08.180 Excess sewer capacity not grounds for zoning decision challenge. The construction of or existence of sewer capacity in excess of the needs of the density allowed by zoning shall not be grounds for any legal challenge to any zoning decision by the county. [1982 c 213 § 3.]

56.08.190 Extensions by private party—Preparation of plans—Review by district. A sewer district may not require that a specified engineer prepare plans or designs for extensions to its systems if the extensions are to be financed and constructed by a private party, but may review, and approve or reject, the plans or designs which have been prepared for such a private party based upon standards and requirements established by the sewer district. [1987 c 309 § 3.]

**Chapter 56.12
COMMISSIONERS**

Sections

56.12.010	Number—Officers—Compensation—Waiver of compensation—Business, proceedings, etc.
56.12.015	Increase in number of commissioners.
56.12.020	Elections—Terms of office.
56.12.030	Nominations—Vacancies—Elections—Commissioner districts.
56.12.040	Unexcused absences—When position declared vacant—Procedure.

Elections: Title 29 RCW.

Jurisdiction of elections in joint sewer districts—Filing of declarations of candidacy—Joint sewer district defined: RCW 56.02.050.

56.12.010 Number—Officers—Compensation—Waiver of compensation—Business, proceedings, etc. The governing body of a sewer district shall be a board of commissioners consisting of three members. The commissioners shall annually elect one of their number as president and another as secretary of the board.

A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate of fifty dollars for each day or portion thereof devoted to the business of the district: *Provided*, That the compensation for each commissioner shall not exceed four thousand eight hundred dollars per year. In addition, the secretary may be paid a reasonable sum for clerical services.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

No commissioner shall be employed full time by the district.

The board shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book kept for that purpose, which shall be a public record. [1985 c 330 § 5; 1980 c 92 § 1; 1969 ex.s. c 148 § 7; 1959 c 103 § 4; 1955 c 373 § 1; 1945 c 140 § 8; 1941 c 210 § 9; Rem. Supp. 1945 § 9425-18.]

Severability—1969 ex.s. c 148: See note following RCW 56.36.010.

Severability—1959 c 103: See note following RCW 56.08.010.

56.12.015 Increase in number of commissioners. If a three-member board of commissioners of any sewer district determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, or if the board is presented with a petition signed by ten percent of the qualified electors resident within the district calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the legislative authority of the county requesting that an election be held. Upon receipt of the resolution, the legislative authority of the county shall call a special election to be held within the sewer district at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of
(Name and/or No. of sewer district) be increased
from three to five members?

Yes _____

No _____

If the proposition receives a majority approval at the election the board of commissioners of the sewer district shall be increased to five members. In any sewer district with more than ten thousand customers, if a three-member board of commissioners determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, the number of commissioners shall be so increased, without an election, unless within ninety days of adoption of that resolution, a petition requesting an election and signed by at least ten percent of the electors is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the legislative authority of the county, which shall call a special election in the manner described in this section.

The two positions created on boards of sewer commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general sewer district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general sewer district election after the appointment, at which two commissioners shall be elected for six-year terms. [1987 c 449 § 3.]

56.12.020 Elections—Terms of office. At the election held to form or reorganize a district, there shall

be elected three commissioners who shall assume office immediately when qualified in accordance with RCW 29.01.135 to hold office for terms of two, four, and six years respectively, and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170.

The term of each nominee shall be expressed on the ballot and shall be computed from the first day of January next following if the initial election of the sewer district commissioners was in a general district election as provided in RCW 29.13.020, or from the first day of January following the first general election for sewer districts after its creation if the initial election was on a date other than a general district election. Thereafter, every two years there shall be elected a commissioner for a term of six years and until his or her successor is elected and qualified, at the general election held in the odd-numbered years, as provided in RCW 29.13.020, and conducted by the county auditor and the returns shall be canvassed by the county canvassing board of election returns: *Provided*, That each such commissioner shall assume office in accordance with RCW 29.04.170. [1979 ex.s. c 126 § 38; 1963 c 200 § 17; 1955 c 55 § 12; 1953 c 110 § 1. Prior: 1945 c 140 § 6; 1941 c 210 § 7; Rem. Supp. 1945 § 9425-16.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Terms of district officers: State Constitution Art. 11 § 5.

56.12.030 Nominations—Vacancies—Elections—Commissioner districts. (1) Nominations for the first board of commissioners to be elected at the election for the formation of the sewer district shall be by petition of fifty qualified electors or ten percent of the qualified electors of the district, whichever is the smaller. The petition shall be filed in the auditor's office of the county in which the district is located at least thirty days before the election. Thereafter candidates for the office of sewer commissioner shall file declarations of candidacy and their election shall be conducted as provided by the general elections laws. A vacancy or vacancies shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: *Provided*, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners. If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed by the board of county commissioners. Any person residing in the district who is at the time of election a qualified voter may vote at any election held in the sewer district.

(2) Subsection (1) of this section notwithstanding, the board of commissioners may provide by majority vote that subsequent commissioners be elected from commissioner districts within the district. If the board exercises

this option, it shall divide the district into three commissioner districts of approximately equal population following current precinct and district boundaries. Thereafter, candidates shall be nominated and one candidate shall be elected from each commissioner district by the electors of the commissioner district.

(3) All expense of elections for the formation or reorganization of a sewer district shall be paid by the county in which the election is held and the expenditure is hereby declared to be for a county purpose, and the money paid for that purpose shall be repaid to the county by the district if formed or reorganized. [1986 c 41 § 1; 1985 c 141 § 3; 1981 c 169 § 2; 1953 c 250 § 9; 1947 c 212 § 1; 1945 c 140 § 7; 1941 c 210 § 8; Rem. Supp. 1947 § 9425-17.]

56.12.040 Unexcused absences—When position declared vacant—Procedure. If a sewer commissioner is absent from three consecutive regularly scheduled meetings unless by permission of the board, the office may be declared vacant by the board of commissioners and the vacancy shall then be filled as provided for in this chapter. However, such an action shall not be taken unless the commissioner is notified by mail after two consecutive unexcused absences that the position will be declared vacant if the commissioner is absent without being excused from the next regularly scheduled meeting. [1987 c 449 § 4.]

Chapter 56.16 FINANCES

Sections	
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56.16.170	Maintenance or general fund and special funds—Loans from maintenance or general funds to construction funds.

County treasurer's duty to segregate certified assessments and charges in sewer districts: RCW 36.29.160.

Levy of taxes: Chapter 84.52 RCW.

Limitation on levies: State Constitution Art. 7 § 2.

Public contracts and indebtedness: Title 39 RCW.

56.16.010 General indebtedness. The sewer commissioners may submit to the sewer district voters a ballot proposition authorizing the sewer district to incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations for the construction of any part or all of the comprehensive plan for the district. Elections shall be held as provided in RCW 39.36.050. The proposition authorizing both the bond issue and bond retirement levies must be approved by three-fifths of the qualified voters of the said sewer district voting on said proposition, at which election the total number of persons voting on the proposition shall constitute not less than forty percent of the total number of votes cast in the sewer district at the last preceding general election. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 46; 1973 1st ex.s. c 195 § 63; 1953 c 250 § 10; 1951 2nd ex.s. c 26 § 1; 1941 c 210 § 14; Rem. Supp. 1941 § 9425-23.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Limitations on municipal corporation indebtedness: State Constitution Art. 8 § 6; RCW 35.30.040, 35.37.040.

56.16.020 Revenue bonds authorized. The sewer commissioners may, by resolution, issue revenue bonds for the construction costs, interest during the period of construction and six months thereafter, working capital, or other costs of any part or all of the general comprehensive plan or for other purposes or functions of a sewer district authorized by statute without submitting a proposition therefor to the voters. The resolution shall include the amount of the bonds to be issued. [1987 c 449 § 5; 1977 ex.s. c 300 § 3; 1959 c 103 § 5; 1953 c 250 § 11; 1951 c 129 § 2; 1941 c 210 § 16; Rem. Supp. 1941 § 9425-25.]

Severability—1959 c 103: See note following RCW 56.08.010.

Special assessments and taxation for local improvements: State Constitution Art. 7 § 9.

56.16.030 Additions and betterments—Financing plan. (1) In the same manner as herein provided for the adoption of the general comprehensive plan, and after the adoption of the general comprehensive plan, a plan providing for additions and betterments to the general comprehensive plan, or reorganized district may be adopted. Without limiting its generality "additions and betterments" shall include any necessary change in, amendment of, or addition to the general comprehensive plan. The sewer district may incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations for the construction of the additions and betterments in the same way the general indebtedness may be incurred for the construction of the general comprehensive plan as

provided in RCW 56.16.010. Upon ratification by the voters of the entire district, of the proposition to incur such indebtedness, the additions and betterments may be carried out by the sewer commissioners to the extent specified or referred to in the proposition to incur such general indebtedness. The sewer district may issue revenue bonds to pay for the construction of the additions and betterments by resolution of the board of sewer commissioners.

(2) After July 23, 1989, when the district adopts a general comprehensive plan or plans for an area annexed as provided for in RCW 56.08.020, the district shall include a long-term plan for financing the planned projects. [1989 c 389 § 3; 1984 c 186 § 47; 1977 ex.s. c 300 § 4; 1973 1st ex.s. c 195 § 64; 1959 c 103 § 6; 1953 c 250 § 12; 1951 2nd ex.s. c 26 § 2; 1951 c 129 § 3; 1945 c 140 § 11; 1941 c 210 § 17; Rem. Supp. 1945 § 9425-26.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1959 c 103: See note following RCW 56.08.010.

Adoption of general comprehensive plan: RCW 56.08.020.

56.16.035 Additional revenue bonds for increased cost of improvements. Whenever a sewer district shall have adopted a general comprehensive plan, and bonds to defray the cost thereof shall have been authorized by the board of commissioners, and if before completion of the improvements the board of commissioners shall by resolution find that the authorized bonds are not sufficient to defray the cost of such improvements due to the increase of costs of construction subsequent to the adoption of said plan, the board of commissioners may, by resolution, authorize the issuance and sale of additional sewer revenue bonds for such purpose in excess of those previously issued. [1977 ex.s. c 300 § 5; 1959 c 103 § 7.]

Severability—1959 c 103: See note following RCW 56.08.010.

56.16.040 General obligation bonds—Bond retirement property tax levies. Whenever any such sewer district shall hereafter adopt a plan for a sewer system as herein provided, or any additions and betterments thereto, or whenever any reorganized sewer district shall hereafter adopt a plan for any additions or betterments thereto, and the qualified voters of any such sewer district or reorganized sewer district shall hereafter authorize both bond retirement property tax levies and a general indebtedness for all the said plan, or any part thereof, or any additions and betterments thereto or for refunding in whole or in part bonds theretofore issued, general obligation bonds for the payment thereof may be issued.

The general obligation bonds shall never be issued to run for a longer period than thirty years from the date of the issue and shall as nearly as practicable be issued for a period which will not exceed the life of the improvement to be acquired by the issue of the bonds.

Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 48; 1983 c 167 § 272 (repealed by 1984 c 186 § 70); 1983 c 167 § 155;

1973 1st ex.s. c 195 § 65; 1970 ex.s. c 56 § 80; 1969 ex.s. c 232 § 85; 1953 c 250 § 13; 1951 2nd ex.s. c 26 § 3; 1945 c 140 § 12; 1941 c 210 § 18; Rem. Supp. 1945 § 9425-27.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Effective dates—1983 c 167: See note following RCW 36.68.520.

Liberal construction—**Severability**—1983 c 167: See RCW 39.46.010 and note following.

Severability—**Effective dates and termination dates**—**Construction**—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—**Saving**—**Severability**—1969 ex.s. c 232: See notes following RCW 39.52.020.

56.16.050 Limitation of indebtedness. Each and every sewer district hereafter to be organized pursuant to this title, or reorganized under chapter 140, Laws of 1945, may contract indebtedness pursuant to the provisions of RCW 56.16.040, but not exceeding in amount, together with existing indebtedness two and one-half percent of the value of the taxable property in said district, as the term "value of the taxable property" is defined in RCW 39.36.015, whenever three-fifths of the voters voting at said election in such sewer district assent thereto, at which election the total number of persons voting on the proposition shall constitute not less than forty percent of the total number of votes cast at the last preceding general election. The election shall be held as provided in RCW 39.36.050. All bonds so to be issued shall be subject to the provisions regarding bonds as set out in RCW 56.16.040. [1984 c 186 § 49; 1970 ex.s. c 42 § 34; 1945 c 140 § 15; 1941 c 210 § 42; Rem. Supp. 1945 § 9425-51.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—**Effective date**—1970 ex.s. c 42: See notes following RCW 39.36.015.

56.16.060 Revenue bonds—**Issuance, form, payment, etc.** (1) When sewer revenue bonds are issued for authorized purposes, said bonds shall be in bearer form or registered as to principal or interest or both, as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds; shall be in such denominations, shall be numbered, shall bear such date, shall be payable at such time or times up to a maximum period of not to exceed thirty years and at such place or places one of which must be the office of the treasurer of the county in which the district is located, or of the county in which fifty-one percent or more of the area of the district is located such place or places to be determined by the board of commissioners of the district; shall bear interest at such rate or rates payable at such time or times as authorized by the board of sewer commissioners; shall be executed by the president of the board of commissioners and attested by the secretary thereof, one of which signatures may, with the written permission of the signator whose facsimile signature is being used, be a facsimile and have the seal of the district impressed thereon; and may have facsimile signatures of the president and secretary imprinted on any interest coupons in lieu of original signatures.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 156; 1975 1st ex.s. c 25 § 1; 1971 ex.s. c 272 § 4; 1970 ex.s. c 56 § 81; 1969 ex.s. c 232 § 86; 1959 c 103 § 8; 1941 c 210 § 19; Rem. Supp. 1941 § 9425-28.]

Liberal construction—**Severability**—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—**Saving**—**Severability**—1969 ex.s. c 232: See notes following RCW 39.52.020.

Severability—1959 c 103: See note following RCW 56.08.010.

Facsimile signature on bonds and coupons: RCW 39.44.100 through 39.44.102.

56.16.065 Revenue warrants and revenue bond anticipation warrants. Sewer districts may also issue revenue warrants and revenue bond anticipation warrants for the same purposes for which such districts may issue revenue bonds. The provisions of this chapter relating to the authorization, terms, conditions, covenants, issuance and sale of revenue bonds (exclusive of provisions relating to refunding) shall be applicable to such warrants. Sewer districts issuing revenue bond anticipation warrants may make covenants relative to the issuance of revenue bonds to provide funds for the redemption of part or all of such warrants and may contract for the sale of such bonds and warrants. [1975 1st ex.s. c 25 § 4.]

56.16.070 Special fund to pay revenue bonds. The sewer commissioners shall have power and are required to create a special fund, or funds, for the sole purpose of paying the interest and principal of sewer revenue bonds, as herein provided into which special fund or funds the said sewer commissioners shall obligate and bind the sewer district to set aside and pay a fixed proportion of the gross revenues of the system of sewers, or any fixed amount out of and not exceeding a fixed proportion of such revenues, or a fixed amount or amounts without regard to any fixed proportion, and such bonds and the interest thereof shall be payable only out of such special fund or funds, and shall be a lien and charge against all revenues of the district and payments received from any utility local improvement district or districts pledged to secure such bonds, subject only to operating and maintenance expenses. [1959 c 103 § 9; 1941 c 210 § 20; Rem. Supp. 1941 § 9425-29.]

Severability—1959 c 103: See note following RCW 56.08.010.

56.16.080 Special fund, considerations in creating—**Rights of bond owner.** (1) In creating any special fund or funds the sewer commissioners of such sewer district shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to, and to any proportion or part of the revenue previously pledged as a fund for the payment of bonds, warrants or other indebtedness, and shall not set aside into such special fund a greater amount or proportion of the revenue and proceeds than in their judgment will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the

revenue so previously pledged. Any such bonds, and the interest thereon, issued against any such fund as herein provided, shall be a valid claim of the owner thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such sewer district within the meaning of the constitutional provisions and limitations. Each such bond or warrant shall state upon its face that it is payable from a special fund, naming the said fund and the resolution creating it. Said bonds shall be sold in such manner, at such prices and at such rate or rates of interest as the sewer commissioners shall deem for the best interests of the sewer district, either at public or private sale, and the said commissioners may provide in any contract for the construction and acquisition of the proposed improvement that payment therefor shall be made in such bonds at par value thereof.

When any such special fund shall have been heretofore or shall be created and any such bonds shall have been heretofore or shall hereafter be issued against the same, a fixed proportion or a fixed amount out of and not to exceed such fixed proportion, or a fixed amount without regard to any fixed proportion, of revenue shall be set aside and paid into said special fund as provided in the resolution creating such fund or authorizing such bonds. In case any sewer district shall fail thus to set aside and pay said fixed proportion or amount as aforesaid, the owner of any bond payable from such special fund may bring suit or action against the sewer district and compel such setting aside and payment.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 157; 1975 1st ex.s. c 25 § 2; 1970 ex.s. c 56 § 82; 1941 c 210 § 21; Rem. Supp. 1941 § 9425–30.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

56.16.085 Covenants to guarantee payment of revenue bonds—Bonds payable from same source may be issued on parity. The board of commissioners may make such covenants as it may deem necessary to secure and guarantee the payment of the principal of and interest on sewer revenue bonds of the district, including but not being limited to covenants for the establishment and maintenance of adequate reserves to secure or guarantee the payment of such principal and interest; the protection and disposition of the proceeds of sale of such bonds; the use and disposition of the gross revenues of the sewer system of the district and any additions or betterments thereto or extensions thereof; the use and disposition of any utility local improvement district assessments; the creation and maintenance of funds for renewals and replacements of the system; the establishment and maintenance of rates and charges adequate to pay principal and interest of such bonds and to maintain adequate coverage over debt service; the maintenance, operation and management of the system and the accounting, insuring and auditing of the business in

connection therewith; the terms upon which such bonds or any of them may be redeemed at the election of the district; limitations upon the right of the district to dispose of its system or any part thereof; the appointment of trustees, depositaries and paying agents to receive, hold, disburse, invest and reinvest all or any part of the proceeds of sale of the bonds and all or any part of the income, revenue and receipts of the district, and the board of commissioners may make such other covenants as it may deem necessary to accomplish the most advantageous sale of such bonds. The board of commissioners may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. [1959 c 103 § 10.]

Severability—1959 c 103: See note following RCW 56.08.010.

56.16.090 Rates and charges—Classification of services. The sewer commissioners of any sewer district, in the event that such sewer revenue bonds are issued, shall provide for revenues by fixing rates and charges for the furnishing of sewerage disposal service to those to whom such service is available. Such rates and charges may be combined for the furnishing of more than one type of sewer service such as but not limited to storm or surface water and sanitary. Such rates and charges are to be fixed as deemed necessary by such sewer commissioners, so that uniform charges will be made for the same class of customer or service. In classifying customers served or service furnished by such system of sewerage, the board of commissioners may in its discretion consider any or all of the following factors: The difference in cost of service to the various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the sewage delivered and the time of its delivery; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Such rates are to be made on a monthly basis and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system. [1974 ex.s. c 58 § 3; 1959 c 103 § 11; 1941 c 210 § 22; Rem. Supp. 1941 § 9425–31.]

Severability—1959 c 103: See note following RCW 56.08.010.

Authority to adjust or delay rates and charges for low-income persons: RCW 56.08.014.

Public property subject to rates and charges for storm water control facilities: RCW 56.08.012.

56.16.100 Collection of charges—Lien. The commissioners shall enforce collection of the sewer connection charges and sewerage disposal service charges against property to which and its owners to whom the service is available, such charges being deemed charges against the property to which the service is available, by

addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either sewer connection charges or sewer service charges are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate fixed by resolution, shall be a lien against the property to which the service was available, subject only to the lien for general taxes. [1977 ex.s. c 300 § 6; 1971 ex.s. c 272 § 5; 1953 c 250 § 14; 1941 c 210 § 23; Rem. Supp. 1941 § 9425-32.]

56.16.110 Foreclosure of lien for charges. The district may, at any time after the sewer connection charges or sewerage disposal service charges and penalties provided for in RCW 56.16.100, as now or hereafter amended, are delinquent for a period of sixty days, bring suit in foreclosure by civil action in the superior court of the county in which the real property is situated. The court may allow, in addition to the costs and disbursements provided by statute, such an attorney's fee as it may adjudge reasonable. The action shall be in rem against the property, and in addition may be brought in the name of the district against an individual, or against all of those who are delinquent in one action, and the laws and rules of the court shall control as in other civil actions. [1977 ex.s. c 300 § 7; 1971 ex.s. c 272 § 6; 1953 c 250 § 15; 1941 c 210 § 24; Rem. Supp. 1941 § 9425-33.]

56.16.115 Refunding bonds. The board of sewer commissioners may by resolution, without submitting the matter to the voters of the district, authorize the issuance of refunding general obligation bonds to refund any outstanding general obligation bonds, or any part thereof, at maturity thereof, or before the maturity thereof, if they are subject to call for prior redemption, or if all of the holders thereof consent thereto. The total cost to the district over the life of the refunding bonds shall not exceed the total cost, which the district would have incurred but for such refunding, over the remainder of the life of the bonds being refunded. The provisions of RCW 56.16.040 specifying the issuance and sale of general obligation bonds and providing for annual tax levies in excess of the constitutional and/or statutory tax limitations shall apply to the refunding general obligation bonds issued under this title.

The board of sewer commissioners may by resolution provide for the issuance of refunding revenue bonds to refund outstanding general obligation bonds and/or revenue bonds, or any part thereof, at maturity thereof, or before maturity thereof, if they are subject to call for prior redemption, or if all of the holders thereof consent thereto. The total cost to the district over the life of said refunding revenue bonds shall not exceed the total cost, which the district would have incurred but for such refunding, over the remainder of the life of the bonds being refunded. Uncollected assessments originally payable

into the revenue bond fund of a refunded revenue bond issue shall be paid into the revenue bond fund of the refunding issue. The provisions of RCW 56.16.060 specifying the form and maturities of revenue bonds shall apply to the refunding revenue bonds issued under this title.

Refunding general obligation bonds or refunding revenue bonds may be exchanged for the bonds being refunded or may be sold in such manner as the sewer commissioners shall deem for the best interest of the sewer district. [1984 c 186 § 50; 1977 ex.s. c 300 § 8; 1973 1st ex.s. c 195 § 66; 1959 c 103 § 12; 1953 c 250 § 16.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective dates and termination dates—**Construction**—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1959 c 103: See note following RCW 56.08.010.

56.16.130 Interest payments. Any coupons for the payment of interest on bonds of any sewer district shall be considered for all purposes as warrants drawn upon the general fund of the said sewer district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such sewer district at maturity, or thereafter, and when so presented, if there are not funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to endorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as the bonds to which they were attached. When there are no funds in the treasury to make interest payments on bonds not having coupons, the overdue interest payment shall continue bearing interest at the bond rate until it is paid, unless otherwise provided in the proceedings authorizing the sale of the bonds. [1983 c 167 § 158; 1941 c 210 § 45; Rem. Supp. 1941 § 9425-54.]

Liberal construction—**Severability**—1983 c 167: See RCW 39.46.010 and note following.

56.16.135 Treasurer—**Designation**—**Approval**—**Powers and duties**—**Bond.** Upon obtaining the approval of the county treasurer, the board of commissioners of a sewer district with more than twenty-five hundred customers may designate by resolution some other person having experience in financial or fiscal matters as the treasurer of the district. Such a treasurer shall possess all of the powers, responsibilities, and duties of, and shall be subject to the same restrictions as provided by law for, the county treasurer with regard to a sewer district, and the county auditor with regard to sewer district financial matters. Such treasurer shall be bonded for not less than twenty-five thousand dollars. Approval by the county treasurer authorizing such a sewer district to designate its treasurer shall not be arbitrarily or capriciously withheld. [1988 c 162 § 10; 1983 c 57 § 2.]

Ratification—1988 c 162 §§ 10, 11: "Any action taken by a sewer district treasurer or water district treasurer prior to March 21, 1988, and consistent with sections 10 and 11 of this act is ratified and confirmed." [1988 c 162 § 12.]

56.16.140 Maintenance or general fund and special funds. Unless the board of commissioners of a sewer district designates a treasurer under RCW 56.16.135, the county treasurer of the county in which the district is located or the county in which fifty-one percent or more of the area of the district is located shall create and maintain a separate fund designated as the maintenance fund or general fund of the sewer district into which shall be paid all money received by him from the collection of taxes levied by such district other than taxes levied for the payment of general obligation bonds thereof, and into which shall be paid all revenues of the district other than assessments levied in utility local improvement districts, and no money shall be disbursed therefrom except upon warrants of the county auditor issued by authority of the commissioners or upon a resolution of the commissioners ordering a transfer to any other fund of the district. The county treasurer of each county in which the district or a portion thereof is located shall also maintain such other special funds as may be prescribed by the sewer district, into which shall be placed such moneys as the board of sewer commissioners may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by authority of the board of sewer commissioners. [1983 c 57 § 1; 1971 ex.s. c 272 § 7; 1959 c 103 § 13; 1941 c 210 § 46; Rem. Supp. 1941 § 9425-55.]

Severability—1959 c 103: See note following RCW 56.08.010.

56.16.150 Maintenance or general fund and special funds—Use of surplus in maintenance or general fund. Whenever a sewer district has accumulated moneys in the maintenance fund or general fund of the district in excess of the requirements of such fund, the board of commissioners may in its discretion use any of such surplus moneys for any of the following purposes: (1) Redemption or servicing of outstanding obligations of the district; (2) maintenance expenses of the district; (3) construction or acquisition of any facilities necessary to carry out the purpose of the district. [1959 c 103 § 14.]

Severability—1959 c 103: See note following RCW 56.08.010.

56.16.160 Maintenance or general fund and special funds—Deposits and investments. Whenever there shall have accumulated in any general or special fund of a sewer district moneys, the disbursement of which is not yet due, the board of commissioners may, by resolution, authorize the county treasurer to deposit or invest such moneys in qualified public depositories, or to invest such moneys in any investment permitted at any time by RCW 36.29.020: *Provided*, That the county treasurer may refuse to invest any district moneys the disbursement of which will be required during the period of investment to meet outstanding obligations of the district. [1986 c 294 § 12; 1983 c 66 § 21; 1981 c 24 § 3; 1973 1st ex.s. c 140 § 2; 1959 c 103 § 15.]

Severability—1983 c 66: See note following RCW 39.58.010.

Severability—1959 c 103: See note following RCW 56.08.010.

Public depositories: Chapter 39.58 RCW.

56.16.165 Deposit account requirements. Sewer district moneys shall be deposited by the district in an account, which may be interest-bearing, subject to such requirements and conditions as may be prescribed by the state auditor. The account shall be in the name of the district except, upon request by the treasurer, the accounts shall be in the name of the " (name of county) county treasurer." The treasurer may instruct the financial institutions holding the deposits to transfer them to the treasurer at such times as the treasurer may deem appropriate, consistent with regulations governing and policies of the financial institution. [1981 c 24 § 1.]

56.16.170 Maintenance or general fund and special funds—Loans from maintenance or general funds to construction funds. The board of commissioners of any sewer district may, by resolution, authorize and direct a loan or loans from maintenance funds or general funds of the district to construction funds of the district: *Provided*, That such loan does not, in the opinion of the board of commissioners, impair the ability of the district to operate and maintain its system of sewers. [1959 c 103 § 16.]

Severability—1959 c 103: See note following RCW 56.08.010.

Chapter 56.20

UTILITY LOCAL IMPROVEMENT DISTRICTS

Sections	
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56.20.120	Foreclosure of assessments—Attorneys' fees.

Deferral of special assessments: Chapter 84.38 RCW.

56.20.010 Local districts authorized—Special assessments. Any sewer district shall have the power to establish utility local improvement districts within its territory as hereinafter provided, and to levy special assessments under a mode of annual installments extending over a period not exceeding twenty years on all

property specially benefited by any local improvement, on the basis of the special benefits to pay in whole or in part the damages or costs of any improvements ordered in such sewer district. The levying, collection and enforcement of all special assessments hereby authorized shall be in the manner now and hereafter provided by law for the levying, collection and enforcement of special assessments by cities and towns, insofar as the same shall not be inconsistent with the provisions of this title. The duties devolving upon the city or town treasurer under said laws are imposed upon the county treasurer of each county in which the real property is located for the purposes of this title. The mode of assessment shall be in the manner to be determined by the sewer commissioners by resolution. It must be specified in any petition for the establishment of a utility local improvement district and in the approved general comprehensive plan or approved amendment thereto, that, except as provided in this section, the special assessments shall be for the sole purpose of payment into the revenue bond fund for the payment of revenue bonds. Special assessments in any utility local improvement district may be made on the basis of special benefits up to but not in excess of the total cost of any comprehensive scheme or plan payable by issuance of revenue bonds. No warrants or bonds shall be issued in any such utility local improvement district, but the collection of interest and principal on all special assessments in such utility local improvement district, when collected, shall be paid into the revenue bond fund, except that special assessments paid before the issuance and sale of bonds may be deposited in a fund for the payment of costs of improvements in the utility local improvement district. [1987 c 169 § 1; 1971 ex.s. c 272 § 8; 1941 c 210 § 26; Rem. Supp. 1941 § 9425-35.]

Local improvements, collection of assessments: Chapter 35.49 RCW.

56.20.015 Certain powers of cities and water districts granted to sewer districts—General obligation bonds for water system purposes—Election. In addition to all of the powers and authorities set forth in Title 56 RCW, any sewer district shall have all of the powers of cities as set forth in chapter 35.44 RCW. Sewer districts may also exercise all of the powers permitted to a water district under Title 57 RCW, except that a sewer district may not exercise water district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise water district powers in such area without the consent by resolution of the board of commissioners of such district.

A sewer district shall have the power to issue general obligation bonds for water system purposes: *Provided*, That a proposition to authorize general obligation bonds payable from excess tax levies for water system purposes pursuant to chapters 57.16 and 57.20 RCW shall be submitted to all of the qualified voters within that part of the sewer district which is not contained within another existing district duly authorized to exercise water district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be

levied only upon all of the taxable property within such part of the sewer district. Such bonds may also be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 159; 1981 c 45 § 5; 1980 c 12 § 1; 1977 ex.s. c 300 § 9; 1974 ex.s. c 58 § 4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 56.36.060.

56.20.020 Petition or resolution to form local district—Procedure—Written protest. Utility local improvement districts to carry out all or any portion of the comprehensive plan, or additions and betterments thereof, adopted for the sewer district may be initiated either by resolution of the board of sewer commissioners or by petition signed by the owners according to the records of the office of the county auditor of at least fifty-one percent of the area of the land within the limits of the utility local improvement district to be created.

In case the board of sewer commissioners desires to initiate the formation of a utility local improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed utility local improvement district, describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district, which date shall, unless there is an emergency, be no less than thirty days and no more than ninety days from the day the resolution of intention was adopted.

In case any such utility local improvement district is initiated by petition, such petition shall set forth the nature and territorial extent of such proposed improvement and the fact that the signers thereof are the owners according to the records of the county auditor of at least fifty-one percent of the area of land within the limits of the utility local improvement district to be created. Upon the filing of such petition with the secretary of the board of sewer commissioners, the board shall determine whether the petition is sufficient, and the board's determination thereof shall be conclusive upon all persons. No person may withdraw his name from the petition after the filing thereof with the secretary of the board of sewer commissioners. If the board finds the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of the improvement, designating the number of the proposed local district, describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

Notice of the adoption of the resolution of intention, whether the resolution was adopted on the initiative of

the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of sewer commissioners. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed improvement district by mailing the notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon. Whenever such notices are mailed, the sewer commissioners shall maintain a list of such reputed property owners, which list shall be kept on file at a location within the sewer district and shall be made available for public perusal. The notices shall refer to the resolution of intention and designate the proposed improvement district by number. The notices shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the date, time, and place of the hearing before the board of sewer commissioners. In the case of improvements initiated by resolution, the notice shall also: (1) State that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board of sewer commissioners no later than ten days after the public hearing; (2) state that if owners of at least forty percent of the area of land within the proposed district file written protests with the secretary of the board, the power of the sewer commissioners to proceed with the creation of the proposed district shall be divested; (3) provide the name and address of the secretary of the board; and (4) state the hours and location within the sewer district where the names of the property owners within the proposed district are kept available for public perusal. In the case of the notice given each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, parcel of land, or other property. [1986 c 256 § 1; 1977 ex.s. c 300 § 10; 1974 ex.s. c 58 § 5; 1965 ex.s. c 40 § 1; 1953 c 250 § 17; 1941 c 210 § 27; Rem. Supp. 1941 § 9425-36.]

56.20.030 Hearing—Improvement ordered—Divestment of power to order—Notice—Appeal—Assessment roll. Whether the improvement is initiated by petition or resolution, the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in plans for the proposed improvement as shall be deemed necessary. The board may not change the boundaries of the district to include property not previously included in it without first passing a new resolution of intention and giving a new notice to property owners in the manner

and form and within the time provided in this chapter for the original notice.

After the hearing the commissioners shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution. The jurisdiction of the commissioners to proceed with any improvement initiated by resolution shall be divested: (a) by protests filed with the secretary of the board before the public hearing signed by the owners, according to the records of the county auditor, of at least forty percent of the area of land within the proposed local district or (b) by the commissioners not adopting a resolution ordering the improvement at a public hearing held not more than ninety days from the day the resolution of intention was adopted, unless the commissioners file with the county auditor a copy of the notice required by RCW 56.20.020, and in no event at a hearing held more than two years from the day the resolution of intention was adopted.

If the commissioners find that the district should be formed, they shall by resolution form the district and order the improvement. After execution of the resolution forming the district, the secretary of the board of commissioners shall publish, in a legal publication that serves the area subject to the district, a notice setting forth that a resolution has been passed forming the district and that a lawsuit challenging the jurisdiction or authority of the sewer district to proceed with the improvement and creating the district must be filed, and notice to the sewer district served, within thirty days of the publication of the notice. The notice shall set forth the nature of the appeal. Property owners bringing the appeal shall follow the procedures as set forth under appeal under RCW 56.20.080. Whenever a resolution forming a district has been adopted, the formation is conclusive in all things upon all parties, and cannot be contested or questioned in any manner in any proceeding whatsoever by any person not commencing a lawsuit in the manner and within the time provided in this section, except for lawsuits made under RCW 56.20.080.

Following an appeal, if it is unsuccessful or if no appeal is made under RCW 56.20.080, the commissioners may proceed with the improvement and provide the general funds of the sewer district to be applied thereto, adopt detailed plans of the utility local improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the sewer district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle the district to proceed with the work. The board of sewer commissioners shall proceed with the work and file with the county treasurer of each county in which the real property is to be assessed its roll levying special assessments in the amount to be paid by special assessment against the property situated within the local improvement district in proportion to the special benefits to be derived by the property therein from the improvement. [1986 c 256 § 2; 1974 ex.s. c 58 § 6; 1971 ex.s. c 272 § 9; 1953 c 250 § 18; 1941 c 210 § 28; Rem. Supp. 1941 § 9425-37.]

56.20.032 Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a utility local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 10.]

56.20.033 Sanitary sewer facilities—Notice to certain property owners. Whenever it is proposed that a utility local improvement district finance sanitary sewers facilities, additional notice of the public hearing on the proposed improvement district shall be mailed to the owners of any property located outside of the proposed utility local improvement district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer facilities installed by the utility local improvement district. The notice shall include information about this restriction. [1987 c 315 § 5.]

56.20.035 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

56.20.040 Notice of filing roll. Before the approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the local district, stating that the roll is on file and open to inspection in the office of the secretary, and fixing the time, not less than fifteen or more than thirty days from the date of the first publication of the notice, within which protests must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing will be held by the commission on the protests. The notice shall also be given by mailing at least fifteen days before the hearing, a similar notice to the owners or reputed owners of the land in the local district as they appear on the books of the treasurer of the county in which the sewer district is located. [1953 c 250 § 19; 1941 c 210 § 29; Rem. Supp. 1941 § 9425–38.]

56.20.050 Hearing on protests—Order. At such hearing on a protest to an assessment, or any adjournment thereof, the sewer commissioners shall have power to correct, revise, raise, lower, change or modify such roll, or any part thereof, and to set aside such roll, and order that such assessment be made de novo, as to such body shall appear equitable and just and may then by resolution approve the same. In the event of any assessment being raised a new notice similar to such first notice shall be given, after which final approval of such roll may be made by the sewer commissioners. Whenever any property shall have been entered originally upon such roll and the assessment upon any such property shall not be raised, no objection thereto shall be considered by the sewer commissioners or by any court on appeal unless such objection be made in writing at, or

prior, to the date fixed for the original hearing upon such roll. [1941 c 210 § 30; Rem. Supp. 1941 § 9425–39.]

56.20.060 Enlarged local district may be formed. In the event that any portion of the system after its installation in such utility local improvement district is not adequate for the purpose for which it was intended, or that for any reason changes, alterations or betterments are necessary in any portion of the system after its installation, then such district, with boundaries which may include one or more existing utility local improvement districts, may be created in the sewer district in the same manner as is provided herein for the creation of utility local improvement districts. Upon the organization of such a utility local improvement district as provided for in this section the plan of the improvement and the payment of the cost of the improvement shall be carried out in the same manner as is provided herein for the carrying out of and the paying for the improvement in the utility local improvement districts previously provided for in this title. [1941 c 210 § 31; Rem. Supp. 1941 § 9425–40.]

56.20.070 Conclusiveness of roll when approved—Exceptions. Whenever any assessment roll for local improvements shall have been confirmed by the sewer commission of such sewer district as herein provided, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefor, including the action of the sewer commission upon such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in this title, and not appealing from the action of the sewer commission in confirming such assessment roll in the manner and within the time in this title provided. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor.

This section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds:

(1) That the property about to be sold does not appear upon the assessment roll, or

(2) That said assessment has been paid.

This section also shall not prohibit the correction of clerical errors and errors in the computation of assessments in assessment rolls by the following procedure:

(1) The board of sewer commissioners may file a petition with the superior court of the county wherein the real property is located, asking that the court enter an order correcting such errors and directing that the county treasurer pay a portion or all of the incorrect assessment by the transfer of funds from the district's maintenance fund, if such relief be necessary.

(2) Upon the filing of the petition, the court shall set a date for hearing and upon the hearing may enter an order as provided in subsection (1) of this paragraph: *Provided*, That neither the correcting order or the corrected assessment roll shall result in an increased assessment to the property owner. [1971 ex.s. c 272 § 10; 1969 c 126 § 1; 1941 c 210 § 33; Rem. Supp. 1941 § 9425-42.]

56.20.080 Review. The decision of the sewer commission upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the secretary of said sewer commission and with the clerk of the superior court in the county in which the real property is situated within ten days after publication of a notice that the resolution confirming such assessment roll has been adopted, and such notice of appeal shall describe the property and set forth the objections of such appellant to such assessment. Within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court, a transcript consisting of the assessment roll and his objections thereto, together with the resolution confirming such assessment roll and the record of the sewer district commission with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such secretary of said sewer commission and by him certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with sureties thereon as provided by law for appeals in civil cases, shall be filed conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the sewer district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the secretary of such sewer district, that such transcript is filed. Said notice shall state a time, not less than three days from the service thereof, when the appellant will call up the said cause for hearing. The superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury, and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in such sewer district and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be

filed with the officer who shall have the custody of the assessment roll, and he shall modify and correct such assessment roll in accordance with such decision. An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court, as in other cases, however, such appeal must be taken within fifteen days after the date of the entry of the judgment of such superior court, and the record and opening brief of the appellant in said cause shall be filed in the supreme court or the court of appeals within sixty days after the appeal shall have been taken by notice as provided in this title. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. The supreme court or the court of appeals on such appeal may correct, change, modify, confirm or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [1971 ex.s. c 272 § 11; 1971 c 81 § 125; 1965 ex.s. c 40 § 2; 1941 c 210 § 32; Rem. Supp. 1941 § 9425-41.]

Rules of court: Cf. RAP 2.2, 5.2, 8.1, 18.22.

56.20.090 Segregation of special assessment—
Fee—Costs. Whenever any land against which there has been levied any special assessment by any sewer district shall have been sold in part or subdivided, the board of sewer commissioners of such district shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of commissioners of the sewer district which levied the assessment. If the sewer commissioners determine that a segregation should be made, they shall by resolution order the county treasurer to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to such charge the board of sewer commissioners may require as a condition to the order of segregation that the person seeking it pay the district the reasonable engineering and clerical costs incident to making the segregation. [1953 c 250 § 20.]

*Segregation
duties of county treasurer: RCW 36.29.160.*

of taxes where part of parcel acquired by public body: RCW 84.60.070.

56.20.100 Acquisition of property subject to local improvement assessment—Payment. See RCW 79.44.190.

56.20.110 Service fees for sewers not constructed within ten years after voter approval—Credit against future assessments, service charges. See RCW 35.43.260.

56.20.120 Foreclosure of assessments—Attorneys' fees. Judgments foreclosing special assessments pursuant to RCW 35.50.260 may also allow to sewer districts, in addition to delinquent installments, interest, penalties, and costs, such attorneys' fees as the court may find reasonable. [1987 c 449 § 7.]

Chapter 56.22

CONTRACTS FOR SEWER EXTENSIONS

Sections

56.22.010	Contracts—Conditions.
56.22.020	Reimbursement to owner.
56.22.030	Scope of reimbursement.
56.22.040	Reimbursement—Procedures.
56.22.050	District participation in financing project.

56.22.010 Contracts—Conditions. If the sewer district approves an extension to the sewer system, the district shall contract with owners of real estate located within the district boundaries, at an owner's request, for the purpose of permitting extensions to the district's sewer system to be constructed by such owner at such owner's sole cost where such extensions are required as a prerequisite to further property development. The contract shall contain such conditions as the district may require pursuant to the district's adopted policies and standards. The district shall request comprehensive plan approval for such extension, if required, and connection of the extension to the district system is conditioned upon:

- (1) Construction of such extension according to plans and specifications approved by the district;
- (2) Inspection and approval of such extension by the district;
- (3) Transfer to the district of such extension without cost to the district upon acceptance by the district of such extension;
- (4) Payment of all required connection charges to the district;
- (5) Full compliance with the owner's obligations under such contract and with the district's rules and regulations;
- (6) Provision of sufficient security to the district to ensure completion of the extension and other performance under the contract;
- (7) Payment by the owner to the district of all of the district's costs associated with such extension including, but not limited to, the district's engineering, legal, and administrative costs; and

(8) Verification and approval of all contracts and costs related to such extension. [1989 c 389 § 4.]

56.22.020 Reimbursement to owner. The contract shall also provide, subject to the terms and conditions in this section, for the reimbursement to the owner or the owner's assigns for a period not to exceed fifteen years of a portion of the costs of the sewer facilities constructed pursuant to such contract from connection charges received by the district from other property owners who subsequently connect to or use the sewer facilities within the fifteen-year period and who did not contribute to the original cost of such sewer facilities. [1989 c 389 § 5.]

56.22.030 Scope of reimbursement. The reimbursement shall be a pro rata share of construction and contract administration costs of the sewer project. Reimbursement for sewer projects shall include, but not be limited to, design, engineering, installation, and restoration. [1989 c 389 § 6.]

56.22.040 Reimbursement—Procedures. The procedures for reimbursement contracts shall be governed by the following:

(1) A reimbursement area shall be formulated by the board of commissioners within a reasonable time after the acceptance of the extension. The reimbursement shall be based upon a determination by the board of commissioners of which parcels would require similar sewer improvements upon development.

(2) The contract must be recorded in the appropriate county auditor's office after the final execution of the agreement. [1989 c 389 § 7.]

56.22.050 District participation in financing project. As an alternative to financing projects under this chapter solely by owners of real estate, sewer districts may join in the financing of improvement projects and may be reimbursed in the same manner as the owners of real estate who participate in the projects, if the board of commissioners has specified the conditions of its participation in a resolution. [1989 c 389 § 8.]

Chapter 56.24

ANNEXATION OF TERRITORY

Sections

56.24.001	Actions subject to review by boundary review board.
56.24.070	Annexation authorized—Petition—Filing—Certificate of sufficiency—Notice of hearing.
56.24.080	Hearing—Boundaries—Election, notice, judges.
56.24.090	Election—Qualification of voters.
56.24.100	Conduct, expense of election.
56.24.110	Petition method is alternative to election method.
56.24.120	Petition method—Petition—Signers—Content—Certain public properties excluded from local improvement districts.
56.24.130	Petition method—Hearing—Notice.
56.24.140	Petition method—Resolution—Filing.
56.24.150	Petition method—Effective date of annexation—Prior indebtedness.
56.24.160	Sewer district activities to be approved—Criteria for approval by county legislative authority.

- 56.24.180 Annexation of certain unincorporated territory—
Authorized—Hearing.
- 56.24.190 Annexation of certain unincorporated territory—Op-
portunity to be heard—Effective date of annexation
resolution—Notice—Referendum.
- 56.24.200 Annexation of certain unincorporated territory—
Referendum authorized—Petition—Election—
Effective date of annexation.
- 56.24.205 Annexation of certain unincorporated territory with
boundaries contiguous to two districts—Procedure.
- 56.24.210 Expenditure of funds to provide certain information
authorized—Limits.
- 56.24.900 Severability—1967 ex.s. c 11.

*Annexation of district territory to cities and towns: Chapter 35.13A
RCW.*

**56.24.001 Actions subject to review by boundary re-
view board.** Actions taken under chapter 56.24 RCW
may be subject to potential review by a boundary review
board under chapter 36.93 RCW. [1989 c 84 § 52.]

**56.24.070 Annexation authorized—Petition—
Filing—Certificate of sufficiency—Notice of hear-
ing.** Territory within the county or counties in which a
district is located, or territory adjoining or in close prox-
imity to a district but which is located in another county,
may be annexed to and become a part of the district. All
annexations shall be accomplished in the following man-
ner: Twenty percent of the number of registered voters
residing in the territory proposed to be annexed who
voted at the last election may file a petition with the
district commissioners and cause the question to be sub-
mitted to the electors of the territory whether the terri-
tory will be annexed and become a part of the district. If
the commissioners concur in the petition, they shall file
it with the county election officer, who shall, within ten
days, examine the signatures thereon and certify to the
sufficiency or insufficiency thereof; and for such purpose
the county election officer shall have access to all regis-
tration books in the possession of the officers of any city
or town in the proposed district. If the petition contains
a sufficient number of signatures, the election officer
shall transmit it, together with a certificate of suffi-
ciency attached thereto to the sewer commissioners of
the district. If there are no electors residing in the terri-
tory to be annexed, the petition may be signed by such a
number as appear of record to own at least a majority of
the acreage in the territory, and the petition shall dis-
close the total number of acres of land in the territory
and the names of all record owners of land therein. If
the commissioners are satisfied as to the sufficiency of
the petition and concur therein, they shall send it, to-
gether with their certificate of concurrence attached
thereto to the county legislative authority.

The county legislative authority, upon receipt of a pe-
tition certified to contain a sufficient number of signa-
tures of electors, or upon receipt of a petition signed by
such a number as own at least a majority of the acreage,
together with a certificate of concurrence signed by the
sewer commissioners, at a regular or special meeting
shall cause to be published once a week for at least two
weeks in a newspaper in general circulation throughout
the territory proposed to be annexed a notice that the

petition has been filed, stating the time of the meeting at
which it shall be presented, and setting forth the bound-
aries of the territory proposed to be annexed. [1989 c
308 § 3; 1988 c 162 § 13; 1985 c 469 § 56; 1982 1st
ex.s. c 17 § 3; 1967 ex.s. c 11 § 1.]

**56.24.080 Hearing—Boundaries—Election, no-
tice, judges.** When the petition is presented for hearing,
the county legislative authority shall hear the same or
may adjourn the hearing from time to time not exceed-
ing one month in all, and any person, firm or corpora-
tion may appear before the county legislative authority
and make objections to the proposed boundary lines or
to the annexation of the territory described in the peti-
tion; and upon a final hearing the county legislative au-
thority shall make such changes in the proposed
boundary lines as it deems to be proper and shall estab-
lish and define the boundaries and shall find whether the
proposed annexation of the territory as established by
the county legislative authority to the sewer district will
be conducive to the public health, welfare and conve-
nience and will be of special benefit to the land included
within the boundaries of the territory proposed to be an-
nexed to the sewer district and so established by the
county legislative authority: *Provided*, That no lands
which will not, in the judgment of the county legislative
authority, be benefited by inclusion therein, shall be in-
cluded within the boundaries of the territory as so es-
tablished and defined: *Provided further*, That no change
shall be made by the county legislative authority in the
boundary lines, including any territory outside of the
boundary lines described in the petition: *And provided
further*, That no person having signed the petition as
herein provided for shall be allowed to withdraw his or
her name therefrom after the filing of the same with the
board of sewer commissioners of the sewer district.

Upon the entry of the findings of the final hearing to
the petition by the county legislative authority, if it finds
the proposed annexation of the territory to the sewer
district to be conducive to the public health, welfare and
convenience and to be of special benefit to the land pro-
posed to be annexed and included within the boundaries
of the district, it shall give notice of a special election to
be held within the boundaries of the territory proposed
to be annexed to the sewer district for the purpose of
determining whether the same shall be annexed to the
sewer district; and the notice shall particularly describe
the boundaries established by the county legislative au-
thority on its final hearing of the petition, and shall state
the name of the sewer district to which the territory is
proposed to be annexed, and the same shall be published
once a week for at least two weeks prior to the election
in a newspaper of general circulation within the county
within which the district is located, and shall be posted
for the same period in at least four public places within
the boundaries of the district proposed to be annexed,
which notice shall designate the places within the terri-
tory proposed to be annexed to the sewer district where
the said election shall be held, and shall require the vot-
ers to cast ballots which shall contain the words:

For Annexation to Sewer District
or
Against Annexation to Sewer District

The county legislative authority shall name the persons to act as judges at such election. [1985 c 469 § 57; 1967 ex.s. c 11 § 2.]

56.24.090 Election—Qualification of voters. The said election shall be held on the date designated in such notice and shall be conducted in accordance with the general election laws of the state. In the event the original petition for annexation is signed by qualified electors then only qualified electors, at the date of election, residing in the territory proposed to be annexed, shall be permitted to vote at the said election. In the event the original petition for annexation is signed by property owners as provided for in this chapter then no person shall be entitled to vote at such election unless at the time of the filing of the original petition he owned the land in the district of record and in addition thereto at the date of election shall be a qualified elector of the county in which such district is located. It shall be the duty of the county auditor, upon request of the county commissioners, to certify to the election officers of any such election, the names of all persons owning land in the district at the date of the filing of the original petition as shown by the records of his office; and at any such election the election officers may require any such landowner offering to vote to take an oath that he is a qualified elector of the county before he shall be allowed to vote: *Provided*, That at any election held under the provisions of this chapter an officer or agent of any corporation having its principal place of business in said county and owning land at the date of filing the original petition in the district duly authorized thereto in writing may cast a vote on behalf of such corporation. When so voting he shall file with the election officers such a written instrument of his authority. The judge or judges at such election shall make return thereof to the board of sewer commissioners, who shall canvass such return and cause a statement of the result of such election to be entered on the record of such commissioners. If the majority of the votes cast upon the question of such election shall be for annexation, then such territory shall immediately be and become annexed to such sewer district and the same shall then forthwith be a part of the said sewer district, the same as though originally included in such district. [1967 ex.s. c 11 § 3.]

56.24.100 Conduct, expense of election. All elections held pursuant to this chapter, whether general or special, shall be conducted by the county election board of the county in which the district is located.

The expense of all such elections shall be paid for out of the funds of such sewer district. [1967 ex.s. c 11 § 4.]

56.24.110 Petition method is alternative to election method. The method of annexation provided for in RCW 56.24.120 through 56.24.150 shall be an alternative method to that specified in RCW 56.24.070 through 56.24.100. [1967 ex.s. c 11 § 5.]

56.24.120 Petition method—Petition—Signers—Content—Certain public properties excluded from local improvement districts. A petition for annexation of an area contiguous to a sewer district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation. [1985 c 141 § 4; 1967 ex.s. c 11 § 6.]

56.24.130 Petition method—Hearing—Notice. If the petition for annexation filed with the board of commissioners complies with the requirements of law, as proved to the satisfaction of the board of commissioners, it may entertain the petition, fix the date for public hearing thereon, and cause notice of the hearing to be published in one issue of a newspaper of general circulation in the area proposed to be annexed and also posted in three public places within the area proposed for annexation. The notice shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of publication and posting of the notice shall be borne by the signers of the petition. [1967 ex.s. c 11 § 7.]

56.24.140 Petition method—Resolution—Filing. Following the hearing the board of commissioners shall determine by resolution whether annexation shall be made. It may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the resolution a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [1967 ex.s. c 11 § 8.]

56.24.150 Petition method—Effective date of annexation—Prior indebtedness. Upon the date fixed in the resolution the area annexed shall become a part of the district.

No property within the limits of the territory so annexed shall ever be taxed or assessed to pay any portion of the indebtedness of the district to which it is annexed contracted prior to or existing at the date of annexation; nor shall any such property be released from any taxes

or assessments levied against it or from liability for payment of outstanding bonds or warrants issued prior to such annexation. [1967 ex.s. c 11 § 9.]

56.24.160 Sewer district activities to be approved—Criteria for approval by county legislative authority. See RCW 56.02.060 and 56.02.070.

56.24.180 Annexation of certain unincorporated territory—Authorized—Hearing. When there is, within a sewer district, unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to the sewer district, the board of commissioners may resolve to annex such territory to the sewer district. The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the sewer district and one or more newspapers of general circulation within the area to be annexed. [1982 c 146 § 1.]

56.24.190 Annexation of certain unincorporated territory—Opportunity to be heard—Effective date of annexation resolution—Notice—Referendum. On the date set for hearing under RCW 56.24.180, residents or property owners of the area included in the resolution for annexation shall be afforded an opportunity to be heard. The board of commissioners may provide by resolution for annexation of the territory described in the resolution, but the effective date of the resolution shall be not less than forty-five days after the passage thereof. The board of commissioners shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the resolution, in one or more newspapers of general circulation within the sewer district and in one or more newspapers of general circulation within the area to be annexed. Upon the filing of a timely and sufficient referendum petition under RCW 56.24.200, a referendum election shall be held under RCW 56.24.200, and the annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto. After the expiration of the forty-fifth day from, but excluding the date of passage of the annexation resolution, if no timely and sufficient referendum petition has been filed, under RCW 56.24.200, the area annexed shall become a part of the sewer district upon the date fixed in the resolution of annexation. [1982 c 146 § 2.]

56.24.200 Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation. Such annexation resolution under RCW 56.24.190 shall be subject to referendum for forty-five days after the passage thereof.

Upon the filing of a timely and sufficient referendum petition with the board of commissioners, signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of such area in a general election if one is to be held within ninety days or at a special election called for that purpose not less than forty-five days nor more than ninety days after the filing of the referendum petition. Notice of such election shall be given under RCW 56.24.080 and the election shall be conducted under RCW 56.24.090. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation resolution, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the sewer district upon the date fixed in the resolution of annexation upon transmitting the resolution to the county legislative authority. [1982 c 146 § 3.]

56.24.205 Annexation of certain unincorporated territory with boundaries contiguous to two districts—Procedure. When there is unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to two sewer districts or contiguous to a sewer district and a water district, the board of commissioners of one of the districts may resolve to annex such territory to that district, provided a majority of the board of commissioners of the other sewer or water district concurs. The district resolving to annex such territory may proceed to effect the annexation by complying with RCW 56.24.180 through 56.24.200. [1987 c 449 § 8.]

56.24.210 Expenditure of funds to provide certain information authorized—Limits. Sewer districts may expend funds to inform residents in areas proposed for annexation into the district of the following:

- (1) Technical information and data;
- (2) The fiscal impact of the proposed improvement;
- (3) The types of improvements planned.

Expenditures under this section shall be limited to research, preparation, printing, and mailing of the information. [1986 c 258 § 1.]

56.24.900 Severability—1967 ex.s. c 11. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 11 § 11.]

Chapter 56.28

WITHDRAWAL OF TERRITORY

Sections	
56.28.001	Actions subject to review by boundary review board.
56.28.010	Withdrawal authorized—Methods—Laws applicable.

- 56.28.020 Alternative procedure—Resolution.
 56.28.100 Sewer district activities to be approved—Criteria for approval by county legislative authority.

56.28.001 Actions subject to review by boundary review board. Actions taken under chapter 56.28 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 53.]

56.28.010 Withdrawal authorized—Methods—Laws applicable. Territory within a sewer district may be withdrawn therefrom in the same manner provided by law for withdrawal of territory from water districts, and in addition thereto, territory may be withdrawn from a sewer district upon a written petition designating the territory proposed to be withdrawn signed by all of the owners of land within said territory, concurred in by unanimous vote of the sewer commissioners and approved by resolution of the board of county commissioners. The provisions of RCW 57.28.110 shall apply to territory withdrawn from a sewer district. [1953 c 250 § 27.]

56.28.020 Alternative procedure—Resolution. As an alternative procedure to that set forth in RCW 56.28.010, the withdrawal of territory within a sewer district may be commenced by a resolution of the board of commissioners that sets forth boundaries of the territory to be withdrawn and sets a date for the public hearing required under RCW 57.28.050. Upon the final hearing, the commissioners shall make such changes in the proposed boundaries as they deem proper, except that no changes in the boundary lines may be made by the commissioners to include lands not within the boundaries of the territory as described in such resolution.

Whenever the board of commissioners proposes to commence the withdrawal of any portion of their territory located within a city or town using the alternative procedures herein authorized, they shall first notify such city or town of their intent to withdraw said territory. If the legislative authority of the city or town takes no action within sixty days of receipt of notification, the district may proceed with the resolution method.

If the city of [or] town legislative authority disapproves of use of the alternative procedures, the board of commissioners may proceed using the process established pursuant to RCW 56.28.010.

A withdrawal procedure commenced under this section shall be subject to the procedures and requirements set forth in RCW 57.28.040 through 57.28.110. [1985 c 153 § 2.]

56.28.100 Sewer district activities to be approved—Criteria for approval by county legislative authority. See RCW 56.02.060 and 56.02.070.

Chapter 56.32

CONSOLIDATION OR MERGER OF DISTRICTS—TRANSFER OF PART OF DISTRICT

(Formerly: Consolidation of districts—Merger)

Sections	
56.32.001	Actions subject to review by boundary review board.
56.32.010	Consolidation authorized—Methods.
56.32.020	Petition method—Signers—Filing—Certificate of sufficiency.
56.32.030	Agreements by consolidating districts—Contents—Comprehensive plan.
56.32.040	Election—Proposition—Notice.
56.32.050	Consolidation effected—Rights and powers of new district.
56.32.060	Vesting of funds and property in consolidated district—Outstanding indebtedness.
56.32.070	Sewer commissioners—Number.
56.32.080	Merger of districts authorized.
56.32.090	Initiation of merger—Methods.
56.32.100	Election on merging of districts.
56.32.110	Return of election—When merger effective—Cessation of merging district.
56.32.115	County auditor defined.
56.32.120	Vesting of funds and property in merged district—Outstanding indebtedness.
56.32.150	Sewer district activities to be approved—Criteria for approval by county legislative authority.
56.32.160	Transfer of part of district—Procedure.

56.32.001 Actions subject to review by boundary review board. Actions taken under chapter 56.32 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 54.]

56.32.010 Consolidation authorized—Methods. Two or more sewer districts may be joined into one consolidated sewer district. The consolidation may be initiated in either of the following ways: Ten percent of the legal electors residing within each of the sewer districts proposed to be consolidated may petition the board of sewer commissioners of each of their respective sewer districts to cause the question to be submitted to the legal electors of the sewer districts proposed to be consolidated; or, the boards of sewer commissioners of each of the sewer districts proposed to be consolidated may by resolution determine that the consolidation of such districts shall be conducive to the public health, welfare, and convenience and to be of special benefit to the lands of such districts. [1989 c 308 § 9; 1975 1st ex.s. c 86 § 1; 1967 c 197 § 2.]

56.32.020 Petition method—Signers—Filing—Certificate of sufficiency. If consolidation proceedings are initiated by petition, upon the filing of such petitions with the boards of sewer commissioners of the sewer districts, the boards of sewer commissioners of all of the districts shall file such petitions with the county auditor of each county in which any of the affected districts is located, who shall within ten days examine the signatures thereon and certify to the sufficiency or insufficiency thereof. If all of the petitions shall be found to contain a sufficient number of signatures, the respective county auditor shall transmit them, together with his certificate of sufficiency attached thereto, to the

boards of sewer commissioners of each of the districts proposed for consolidation. In the event that there are no legal electors residing in one or more of the sewer districts proposed to be consolidated, the petitions may be signed by such a number as appear of record to own at least a majority of the acreage in the pertinent sewer district, and the petitions shall disclose the total number of acres of land in the sewer district and shall also contain the names of all record owners of land therein. [1975 1st ex.s. c 86 § 2; 1967 c 197 § 3.]

56.32.030 Agreements by consolidating districts—Contents—Comprehensive plan. Upon the receipt of each county auditor's certificate of sufficiency of the petitions by the boards of sewer commissioners of the districts proposed for consolidation, hereinafter referred to as the "consolidating districts", or upon adoption by the boards of sewer commissioners of the consolidating districts of their resolutions for consolidation, the boards of the consolidating districts shall, within ninety days, enter into an agreement providing for consolidation.

The agreement shall set forth the method and manner of consolidation, a comprehensive plan or scheme of sewer supply for the consolidated district and, if such comprehensive plan or scheme of sewer supply provides that one or more of the consolidating districts or the proposed consolidated district issue revenue bonds for the construction and/or other costs of any part or all of the comprehensive plan, then the details thereof shall be set forth.

The requirement that a comprehensive plan or scheme of sewer supply for the consolidated district be set forth in the agreement for consolidation shall be satisfied if the existing comprehensive plans or schemes of the consolidating districts are incorporated therein by reference and any changes or additions thereto are set forth in detail. [1975 1st ex.s. c 86 § 3; 1967 c 197 § 4.]

56.32.040 Election—Proposition—Notice. The respective boards of sewer commissioners of the consolidating districts shall certify such agreement to the county auditors of the counties in which the districts are located. Thereupon, the county auditor of the county in which the largest amount of territory of the proposed consolidated sewer is located shall call a special election for the purpose of submitting to the voters of each of the consolidating districts the proposition of whether or not the several districts shall be consolidated into one sewer district. The proposition shall give the title of the proposed consolidated district. Notice of the election shall be given and the election conducted in accordance with the general election laws. [1975 1st ex.s. c 86 § 4; 1967 c 197 § 5.]

56.32.050 Consolidation effected—Rights and powers of new district. If at the election a majority of the voters in each of the consolidating districts shall vote in favor of the consolidation, the county canvassing board of the county the auditor of which conducted the election shall so declare in its canvass and the return of the election shall be made within ten days after the date

thereof. Upon the return the consolidation shall be effective and the consolidating districts shall cease to exist and shall then be and become a new sewer district and municipal corporation of the state of Washington.

The name of such new sewer district shall be "----- (name)----- Sewer District of ----- County", which shall be the name appearing on the ballot.

The district shall have all and every power, right and privilege possessed by other sewer districts of the state of Washington. The district may issue revenue bonds to pay for the construction of any additions and betterments set forth in the comprehensive scheme and plan of sewer supply contained in the agreement for consolidation and any future additions and betterments to the comprehensive scheme and plan of sewer supply, as its board of sewer commissioners shall by resolution adopt, without submitting a proposition therefor to the voters of the district. [1975 1st ex.s. c 86 § 5; 1967 c 197 § 6.]

56.32.060 Vesting of funds and property in consolidated district—Outstanding indebtedness. Upon the formation of any consolidated sewer district, all funds, rights and property, real and personal, of the former districts, shall vest in and become the property of the consolidated district. Unless the agreement for consolidation provides to the contrary, any outstanding indebtedness of any form, owed by the districts, shall remain the obligation of the area of the original debtor district and the sewer commissioners of the consolidated sewer district shall make such levies, assessments, or charges for service upon that area or the sewer users therein as shall pay off the indebtedness at maturity. [1967 c 197 § 7.]

56.32.070 Sewer commissioners—Number. The sewer commissioners of all sewer districts consolidated into any new consolidated sewer district shall become sewer commissioners thereof until their respective terms of office expire. At each election of sewer commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of sewer commissioners in the consolidated sewer district shall be reduced to three. [1985 c 141 § 5; 1967 c 197 § 8.]

56.32.080 Merger of districts authorized. Whenever two sewer districts desire to merge, either district hereinafter referred to as the "merging district", may merge into the other districts, hereinafter referred to as the "merger district", and the merger district will survive under its original name or number. [1989 c 308 § 10; 1975 1st ex.s. c 86 § 6; 1967 c 197 § 9.]

56.32.090 Initiation of merger—Methods. A merger of two sewer districts may be initiated in any of the following ways:

(1) Whenever the boards of sewer commissioners of both such districts determine by resolution that the merger of such districts shall be conducive to the public health, welfare and convenience and to be of special benefit to the lands of such districts.

(2) Whenever ten percent of the legal electors residing within the merging district petition the board of sewer commissioners of the merging sewer district for a merger, and the board of sewer commissioners of the merger district determines by resolution that the merger of the districts shall be conducive to the public health, welfare and convenience of the two districts.

(3) Whenever the boards determine that the merger of the districts shall be conducive to the public health, welfare and convenience and to be of special benefit to the lands of the districts, they shall enter into an agreement providing for the merger. [1967 c 197 § 10.]

56.32.100 Election on merging of districts. The respective boards of sewer commissioners of the districts shall certify the agreement to the county auditor of the county in which the largest amount of territory of the merging district is located. Thereupon, the county auditor shall call a special election for the purpose of submitting to the voters of the merging district the proposition of whether the merging district shall be merged into the merger district. Notice of the election shall be given and the election conducted in accordance with the general election laws. [1975 1st ex.s. c 86 § 7; 1967 c 197 § 11.]

56.32.110 Return of election—When merger effective—Cessation of merging district. If at the election a majority of the voters of the merging sewer district shall vote in favor of the merger, the county canvassing board of the county the auditor of which conducted the election shall so declare in its canvass and the return of the election shall be made within ten days after the date thereof. Upon the return the merger shall be effective and the merging sewer district shall cease to exist and shall become a part of the merger sewer district. The sewer commissioners of the merging district shall cease to hold office and the affairs of the merged districts shall be managed by the sewer commissioners of the merger district. [1975 1st ex.s. c 86 § 8; 1967 c 197 § 12.]

56.32.115 County auditor defined. For the purposes of this chapter, county auditor of a county shall mean the election officer of that county. [1975 1st ex.s. c 86 § 9.]

56.32.120 Vesting of funds and property in merged district—Outstanding indebtedness. All funds, rights and property, real and personal, of the merging district, shall vest in and become the property of the merger district. Unless the agreement of merger provides to the contrary, any outstanding indebtedness of any form, owed by the district shall remain the obligation of the area of the original debtor district and the sewer commissioners of the merger sewer district shall make such levies, assessments, or charges for service upon that area or the sewer users therein as shall pay off the indebtedness at maturity. [1967 c 197 § 13.]

56.32.150 Sewer district activities to be approved—Criteria for approval by county legislative authority. See RCW 56.02.060 and 56.02.070.

56.32.160 Transfer of part of district—Procedure. A part of one sewer or water district may be transferred into an adjacent sewer district if the area can be better served thereby. Such transfer can be accomplished by a petition, directed to both districts, signed by the owners according to the records of the county auditor of not less than sixty percent of the area of land to be transferred. If a majority of the commissioners of each district approves the petition, copies of the approving resolutions shall be filed with the county legislative authority which shall act upon the petition as a proposed action in accordance with RCW 56.02.060. [1987 c 449 § 9.]

Chapter 56.36

MERGER OF WATER DISTRICTS INTO SEWER DISTRICT—MERGER OF SEWER DISTRICTS INTO WATER DISTRICT

Sections

56.36.001	Actions subject to review by boundary review board.
56.36.010	Merger authorized.
56.36.020	Initiation of merger—Resolution—Petition.
56.36.030	Agreement of merger—Board review of proposed merger—Special election.
56.36.040	Election—Results—Effect—Commissioners—Terms.
56.36.045	Persons serving on both boards to hold only one position after merger.
56.36.050	Disposition of funds, rights and property—Indebtedness of merged water districts.
56.36.060	Powers of sewer district.
56.36.070	Validation of prior mergers.
56.36.090	Merger of sewer districts into water district.
56.36.100	Sewer district activities to be approved—Criteria for approval by county legislative authority.

56.36.001 Actions subject to review by boundary review board. Actions taken under chapter 56.36 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 55.]

56.36.010 Merger authorized. Any water district, acting alone or in conjunction with any other water district or districts similarly situated as hereafter described, the territory of which lies wholly or partly within, or which is adjoining or in proximity to a sewer district, may merge into the sewer district, and the sewer district will survive under its original name. The term "in proximity to" as used herein shall mean within one mile of each other, measured in a straight line between the closest points of approach of the territorial boundaries of the respective districts. [1982 1st ex.s. c 17 § 4; 1969 ex.s. c 148 § 1.]

Severability—1969 ex.s. c 148: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 148 § 9.]

56.36.020 Initiation of merger—Resolution—Petition. A merger of one or more water districts into a

sewer district may be initiated in any one of the following ways:

(1) Whenever the board of commissioners of the sewer district, on the one hand, and the board of commissioners of the water district or of the respective water districts seeking to merge into the sewer district, on the other hand, each determine by resolution that the merger of such water district or water districts into the sewer district shall be conducive to the public health, welfare and convenience and to be of special benefit to the lands of such district so desiring to merge.

(2) Whenever ten percent of the qualified electors residing within each of the sewer districts and the water district or districts involved petition the board of commissioners of their respective districts for a merger of such district into the sewer district.

(3) Whenever ten percent of the qualified electors residing within the sewer district petition the board of sewer commissioners for such a merger, and the board of water commissioners of the district or each water district to be merged determines by resolution that the merger of such district into the sewer district will be conducive to the public health, welfare and convenience of the two districts. [1969 ex.s. c 148 § 2.]

Severability—1969 ex.s. c 148: See note following RCW 56.36.010.

56.36.030 Agreement of merger—Board review of proposed merger—Special election. Whenever a merger is initiated in any of the three ways provided in RCW 56.36.020, the boards of the sewer and water commissioners of the respective districts involved shall enter into an agreement providing for the merger. The agreement must be entered into within ninety days following completion of the last act required for initiation of the merger by any one of the means above specified, as provided in RCW 56.36.020. Where two or more water districts seek to merge into a sewer district at or about the same time, there need be but one agreement of merger signed by the sewer district and such two or more water districts if the parties so agree.

Upon entry of such agreement, the boards of the water and sewer commissioners shall file a notice of intention to merge together with a copy of said agreement with the boundary review board, if any, of the county and the board shall review the proposed merger under the provisions of RCW 36.93.150 through 36.93.180.

The respective boards of sewer and water commissioners of such districts shall certify such agreement to the county auditor of the county in which the districts are located within twenty days from date of execution of such agreement, with a certified copy thereof filed with the clerk of the board of county commissioners of such county. Thereupon, unless the boundary review board has disapproved the proposed merger, the county auditor shall call a special election for the purpose of submitting to the voters of the water district or of each of the two or more water districts involved the proposition of whether the water district shall be merged into the sewer district. Notice of the election shall be given, and the

election conducted, in accordance with the general election laws. [1971 ex.s. c 146 § 7; 1969 ex.s. c 148 § 3.]

Severability—1969 ex.s. c 148: See note following RCW 56.36.010.

56.36.040 Election—Results—Effect—Commissioners—Terms. If at such election a majority of the voters in the water district or all or either of the water districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the sewer district and each water district in which the majority of voters voted in favor of the merger, and each such water district shall cease to exist as a separate entity and the area within such water district shall become a part of the sewer district. The water commissioners of any water district so merged shall hold office as commissioners of the sewer district into which the water district was merged until their respective terms of office expire or until they resign from office if the resignation is before the expiration of their terms of office. At the district election immediately preceding the time when the total number of remaining sewer commissioners is reduced to two through expiration of terms of office or resignations, one sewer commissioner shall be elected for a four year term of office. At the next district election, one sewer commissioner shall be elected for a four year term of office, and one shall be elected for a six year term of office. Thereafter, each sewer commissioner shall be elected for a six-year term of office in the manner provided in RCW 56.12.020 and 56.12.030 for elections in an existing district. [1982 c 104 § 1; 1981 c 45 § 6; 1969 ex.s. c 148 § 4.]

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 56.36.060.

Severability—1969 ex.s. c 148: See note following RCW 56.36.010.

56.36.045 Persons serving on both boards to hold only one position after merger. A person who serves on the board of commissioners of a water district that merges under this chapter into a sewer district, for which the person also serves on the board of commissioners, shall only hold one position on the board of commissioners of the district that results from the merger and shall only receive compensation, expenses, and benefits that are available to a single commissioner. [1988 c 162 § 3.]

56.36.050 Disposition of funds, rights and property—Indebtedness of merged water districts. All funds, rights and property, real and personal, of any water district merging into a sewer district shall vest in and become the property of the sewer district. Unless the agreement of merger provides to the contrary, any outstanding indebtedness of any form, owed by the water district, shall remain the obligation of and, as applicable, a lien upon the land, assets and/or revenue of the original district. The board of commissioners of the sewer district shall make such levies, assessments or charges

upon said land or the water or sewer users therein as are necessary to pay any indebtednesses of the merged water districts as and when the same mature. [1969 ex.s. c 148 § 5.]

Severability—1969 ex.s. c 148: See note following RCW 56.36.010.

56.36.060 Powers of sewer district. Following merger, the sewer district and the board of commissioners thereof shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other powers granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area and shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area. The sewer district shall have the power to issue revenue bonds to which are pledged water revenue, sewer revenue, or both water and sewer revenue, as well as the power to levy assessments against property specially benefited in local improvement districts or utility local improvement districts, for improvements to the water system or the sewer system or both. [1981 c 45 § 7; 1969 ex.s. c 148 § 6.]

Legislative declaration—"District" defined—1981 c 45: "It is declared to be the public policy of the state of Washington to provide for the orderly growth and development of those areas of the state requiring public water service or sewer service and to secure the health and welfare of the people residing therein. The growth of urban population and the movement of people into suburban areas has required the performance of such services by water districts and sewer districts and the development of such districts has created problems of conflicting jurisdiction and potential double taxation.

It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions by establishing the principle that the first in time is the first in right where districts overlap and by encouraging the consolidation of districts. It is also the purpose of this act to prevent the imposition of double taxation upon the same property by establishing a general classification of property which will be exempt from property taxation by a district when such property is within the jurisdiction of an established district duly authorized to provide service of like character.

Unless the context clearly requires otherwise, as used in this act, the term "district" means either a water district organized under Title 57 RCW or a sewer district organized under Title 56 RCW or a merged water and sewer district organized pursuant to chapter 57.40 or 56.36 RCW." [1981 c 45 § 1.]

Severability—1981 c 45: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 45 § 14.]

Severability—1969 ex.s. c 148: See note following RCW 56.36.010.

56.36.070 Validation of prior mergers. Each and all of the respective areas of land organized as a water district and heretofore attempted to be merged into a sewer district under *chapter 148 of the Laws of 1969 [ex. sess.], and amendments thereto, and which have maintained their organization as part of a sewer district since the date of such attempted merger, are hereby validated and declared to be a proper merger of a water district

into a sewer district. Such district shall have the respective boundaries set forth in their merger proceedings as shown by the official files of the legislative authority of the county in which such merged district is located. All debts, contracts, bonds, and other obligations heretofore executed in connection with or in pursuance of such attempted organization, and any and all assessments or levies and all other actions taken by such districts or by their respective officers acting under such attempted organization, are hereby declared legal and valid and of full force and effect. Such districts may hereafter exercise their powers only to the extent permitted by and in accordance with the provisions of RCW 56.36.060, as now or hereafter amended. [1981 c 45 § 8.]

***Reviser's note:** Chapter 148, Laws of 1969 ex. sess. consists of the enactment of RCW 56.36.010 through 56.36.060 and the amendment of RCW 56.12.010 and 57.12.010.

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 56.36.060.

56.36.090 Merger of sewer districts into water district. See RCW 57.40.100 through 57.40.150.

56.36.100 Sewer district activities to be approved—Criteria for approval by county legislative authority. See RCW 56.02.060 and 56.02.070.

Title 57

WATER DISTRICTS

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Chapter 57.02

GENERAL PROVISIONS

Sections

- 57.02.010 Petition signatures of property owners—Rules governing.
- 57.02.020 Claims against district.
- 57.02.030 Title to be liberally construed.

- 57.02.040 Water district activities to be approved—Criteria for approval by county legislative authority.
- 57.02.050 Districts comprising territory in more than one county—Delegation of duties—Exceptions.
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- 57.02.070 Ratification of actions for the formation, annexation, consolidation, or merger of water districts prior to July 10, 1982.

Effect when city or town takes over portion of water system: RCW 57.08.035.

57.02.010 Petition signatures of property owners—Rules governing. Wherever in Title 57 RCW petitions are required to be signed by the owners of property, the following rules shall govern the sufficiency thereof:

(1) The signature of a record owner, as determined by the records of the county auditor of the county in which the real property is located, shall be sufficient without the signature of his or her spouse.

(2) In the case of mortgaged property, the signature of the mortgagor shall be sufficient.

(3) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor of the county in which the real property is located, shall be deemed sufficient.

(4) Any officer of a corporation owning land in the district duly authorized to execute deeds or encumbrances on behalf of the corporation may sign on behalf of such corporation: *Provided*, That there shall be attached to the petition a certified excerpt from the bylaws showing such authority.

(5) If any property in the district stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator or guardian, as the case may be, shall be equivalent to the signature of the owner of the property. [1982 1st ex.s. c 17 § 8; 1953 c 251 § 24.]

57.02.020 Claims against district. See chapter 4.96 RCW.

57.02.030 Title to be liberally construed. The rule of strict construction shall have no application to this title, but the same shall be liberally construed to carry out the purposes and objects for which this title is intended. [1959 c 108 § 19.]

57.02.040 Water district activities to be approved—Criteria for approval by county legislative authority. Notwithstanding any provision of law to the contrary, no water district shall be formed or reorganized under chapter 57.04 RCW, nor shall any water district annex territory under chapter 57.24 RCW, nor shall any water district withdraw territory under chapter

57.28 RCW, nor shall any water district consolidate under chapter 57.32 RCW, nor shall any water district be merged under chapter 57.36 RCW, nor shall any sewer district be merged into a water district under chapter 57.40 RCW, unless such proposed action shall be approved as provided for in RCW 56.02.070.

The county legislative authority shall within thirty days of the date after receiving notice of the proposed action, approve such action or hold a hearing on such action. In addition, a copy of such proposed action shall be mailed to the state department of ecology and to the state department of social and health services.

The county legislative authority shall decide within sixty days of a hearing whether to approve or not approve such proposed action. In approving or not approving the proposed action, the county legislative authority shall consider the following criteria:

(1) Whether the proposed action in the area under consideration is in compliance with the development program which is outlined in the county comprehensive plan and its supporting documents; and/or

(2) Whether the proposed action in the area under consideration is in compliance with the basinwide water and/or sewage plan as approved by the state department of ecology and the state department of social and health services; and/or

(3) Whether the proposed action is in compliance with the policies expressed in the county plan for water and/or sewage facilities.

If the proposed action is inconsistent with subsections (1), (2), or (3) of this section, the county legislative authority shall not approve it. If such action is consistent with all such subsections, the county legislative authority shall approve it unless it finds that utility service in the area under consideration will be most appropriately served by the county itself under the provisions of chapter 36.94 RCW, by a city, town, or municipality, or by another existing special purpose district rather than by the proposed action under consideration. If there has not been adopted for the area under consideration a plan under any one of subsections (1), (2) or (3) of this section, the proposed action shall not be found inconsistent with such subsection.

Where a water district is proposed to be formed, and where no boundary review board has been established, the petition described in RCW 57.04.030 shall serve as the notice of proposed action under this section, and the hearing provided for in RCW 57.04.030 shall serve as the hearing provided for in this section and in RCW 56.02.070. [1988 c 162 § 7; 1971 ex.s. c 139 § 2.]

1988 validation: RCW 57.06.180.

57.02.050 Districts comprising territory in more than one county—Delegation of duties—Exceptions. Whenever the boundaries or proposed boundaries of a water district include or are proposed to include by means of formation, annexation, consolidation, or merger (including merger with a sewer district) territory in more than one county, all duties delegated by Title 57 RCW to officers of the county in which the district is located shall be delegated to the officers of the county in

which the largest land area of the district is located, except that elections shall be conducted pursuant to RCW 57.02.060, as now existing or hereafter amended, actions subject to review and approval under RCW 57.02.040 and 56.02.070 shall be reviewed and approved only by the officers or boards in the county in which such actions are proposed to occur, verification of electors' signatures shall be conducted by the county election officer of the county in which such signators reside, and comprehensive plan review and approval or rejection by the respective county legislative authorities under RCW 57.16.010 shall be limited to that part of such plans within the respective counties. [1982 1st ex.s. c 17 § 5.]

57.02.060 Elections—Declarations of candidacy.

(1) Jurisdiction of any election held on the same date as a general election shall rest with the county election officer of each county in which the district or proposed district is located. Election returns of such elections shall be canvassed by the canvassing board of each county and the official results certified to the county election officer of the county in which the largest land area of the district or proposed district is located. Such county election officer shall then combine the official results from each county into a single official result.

(2) Jurisdiction of any election held on a different date than a general election shall rest with the county election officer of the county in which the largest land area of the district or proposed district is located. Election returns of such elections shall be canvassed by the canvassing board of such county and certified to the county election officer of such county.

(3) Candidates for the office of commissioner shall file declarations of candidacy with the county election officer of the county in which the largest land area of the district is located.

(4) Elections referred to in this section shall be conducted as provided by this section and by the general election laws not inconsistent with this section. [1982 1st ex.s. c 17 § 6.]

57.02.070 Ratification of actions for the formation, annexation, consolidation, or merger of water districts prior to July 10, 1982. All actions taken in regard to the formation, annexation, consolidation, or merger of water districts taken prior to July 10, 1982, but consistent with this title, as amended, are hereby approved and ratified and shall be legal for all purposes. [1982 1st ex.s. c 17 § 7.]

Chapter 57.04

FORMATION AND DISSOLUTION

Sections

57.04.001	Actions subject to review by boundary review board.
57.04.020	Districts authorized.
57.04.030	Petition procedure—Hearing—Boundaries.
57.04.050	Election—Notice—Ballots—Excess tax levy.
57.04.060	District created—Name.
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57.04.080	Act cumulative.

- 57.04.090 Dissolution—Court method.
- 57.04.100 Dissolution—Election method.
- 57.04.110 Dissolution when district's boundaries identical with municipality.
- 57.04.150 Water district activities to be approved—Criteria for approval by county legislative authority.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

57.04.001 Actions subject to review by boundary review board. Actions taken under chapter 57.04 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 56.]

57.04.020 Districts authorized. Water districts for the acquirement, construction, maintenance, operation, development and regulation of a water supply system and providing for additions and betterments thereto are authorized to be established. Such districts may include within their boundaries one or more incorporated cities and towns. [1982 1st ex.s. c 17 § 9; 1929 c 114 § 1; RRS § 11579. Cf. 1913 c 161 § 1.]

57.04.030 Petition procedure—Hearing—Boundaries. For the purpose of formation of water districts, a petition shall be presented to the county legislative authority of each county in which the proposed water district is located, which petition shall set forth the object for the creation of the district, shall designate the boundaries thereof and set forth the further fact that establishment of the district will be conducive to the public health, convenience and welfare and will be of benefit to the property included in the district. The petition shall specify the proposed property tax levy assessment, if any, which shall not exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district. The petition shall be signed by at least twenty-five percent of the qualified electors who shall be qualified electors on the date of filing the petition, residing within the district described in the petition. The petition shall be filed with the county election officer of each county in which the proposed district is located, who shall, within ten days examine and verify the signatures of the signers residing in the county; and for such purpose the county election official shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed district. No person having signed such a petition shall be allowed to withdraw his name from the petition after the filing of the petition with the county election officer. The petition shall be transmitted to the election officer of the county in which the largest land area of the district is located who shall certify to the sufficiency or insufficiency of the number of signatures. If the petition shall be found to contain a sufficient number of signatures, the county election officer shall then transmit the same, together with a certificate of sufficiency attached thereto to the county legislative authority of each county in which the proposed district is located. Following receipt of a petition certified to contain a sufficient number of signatures, at a regular or special meeting the county legislative authority shall cause to be published once a week for at least two weeks

in one or more newspapers of general circulation in the proposed district, a notice that such a petition has been presented, stating the time of the meeting at which the petition shall be considered, and setting forth the boundaries of the proposed district. When such a petition is presented for hearing, each county legislative authority shall hear the petition or may adjourn the hearing from time to time not exceeding one month in all. Any person, firm, or corporation may appear before the county legislative authority and make objections to the establishment of the district or the proposed boundary lines thereof. Upon a final hearing each county legislative authority shall make such changes in the proposed boundary lines within the county as it deems to be proper and shall establish and define the boundaries and shall find whether the proposed water district will be conducive to the public health, welfare and convenience and be of special benefit to the land included within the boundaries of the proposed district. No lands which will not, in the judgment of the county legislative authority, be benefited by inclusion therein, shall be included within the boundaries of the district. No change shall be made by the county legislative authority in the boundary lines to include any territory outside of the boundaries described in the petition, except that the boundaries of any proposed district may be extended by the county legislative authority to include other lands in the county upon a petition signed by the owners of all of the land within the proposed extension. [1987 c 33 § 3; 1985 c 469 § 58; 1982 1st ex.s. c 17 § 10; 1931 c 72 § 3; 1929 c 114 § 2; RRS § 11580. Cf. 1915 c 24 § 1; 1913 c 161 § 2. Formerly RCW 57.04.030 and 57.04.040.]

57.04.050 Election—Notice—Ballots—Excess tax levy. Upon entry of the findings of the final hearing on the petition if one or more county legislative authorities find that the proposed district will be conducive to the public health, welfare, and convenience and be of special benefit to the land therein, they shall by resolution call a special election to be held not less than thirty days from the date of the resolution, and cause to be published a notice of the election for four successive weeks in a newspaper of general circulation in the proposed district, which notice shall state the hours during which the polls will be open, the boundaries of the district as finally adopted and the object of the election, and the notice shall also be posted for ten days in ten public places in the proposed district. In submitting the proposition to the voters, it shall be expressed on the ballots in the following terms:

- Water District YES
- Water District NO

giving the name of the district as provided in the petition.

At the same election a proposition shall be submitted to the voters, for their approval or rejection, authorizing the water district, if formed, to levy at the earliest time permitted by law on all property located in the district a general tax for one year, in excess of the limitations provided by law, in the amount specified in the petition

to create the district, not to exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district, said proposition to be expressed on the ballots in the following terms:

- One year ----- dollars and
----- cents per thousand
dollars of assessed value tax YES
- One year ----- dollars and
----- cents per thousand
dollars of assessed value tax NO

Such proposition to be effective must be approved by a majority of at least three-fifths of the electors thereof voting on the proposition in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. [1987 c 33 § 4; 1982 1st ex.s. c 17 § 11; 1973 1st ex.s. c 195 § 67; 1953 c 251 § 1; 1931 c 72 § 4; 1929 c 114 § 3; RRS § 11581. Cf. 1927 c 230 § 1; 1915 c 24 § 2; 1913 c 161 § 3.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

57.04.060 District created—Name. If at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district the board of county commissioners shall so declare in its canvass of the returns of such election to be made within ten days after the date of the election, and such water district shall then be and become a municipal corporation of the state of Washington, and the name of such water district shall be "----- Water District" (inserting the name appearing on the ballot). [1929 c 114 § 5; RRS § 11583. Cf. 1913 c 161 § 5.]

57.04.065 Change of name—Procedure—Effect. Any water district heretofore or hereafter organized and existing may apply to change its name by filing with the county legislative authority in which was filed the original petition for organization of the district, a certified copy of a resolution of its board of commissioners adopted by majority vote of all of the members of said board at a regular meeting thereof providing for such change of name. After approval of the new name by the county legislative authority, all proceedings for such districts shall be had under such changed name, but all existing obligations and contracts of the district entered into under its former name shall remain outstanding without change and with the validity thereof unimpaired and unaffected by such change of name, and the change of name heretofore made by any existing water district in this state, substantially in the manner above approved is hereby ratified, confirmed, and validated. [1984 c 147 § 7.]

57.04.070 When two or more petitions filed. Whenever two or more petitions for the formation of a water district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no

lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150 and 36.94.420, as now or hereafter amended. [1985 c 141 § 6; 1981 c 45 § 9; 1929 c 114 § 4; RRS § 11582. Cf. 1913 c 161 § 4.]

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 56.36.060.

57.04.080 Act cumulative. *This act shall not be construed to repeal, amend, or modify any law heretofore enacted providing a method for water supply for any city or town in this state, but shall be held to be an additional and concurrent method providing for such purpose. Nor shall this act be construed to repeal **chapter 161 of the Laws of 1913, pages 533 to 552, or amendments thereto. [1929 c 114 § 24; RRS § 11601.]

Reviser's note: *(1) The language "this act" appeared in 1929 c 114, the basic water district law, which is codified as follows: RCW 57.04-.020, 57.04.030, 57.04.050 through 57.04.080, 57.04.100, 57.08.010, 57.08.050, 57.12.010, 57.12.020, 57.12.030, 57.16.010, 57.16.020, 57.16.030, 57.16.040, 57.16.050, 57.16.060, 57.16.070, 57.16.080 through 57.16.100, 57.20.010, 57.20.100 through 57.20.140, 57.24.010, 57.24-.020, 57.24.040, and 57.24.050.

** (2) As to the reference "chapter 161 of the Laws of 1913," see note following RCW 57.06.010.

57.04.090 Dissolution—Court method. Dissolution of district, see port districts, chapter 53.48 RCW.

57.04.100 Dissolution—Election method. Any water district organized under this title may be disincorporated in the same manner (insofar as the same is applicable) as is provided in RCW 35.07.010 through 35.07.220 for the disincorporation of the third and fourth class cities, except that the petition for disincorporation shall be signed by not less than twenty-five percent of the voters in the water district. [1929 c 114 § 25; 1917 c 147 § 1; RRS § 11602.]

Reviser's note: This section, formerly uncodified, provides an alternative method of dissolution to that provided by chapter 53.48 RCW, see *State ex rel. Reed v. Spanaway Water District*, 38 Wn.2d 393, 229 P.2d 532 (1951).

57.04.110 Dissolution when district's boundaries identical with municipality. A water district whose boundaries are identical with the boundaries of an incorporated town may be dissolved by summary dissolution proceedings if the water district is free from all debts and liabilities except contractual obligations between the district and the town. Summary dissolution shall take place if the board of commissioners of the water district votes unanimously to dissolve the district and to turn all of its property over to the town within which the district lies, and the council of such town unanimously passes an ordinance accepting the conveyance of the property and assets of the district tendered to the town by the water district. [1955 c 358 § 1.]

Acceptance by town: RCW 35.92.012.

57.04.150 Water district activities to be approved—Criteria for approval by county legislative authority. See RCW 57.02.040 and 56.02.070.

Chapter 57.06

VALIDATION AND CONSTRUCTION

Sections

57.06.010	1927 validation.
57.06.020	1931 validation.
57.06.030	1943 validation.
57.06.040	1943 validation.
57.06.050	1943 validation.
57.06.060	1945 validation.
57.06.070	1945 validation.
57.06.080	1945 validation.
57.06.090	1953 validation.
57.06.100	1953 validation.
57.06.110	1953 validation.
57.06.120	1959 validation.
57.06.130	1959 severability.
57.06.140	1975 validation.
57.06.150	1975 validation.
57.06.160	1975 validation.
57.06.170	1975 validation.
57.06.180	1988 validation.

57.06.010 1927 validation. In case an attempt has been made to organize a water district not containing within its boundaries any incorporated city or town, and either through inadvertence or mistake the election for the organization of the district was held more than thirty days from the date of such certificate of the county auditor but less than sixty days from such date, such proceedings shall not be deemed invalid by reason thereof, and in case all other proceedings in connection with the organization of any such water district were regular, such proceedings are hereby validated and all bonds and warrants issued or to be issued by any such water district are hereby declared to be valid. [1927 c 230 § 2; RRS § 11581–1.]

Reviser's note: This section appeared in an act the first section of which amended RRS § 11581 which compiled 1913 c 161 § 3 as amended. 1913 c 161 was declared unconstitutional in *Drum v. University Place Water District*, 144 Wash. 585, 258 P. 505 (1927). The current basic water district act codified in this title is 1929 c 114.

57.06.020 1931 validation. Each and all of the respective areas of land heretofore organized or attempted to be organized or incorporated under *chapter 161 of the Laws of 1913, and amendments thereto, are each hereby declared to be and created into duly existing water districts having the respective boundaries set forth in their respective organization proceedings as shown in the files and records of the office of the board of county commissioners of the county in which said organization, or attempted organization is located. The water districts validated or created by this act shall have the same rights, liabilities, duties and obligations as water districts created under chapter 114 of the Laws of 1929, and amendments thereto: *Provided*, That the provisions of this act shall apply only to those water districts which have maintained their organization as water districts since the date of their attempted incorporation or establishment: *Provided, however*, That nothing herein contained shall be deemed to validate the debts, contracts, bonds or other obligations executed prior to this act in connection with or in pursuance of such attempted organization, and all taxes or assessments shall hereafter

be levied in accordance with the act of 1929, chapter 114, approved March 13, 1929. [1931 c 71 § 1; RRS § 11604.]

***Reviser's note:** The language "chapter 161 of the Laws of 1913" appears in 1931 c 71 § 1. See note following RCW 57.06.010.

57.06.030 1943 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts or into local improvement districts or utility local improvement districts under the provisions of chapter 114 of the Laws of 1929 and amendments thereto, are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts, as the case may be, having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1943 c 177 § 1; Rem. Supp. 1943 § 11604–13.]

57.06.040 1943 validation. All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, local improvement district, or utility local improvement district, and all bonds or other obligations executed by such districts in connection with or in pursuance of such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1943 c 177 § 2; Rem. Supp. 1943 § 11604–14.]

57.06.050 1943 validation. The provisions of the act shall apply only to such districts attempted to be organized under chapter 114 of the Laws of 1929, and amendments thereto, which have maintained their organization as such since the date of such attempted organization, establishment, or creation. [1943 c 177 § 3; Rem. Supp. 1943 § 11604–15.]

57.06.060 1945 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts or into local improvement districts or utility local improvement districts under the provisions of Pierce's Perpetual Code 994–1 to –53, chapter 114, Laws of 1929, and amendments thereto (sections 11579 to 11604, Remington's Revised Statutes), are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts, as the case may be, having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1945 c 40 § 1; Rem. Supp. 1945 § 11604–17.]

57.06.070 1945 validation. All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, local improvement district, or utility local improvement district, and all bonds or other

obligations executed by such districts in connection with or in pursuance of such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1945 c 40 § 2; Rem. Supp. 1945 § 11604–18.]

57.06.080 1945 validation. The provisions of this act shall apply only to such districts attempted to be organized under Pierce's Perpetual Code 994–1 to 53, chapter 114, Laws of 1929, and amendments thereto (sections 11579 to 11604, Remington's Revised Statutes), which have maintained their organization as such since the date of such attempted organization, establishment, or creation. [1945 c 40 § 3; Rem. Supp. 1945 § 11604–19.]

57.06.090 1953 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts, including all areas attempted to be annexed thereto, or into local improvement districts or utility local improvement districts, under the provisions of chapter 114, Laws of 1929, and amendments thereto, are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts, as the case may be, having the respective boundaries set forth in their organization and annexation proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1953 c 251 § 25.]

57.06.100 1953 validation. All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, local improvement district, or utility local improvement district, and all bonds or other obligations executed by such districts in connection with or in pursuance of such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1953 c 251 § 26.]

57.06.110 1953 validation. The provisions of this act shall apply only to such districts attempted to be organized under chapter 114, Laws of 1929, and amendments thereto, which have maintained their organization as such since the date of such attempted organization, establishment, or creation. [1953 c 251 § 27.]

57.06.120 1959 validation. All debts, contracts and obligations heretofore made or incurred by or in favor of any water district and all bonds, warrants, or other obligations issued by such district, and all charges heretofore made by such districts, and any and all assessments heretofore levied in any local improvement districts or utility local improvement districts of any water district, and all other things and proceedings relating thereto

done or taken by such water districts or by their respective officers are hereby declared to be legal and valid and of full force and effect from the date thereof: *Provided*, That nothing in this section shall apply to ultra vires acts or acts of fraud committed by the officers or agents of said district. [1959 c 108 § 18.]

57.06.130 1959 severability. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1959 c 108 § 20.]

57.06.140 1975 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts under the provisions of chapter 114, Laws of 1929, and amendments thereto, are hereby validated and declared to be duly existing water districts, having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1975 1st ex.s. c 188 § 15.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.150 1975 validation. All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, and all bonds or other obligations executed by such districts in connection with or in pursuance of such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers, including by persons acting as commissioners nominated by petition of at least twenty-five percent of the qualified electors of the district, and elected and qualified as otherwise provided by law, acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1975 1st ex.s. c 188 § 16.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.160 1975 validation. The holding and exercise of the office of commissioner by persons now serving as members of the first board of commissioners under or in pursuance of such attempted organization, nominated by petition of at least twenty-five percent of the qualified electors of the district, and elected and qualified as otherwise provided by law, is hereby declared legal and valid and of full force and effect. [1975 1st ex.s. c 188 § 17.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.170 1975 validation. RCW 57.06.140 through 57.06.160 shall apply only to such districts attempted to be organized under chapter 114, Laws of 1929, and amendments thereto, which have maintained their organization as such since the date of such attempted organization, establishment, or creation, or which have been merged into another municipal corporation. [1975 1st ex.s. c 188 § 18.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.180 1988 validation. The existence of all water districts formed in counties without a boundary review board in compliance with the requirements of chapter 57.04 RCW, whether or not the requirements of RCW 57.02.040 and 56.02.070 were satisfied, is validated and such districts shall be deemed to be legally formed. [1988 c 162 § 9.]

Chapter 57.08 POWERS

Sections	
57.08.010	Right to acquire property and rights—Eminent domain—Leases—Generation of electricity—Rates and charges.
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57.08.112	Association of commissioners—Association to furnish information to legislature and governor.
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57.08.160	Authority to assist customers in the acquisition of water conservation equipment—Limitations.

Lien for labor and materials on public works: Chapter 60.28 RCW.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

57.08.010 Right to acquire property and rights—Eminent domain—Leases—Generation of electricity—Rates and charges. (1) (a) A water district may acquire by purchase or condemnation, or both, all property and property rights and all water and water rights, both within and without the district, necessary for its purposes.

(b) A water district may lease real or personal property necessary for its purposes for a term of years for which such leased property may reasonably be needed where in the opinion of the board of water commissioners such property may not be needed permanently or substantial savings to the district can be effected thereby.

(c) The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities of the third class, insofar as consistent with the provisions of this title, except that all assessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the water district, and the duties devolving upon the city treasurer are hereby imposed upon the county treasurer.

(d) A water district may construct, condemn and purchase, purchase, add to, maintain and supply waterworks to furnish the district and inhabitants thereof, and any city or town therein and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire, or own buildings and other necessary district facilities.

(e) A water district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance and supply of waterworks to furnish the district and inhabitants thereof and residents of Canada with an ample supply of water under terms approved by the board of commissioners. Such waterworks may include facilities which result in combined water supply and electric generation, provided that the electricity generated thereby is a byproduct of the water supply system.

(f) Such electricity may be used by the water district or sold to any entity authorized by law to distribute electricity. Such electricity is a byproduct when the electrical generation is subordinate to the primary purpose of water supply.

(g) For such purposes, a water district may take, condemn and purchase, purchase, acquire and retain water from any public or navigable lake, river or watercourse, or any underflowing water and, by means of aqueducts or pipe line conduct the same throughout such water district and any city or town therein and carry it along and upon public highways, roads and streets, within and without such district.

(h) For the purpose of constructing or laying aqueducts or pipe lines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such water district may occupy the beds and shores up to the high water mark of any such

lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution.

(i) For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a water district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner.

(2) A water district may purchase and take water from any municipal corporation.

(3) A water district may fix rates and charges for water supplied and may charge property owners seeking to connect to the district's water supply system, as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that such property owners shall bear their equitable share of the cost of such system.

(a) For purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants.

(b) The connection charge may include interest charges applied from the date of construction of the water system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the water system, or at the time of installation of the water lines to which the property owner is seeking to connect.

(4) (a) A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The county treasurer may charge and collect a fee of three dollars for each year for the treasurer's services. Such fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer.

(b) Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule. [1989 c 389 § 9; 1989 c 308 § 2; 1988 c 11 § 1; 1987 c 449 § 10; 1985 c 444 § 4; 1959 c 108 § 1; 1929 c 114 § 8; RRS § 11586. Cf. 1913 c 161 § 8.]

Reviser's note: This section was amended by 1989 c 308 § 2 and by 1989 c 389 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Construction—Severability—1985 c 444: See notes following RCW 35.92.010.

Eminent domain

generally: *State Constitution Art. 1 § 16.*

third class cities: *RCW 35.24.310.*

Evaluation of application to appropriate water for electric generation facility: RCW 90.54.170.

57.08.011 Authority to manage, operate, maintain, or repair public or private water system—Contract. A water district may enter into a contract with any person, corporation, or other entity, public or private, that owns a water system located in the water district to manage, operate, maintain, or repair the water system. Such a contract may be entered into only if the general comprehensive plan of the water district reflects the water system that is to be so managed, operated, maintained, or repaired.

A water district shall be liable to provide the services provided in such a contract only if the required contractual payments are made to the district, and such payments shall be secured by a lien on the property served by the water system to the same extent that rates and charges imposed by the water district constitute liens on the property served by the district. The responsibility for all costs incurred by the water system in complying with water quality laws, regulations, and standards shall be solely that of the water system and not the water district, except to the extent payments have been made to the district for the costs of such compliance.

A water district periodically may transfer to another account surplus moneys that may accumulate in an account established by the district to receive payments for the provision of services for such a water system. [1989 c 308 § 14.]

57.08.012 Fluoridation of water authorized. A water district by a majority vote of its board of commissioners may fluoridate the water supply system of the water district. The commissioners may cause the proposition of fluoridation of the water supply to be submitted to the electors of the water district at any general election or special election to be called for the purpose of voting on the proposition. The proposition must be approved by a majority of the electors voting on the proposition to become effective. [1988 c 11 § 2.]

57.08.014 Authority to adjust or delay rates or charges for poor persons—Notice. In addition to the authority of a water district to establish classifications for rates and charges and impose such rates and charges, as provided in RCW 57.08.010 and 57.20.020, a water district may adjust, or delay such rates and charges for poor persons or classes of poor persons, including but not limited to, poor handicapped persons and poor senior citizens. Other financial assistance available to poor persons shall be considered in determining charges and rates under this section. Notification of special rates or charges established under this section shall be provided to all persons served by the district annually and upon initiating service. Information on cost shifts caused by

establishment of the special rates or charges shall be included in the notification. Any reduction in charges and rates granted to poor persons in one part of a service area shall be uniformly extended to poor persons in all other parts of the service area. [1983 c 198 § 2.]

Severability—1983 c 198: See note following RCW 56.08.014.

57.08.015 Sale of unnecessary property authorized—Notice. The board of commissioners of a water district may sell, at public or private sale, property belonging to the district if the board determines that the property is not and will not be needed for district purposes and if the board gives notice of intention to sell as in this section provided: *Provided*, That no such notice of intention shall be required to sell personal property of less than five hundred dollars in value.

The notice of intention to sell shall be published once a week for three consecutive weeks in a newspaper of general circulation in the district. The last publication shall be at least twenty days but not more than thirty days before the date of sale. The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions thereof and shall reserve the right to reject any and all bids. [1989 c 308 § 7; 1977 ex.s. c 299 § 2; 1953 c 50 § 1.]

57.08.016 Sale of unnecessary property authorized—Additional requirements for sale of realty. (1) Subject to the provisions of subsection (2) of this section, no real property valued at five hundred dollars or more of the district shall be sold for less than ninety percent of the value thereof as established by a written appraisal made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state or professionally designated real estate appraisers as defined in RCW 74.46.020. The appraisal shall be signed by the appraisers and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the appraised value thereof: *Provided*, That there shall be no private sale of real property where the appraised value exceeds the sum of five hundred dollars.

(2) If no purchasers can be obtained for the property at ninety percent or more of its appraised value after one hundred eighty days of offering the property for sale, the board of commissioners of the water district may adopt a resolution stating that the district has been unable to sell the property at the ninety percent amount. The water district then may sell the property at the highest price it can obtain at public auction. A notice of intention to sell at public auction shall be published once a week for three consecutive weeks in a newspaper of general circulation in the water district. The last publication shall be at least twenty days but not more than thirty days before the date of sale. The notice shall describe the property, state the time and place at which it will be

offered for sale and the terms of sale, and shall call for bids, fix the conditions thereof, and reserve the right to reject any and all bids. [1989 c 308 § 8; 1988 c 162 § 2; 1984 c 103 § 3; 1953 c 50 § 2.]

57.08.017 Application of sections to certain service provider agreements under chapter 70.150 RCW. RCW 57.08.015, 57.08.016, 57.08.050, 57.08.120, and 57.08.130 shall not apply to agreements entered into under authority of chapter 70.150 RCW provided there is compliance with the procurement procedure under RCW 70.150.040. [1986 c 244 § 16.]

Severability—1986 c 244: See RCW 70.150.905.

57.08.020 Conveyance of water system to city or town. That water districts duly organized under the laws of the state of Washington shall have the following powers in addition to those conferred by existing statutes. Whenever any water district shall have installed a distributing system of mains and laterals and as a source of supply of water shall be purchasing or intending to purchase water from any city or town, and whenever it shall appear to be advantageous to the water consumers in said water district that such city or town shall take over the water system of the water district and supply water to the said water users, the commissioners of said water district, upon being authorized as provided in RCW 57.08.030, shall have the right to convey such distributing system to any such city or town: *Provided*, Such city or town is willing to accept, maintain and repair the same: *Provided, further*, That all bonded and other indebtedness of said water district except local improvement district bonds shall have been paid. [1933 c 142 § 1; RRS § 11586-1.]

57.08.030 Election on conveyance—Contract to maintain. Should the commissioners of any such water district decide that it would be to the advantage of the water consumers of such water district to make the conveyance provided for in RCW 57.08.020, they shall cause the proposition of making such conveyance to be submitted to the electors of the water district at any general election or at a special election to be called for the purpose of voting on the same. If at any such election a majority of the electors voting at such election shall be in favor of making such conveyance, the water district commissioners shall have the right to convey to such city or town the mains and laterals belonging to the water district upon such city or town entering into a contract satisfactory to the water commissioners to maintain and repair the same. [1933 c 142 § 2; RRS § 11586-2.]

57.08.035 Effect when city or town takes over portion of water system. Whenever a city or town located wholly or in part within a water district shall enter into a contract with the commissioners of a water district providing that the city or town shall take over all of the operation of the facilities of the district located within its boundaries, such area of said water district located within said city or town shall upon the execution of said

contract cease to be a part of said water district and the inhabitants therein shall no longer be permitted to vote in said water district. The land, however, within such city or town shall remain liable for the payment of all assessments, any lien upon said property at the time of the execution of said agreement and for any lien of all general obligation bonds due at the date of said contract, and the city shall remain liable for its fair prorated share of the debt of the area for any revenue bonds outstanding as of said date of contract. [1971 ex.s. c 272 § 13.]

57.08.040 City or town may accept and agree to maintain system. Whenever any city or town is selling or proposes to sell water to a water district organized under the laws of the state of Washington and the provisions of RCW 57.08.020 and 57.08.030 have been complied with, any such city or town may by ordinance accept a conveyance of any such distributing system and enter into a contract with the water district for the maintenance and repair of the system and the supplying of water to the water district consumers. [1933 c 142 § 3; RRS § 11586-3.]

57.08.045 Contracts for joint use—Service to areas in other districts. A water district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person or corporation, for the acquisition, ownership, use and operation of any property, facilities, or services, within or without the water district and necessary or desirable to carry out the purposes of the water district, and a water district or sewer district duly authorized to exercise water district powers may provide water services to property owners in areas within or without the limits of the district: *Provided*, That if such area is located within another existing district duly authorized to exercise water district powers in such area, then water service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district. [1981 c 45 § 10; 1959 c 108 § 4; 1953 c 251 § 3.]

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 56.36.060.

57.08.047 Provision of water service beyond district subject to review by boundary review board. The provision of water service beyond the boundaries of a water district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 57.]

57.08.050 Board may create positions—Contracts for materials and work—Small works roster—Notice—Bids—Requirements waived, when. (1) The board of water commissioners shall have authority to create and fill such positions and fix salaries and bonds thereof as it may by resolution provide.

(2) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the

estimated cost of which is less than fifty thousand dollars, may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The board of water commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. The board of water commissioners shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year. All contract projects equal to or in excess of fifty thousand dollars shall be let by competitive bidding. Before awarding any such contract the board of water commissioners shall cause a notice to be published in a newspaper in general circulation where the district is located at least once ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of water commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of water commissioners on or before the day and hour named therein.

(3) Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless he enters into a contract in accordance with his bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of water commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting his own plans and specifications: *Provided*, That no contract shall be let in excess of the cost of said materials or work, or if in the opinion of the board of water commissioners all bids are unsatisfactory they may reject all of them and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of water commissioners in the full amount of the contract price between the bidder and the

commission in accordance with the bid. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said check, cash or bid bonds and the amount thereof shall be forfeited to the water district: *Provided*, That if the bidder fails to enter into a contract in accordance with his bid, and the board of water commissioners deems it necessary to take legal action to collect on any bid bond required herein, then the water district shall be entitled to collect from said bidder any legal expenses, including reasonable attorneys' fees occasioned thereby.

(4) In the event of an emergency when the public interest or property of the water district would suffer material injury or damage by delay, upon resolution of the board of water commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation. [1989 c 105 § 2; 1987 c 309 § 2; 1985 c 154 § 2; 1983 c 38 § 2; 1979 ex.s. c 137 § 2; 1975 1st ex.s. c 64 § 2; 1965 c 72 § 1; 1947 c 216 § 2; 1929 c 114 § 21; Rem. Supp. 1947 § 11598. Cf. 1913 c 161 § 20.]

57.08.060 Powers as to street lighting systems—Establishment. (1) In addition to the powers given water districts by law, they shall also have power to acquire, construct, maintain, operate, and develop street lighting systems.

(2) To establish a street lighting system, the board of water commissioners shall adopt a resolution proposing a street lighting system and delineating the boundaries of the area to be served by the proposed street lighting system. The board shall conduct a public hearing on the resolution to create a street lighting system. Notice of the hearing shall be published at least once each week for two consecutive weeks in one or more newspapers of general circulation in the area to be served by the proposed street lighting system. Following the hearing, the board may by resolution establish the street lighting system.

(3) A street lighting system shall not be established if, within thirty days following the decision of the board, a petition opposing the street lighting system is filed with the board and contains the signatures of at least forty percent of the voters registered in the area to be served by the proposed system.

(4) The water district has the same powers of collection for delinquent street lighting charges as the water district has for collection of delinquent water service charges.

(5) Any street lighting system established by a water district prior to March 31, 1982, is declared to be legal and valid. [1987 c 449 § 11; 1982 c 105 § 1; 1941 c 68 § 1; Rem. Supp. 1941 § 11604–12.]

57.08.065 Powers as to sewer systems—General obligation bonds for sewer system purposes—Election. In addition to the powers now given water districts by law, they shall also have power to establish, maintain and operate a mutual water and sewer system or a separate sewer system within their water district area in the same manner as provided by law for the doing thereof in connection with water supply systems.

In addition thereto, a water district constructing, maintaining and operating a sanitary sewer system may exercise all the powers permitted to a sewer district under Title 56 RCW, including, but not limited to, the right to compel connections to the district's system, liens for delinquent sewer connection charges or sewer service charges, and all other powers presently exercised by or which may be hereafter granted to such sewer districts: *Provided*, That a water district may not exercise sewer district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise sewer district powers in such area without the consent by resolution of the board of commissioners of such other district: *Provided further*, That no water district shall proceed to exercise the powers herein granted to establish, maintain, construct and operate any sewer system without first obtaining written approval and certification of necessity so to do from the department of ecology and department of social and health services. Any comprehensive plan for a system of sewers or addition thereto or betterment thereof shall be approved by the same county and state officials as are required to approve such plans adopted by a sewer district.

A water district shall have the power to issue general obligation bonds for sewer system purposes: *Provided*, That a proposition to authorize general obligation bonds payable from excess tax levies for sewer system purposes pursuant to chapter 56.16 RCW shall be submitted to all of the qualified voters within that part of the water district which is not contained within another existing district duly authorized to exercise sewer district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the water district. [1981 c 45 § 11; 1979 c 141 § 69; 1967 ex.s. c 135 § 3; 1963 c 111 § 1.]

Legislative declaration—“District” defined—Severability—1981 c 45: See notes following RCW 56.36.060.

57.08.070 Participation in volunteer firefighters' relief and pension fund. See chapter 41.24 RCW.

57.08.080 Rates and charges. The commissioners shall enforce collection of the water connection charges and rates and charges for water supplied against property owners connecting with the system and/or receiving such water, such charges being deemed charges against

the property served, by addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either water connection charges or rates and charges for water supplied are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate of not more than eight percent per year shall be a lien against the property upon which the service was received, subject only to the lien for general taxes. [1982 1st ex.s. c 17 § 12; 1959 c 108 § 2.]

57.08.090 Rates and charges—Foreclosure for delinquency—Costs—Fees—Cut off of service. The district may, at any time after the connection charges or rates and charges for water supplied and penalties are delinquent for a period of sixty days, bring suit in foreclosure by civil action in the superior court of the county in which the real property is located. The court may allow, in addition to the costs and disbursements provided by statute, such an attorney's fee as it adjudges reasonable. The action shall be in rem, and may be brought in the name of the district against an individual, or against all of those who are delinquent in one action, and the laws and rules of the court shall control as in other civil actions.

In addition to the right to foreclose provided in this section, the district may also cut off all or part of the service after charges for water supplied are delinquent for a period of sixty days. [1982 1st ex.s. c 17 § 13; 1977 ex.s. c 299 § 1; 1959 c 108 § 3.]

57.08.100 Health care, group, life, and social security insurance contracts for employees' benefit—Joint action with sewer district. A water district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance and/or social security insurance for the benefit of its employees and may pay all or any part of the cost thereof. Any two or more water districts or any one or more water districts and one or more sewer districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of each participating sewer and/or water district may by appropriate resolution authorize their respective district to pay all or any portion of the cost thereof. [1981 c 190 § 6; 1973 c 24 § 2; 1961 c 261 § 2.]

Joint health care, group insurance contracts with water district: RCW 56.08.100.

57.08.105 Liability insurance for officials and employees. The board of water commissioners of each water district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising

from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 7.]

57.08.107 Liability insurance for officers and employees authorized. See RCW 36.16.138.

57.08.110 Association of commissioners—Purposes—Powers—Expenses—Records audited by state division of municipal corporations. To improve the organization and operation of water districts, the commissioners of two or more such districts may form an association thereof, for the purpose of securing and disseminating information of value to the members of the association and for the purpose of promoting the more economical and efficient operation of the comprehensive plans of water supply in their respective districts. The commissioners of water districts so associated shall adopt articles of association, select such officers as they may determine, and employ and discharge such agents and employees as shall be deemed convenient to carry out the purposes of the association. Water district commissioners and employees are authorized to attend meetings of the association. The expense of the association may be paid from the maintenance or general funds of the associated districts in such manner as shall be provided in the articles of association: *Provided*, That the aggregate contributions made to the association by the district in any calendar year shall not exceed the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property of the district. The financial records of such association shall be subject to audit by the Washington state division of municipal corporations of the state auditor. [1973 1st ex.s. c 195 § 68; 1970 ex.s. c 47 § 5; 1961 c 242 § 1.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

57.08.112 Association of commissioners—Association to furnish information to legislature and governor. See RCW 44.04.170.

57.08.120 Lease of real property—Notice, contents, publication—Performance bond or security. A water district may lease out real property which it owns or in which it has an interest and which is not immediately necessary for its purposes upon such terms as the board of water commissioners deems proper: *Provided*, That no such lease shall be made until the water district has first caused notice thereof to be published twice in a newspaper in general circulation in the water district, the first publication to be at least fifteen days and the second at least seven days prior to the making of such lease, which notice shall describe the property proposed to be leased out, to whom, for what purpose, and the rental to be charged therefor. A hearing shall be held pursuant to the terms of the said notice, at which time any and all persons who may be interested shall have the right to appear and to be heard.

No such lease shall be for a period longer than twenty-five years, and each lease of real property shall be secured by a bond conditioned to perform the terms of such lease with surety satisfactory to the commissioners, in a penalty not less than the rental for one-sixth of the term: *Provided*, That the penalty shall not be less than the rental for one year where the term is one year or more. In a lease, the term of which exceeds five years, and when at the option of the commissioners, it is so stipulated in the lease, the commission shall accept, with surety satisfactory to it, a bond conditioned to perform the terms of the lease for some part of the term, in no event less than five years (unless the remainder of the unexpired term is less than five years, in which case for the full remainder) and in every such case the commissioners shall require of the lessee, another or other like bond to be delivered within two years, and not less than one year prior to the expiration of the period covered by the existing bond, covering an additional part of the term in accordance with the foregoing provisions in respect to the original bond, and so on until the end of the term so that there will always be in force a bond securing the performance of the lease, and the penalty in each bond shall be not less than the rental for one-half the period covered thereby, but no bond shall be construed to secure the furnishing of any other bond.

The commissioners may accept as surety on any bond required by this section, either an approved surety company or one or more persons satisfactory to the commissioners, or in lieu of such bond may accept a deposit as security of such property or collateral or the giving of such other form of security as may be satisfactory to the commissioners. [1967 ex.s. c 135 § 1.]

57.08.130 Limitation on leasing real property. The authority granted in RCW 57.08.120 shall not be exercised by the board of water commissioners unless such property is declared by resolution of the board of commissioners to be property for which there is a future need by the district and for the use of which provision is made in the comprehensive plan of the water system of the district as the same may be amended from time to time. [1967 ex.s. c 135 § 2.]

57.08.140 RCW 39.33.060 to govern on sales by water district for park and recreational purposes. The provisions of RCW 57.08.015, 57.08.016, 57.08.120 and 57.08.130 shall have no application as to the sale or conveyance of real or personal property or any interest or right therein by a water district to the county or park and recreation district wherein such property is located for park and recreational purposes, but in such cases the provisions of RCW 39.33.060 shall govern. [1971 ex.s. c 243 § 8.]

Severability—1971 ex.s. c 243: See RCW 84.34.920.

57.08.150 Extensions by private party—Preparation of plans—Review by district. A water district may

not require that a specified engineer prepare plans or designs for extensions to its systems if the extensions are to be financed and constructed by a private party, but may review, and approve or reject, the plans or designs which have been prepared for such a private party based upon standards and requirements established by the water district. [1987 c 309 § 4.]

57.08.160 Authority to assist customers in the acquisition of water conservation equipment—Limitations. (Effective if the proposed amendment to Article VIII of the state Constitution is approved by the voters at the November 1989 general election.) Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the district if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the district to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [1989 c 421 § 5.]

Intent—Contingent effective date—1989 c 421: See notes following RCW 35.92.017.

Chapter 57.12
OFFICERS AND ELECTIONS

Sections

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57.12.010 Commissioners—President and secretary—Compensation—Waiver of compensation. The governing body of a district shall be a board of water commissioners consisting of three members. The board shall annually elect one of its members as president and another as secretary.

The board shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book kept for that purpose which shall be a public record.

A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate of fifty dollars for each day or portion thereof devoted to the business of the district: *Provided*, That the compensation for each commissioner shall not exceed four thousand eight hundred dollars per year. In addition, the secretary may be paid a reasonable sum for clerical services.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

No commissioner shall be employed full time by the district. Each commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business, including his subsistence and lodging, while away from the commissioner's place of residence and mileage for use of a privately-owned vehicle at the mileage rate authorized in RCW 43.03.060 as now existing or hereafter amended.

The date for holding elections and taking office as herein provided shall be subject to the provisions of any consolidated election laws that may be made applicable thereto although previously enacted. [1985 c 330 § 6; 1980 c 92 § 2; 1975 1st ex.s. c 116 § 1; 1969 ex.s. c 148 § 8; 1959 c 108 § 5; 1959 c 18 § 1; 1945 c 50 § 2; 1929 c 114 § 7; Rem. Supp. 1945 § 11585. Cf. 1913 c 161 § 7.]

Severability—1969 ex.s. c 148: See note following RCW 56.36.010.

57.12.015 Increase in number of commissioners. In the event a three-member board of commissioners of any water district determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, or in the event the board is presented with a petition signed by ten percent of the qualified electors resident within the district calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the legislative body of the county requesting that an election be held. Upon receipt of the resolution, the legislative authority of the county shall call a special election to be held within the water district at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of
(Name and/or No. of water district) be increased
from three to five members?

Yes

No

If the proposition receives a majority approval at the election the board of commissioners of the water district shall be increased to five members. In any water district with more than ten thousand customers, if a three-member board of commissioners determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, the number of commissioners shall be so increased, without an election, unless within ninety days of adoption of that resolution a petition requesting an election and signed by at least ten percent of the electors is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the legislative authority of the county, which shall call a special election in the manner described in this section.

The two positions created on boards of water commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general water district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general water district election after the appointment, at which two commissioners shall be elected for six-year terms. [1987 c 449 § 12.]

57.12.020 Commissioners, nomination, declaration of candidacy, election law, vacancies—Qualification of voters. Nominations for the first board of commissioners to be elected at the election for the formation of the water district shall be by petition of at least twenty-five percent of the qualified electors of the district, or twenty-five of the qualified electors of the district, whichever is lesser, filed in the auditor's office of the county in which the district is located, at least thirty days prior to the election. Thereafter, candidates for the office of water commissioners shall file declarations of

candidacy and their election shall be conducted as provided by the general election laws. A vacancy or vacancies on the board shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: *Provided*, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners. If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed by the board of county commissioners.

Any person residing in the district who is a qualified voter under the laws of the state may vote at any district election. [1985 c 141 § 7; 1981 c 169 § 1; 1975 1st ex.s. c 188 § 14; 1959 c 18 § 3. Prior: 1953 c 251 § 4; 1947 c 216 § 1, part; 1945 c 50 § 1, part; 1931 c 72 § 1, part; 1929 c 114 § 6, part; Rem. Supp. 1947 § 11584, part. Cf. 1913 c 161 § 7, part.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.12.030 Registration of voters—Conduct of elections—Formation election expense—Commissioners, terms. The general laws of the state of Washington governing the registration of voters for a general or a special city election shall govern the registration of voters for elections held under this chapter. The manner of holding any general or special election for said water district shall be in accordance with the laws of this state. All elections in a water district shall be conducted under RCW 57.02.060. All expenses of elections for a water district shall be paid for out of the funds of the water district: *Provided*, That if the voters fail to approve the formation of a water district, the expenses of the formation election shall be paid by each county in which the proposed district is located, in proportion to the number of registered voters in the proposed district residing in each county.

Except as in this section otherwise provided, the term of office of each water district commissioner shall be six years, such term to be computed from the first day of January following the election, and one commissioner shall be elected at each biennial general election, as provided in RCW 29.13.020, for the term of six years and until his or her successor is elected and qualified and assumes office in accordance with RCW 29.04.170. All candidates shall be voted upon by the entire water district.

Three water district commissioners shall be elected at the same election at which the proposition is submitted to the voters as to whether such water district shall be formed. The commissioner elected in commissioner position number one shall hold office for the term of six years; the commissioner elected in commissioner position number two shall hold office for the term of four years; and the commissioner elected in commissioner position

number three shall hold office for the term of two years: *Provided*, That the members of the first commission shall take office immediately upon their election and qualification. The terms of all commissioners first to be elected shall also include the time intervening between the date that the results of their election are declared in the canvass of returns thereof and the first day of January following the next general district election as provided in RCW 29.13.020. [1982 1st ex.s. c 17 § 14; 1979 ex.s. c 126 § 39; 1959 c 18 § 4. Prior: 1947 c 216 § 1; 1945 c 50 § 1; 1931 c 72 § 1; 1929 c 114 § 6; Rem. Supp. 1947 § 11584. Cf. 1913 c 161 § 7.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Terms and compensation of county and district officers: *State Constitution Art. 11 § 5.*

Time of holding election for district officers: *State Constitution Art. 6 § 8.*

57.12.039 Election of commissioners from commissioner districts. Notwithstanding RCW 57.12.020 and 57.12.030, the board of commissioners may provide by majority vote that subsequent commissioners be elected from commissioner districts within the district. If the board exercises this option, it shall divide the district into three commissioner districts of approximately equal population following current precinct and district boundaries. Thereafter, candidates shall be nominated and one candidate shall be elected from each commissioner district by the electors of the commissioner district. [1986 c 41 § 2.]

57.12.045 Unexcused absences—When position declared vacant—Procedure. If a water commissioner is absent from three consecutive regularly scheduled meetings unless by permission of the board, the office may be declared vacant by the board of commissioners and the vacancy shall then be filled as provided for in this chapter. However, such an action shall not be taken unless the commissioner is notified by mail after two consecutive unexcused absences that the position will be declared vacant if the commissioner is absent without being excused from the next regularly scheduled meeting. [1987 c 449 § 13.]

Chapter 57.16

COMPREHENSIVE PLAN—LOCAL IMPROVEMENT DISTRICTS

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Deferral of special assessments: Chapter 84.38 RCW.

57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments. The water district commissioners before ordering any improvements hereunder or submitting to vote any proposition for incurring any indebtedness shall adopt a general comprehensive plan of water supply for the district. They shall investigate the several portions and sections of the district for the purpose of determining the present and reasonably foreseeable future needs thereof; shall examine and investigate, determine and select a water supply or water supplies for such district suitable and adequate for present and reasonably foreseeable future needs thereof; and shall consider and determine a general system or plan for acquiring such water supply or water supplies; and the lands, waters and water rights and easements necessary therefor, and for retaining and storing any such waters, erecting dams, reservoirs, aqueducts and pipe lines to convey the same throughout such district. There may be included as part of the system the installation of fire hydrants at suitable places throughout the district, and the purchase and maintenance of necessary fire fighting equipment and apparatus, together with facilities for housing same. The water district commissioners shall determine a general comprehensive plan for distributing such water throughout such portion of the district as may then reasonably be served by means of subsidiary aqueducts and pipe lines, and the method of distributing the cost and expense thereof against such water district and against local improvement districts or utility local improvement districts within such water district for any lawful purpose, and including any such local improvement district or utility local improvement district lying wholly or partially within the limits of any city or town in such district, and shall determine whether the whole or part of the cost and expenses shall be paid from water revenue bonds. After July 23, 1989, when the district adopts a general comprehensive plan or plans for an area annexed as provided for in RCW 57.16.010, the district shall include a long-term plan for the planned projects. The commissioners may employ such engineering and legal service as in their discretion is necessary in carrying out their duties.

The general comprehensive plan shall be adopted by resolution and submitted to an engineer designated by

the legislative authority of the county in which fifty-one percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health. The general comprehensive plan shall be approved, conditionally approved, or rejected by the director of health within sixty days of the plan's receipt and by the designated engineer within sixty days of the plan's receipt.

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of the water district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of these county legislative authorities pursuant to the criteria in RCW 57.02.040 for approving the formation, reorganization, annexation, consolidation, or merger of water districts, and the resolution, ordinance, or motion of the legislative body which rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The legislative body may not impose requirements restricting the maximum size of the water supply facilities provided for in the comprehensive plan: *Provided*, That nothing in this chapter shall preclude a county from rejecting a proposed plan because it is in conflict with the criteria in RCW 57.02.040. Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority: *Provided*, That the water commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section. If the district includes portions or all of one or more cities or towns, the general comprehensive plan shall be submitted also to, and approved by resolution of, the legislative authority of cities and towns before becoming effective. The general comprehensive plan shall be deemed approved by the city or town legislative authority if the city or town legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the city or town or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority.

Before becoming effective, any amendment to, alteration of, or addition to, a general comprehensive plan shall also be subject to such approval as if it were a new general comprehensive plan: *Provided*, That only if the amendment, alteration, or addition affects a particular city or town, shall the amendment, alteration or addition be subject to approval by such particular city or town legislative authority. [1989 c 389 § 10; 1982 c 213 § 2; 1979 c 23 § 2; 1977 ex.s. c 299 § 3; 1959 c 108 § 6; 1959 c 18 § 6. Prior: 1939 c 128 § 2, part; 1937 c 177 § 1; 1929 c 114 § 10, part; RRS § 11588. Cf. 1913 c 161 § 10.]

57.16.020 Vote on general indebtedness. The commissioners may submit to the voters of the district at any general or special election, a proposition that the district incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations for the construction of any part or all of the general comprehensive plan. Elections shall be held as provided in RCW 39.36.050. The proposition authorizing both the bond issue and imposition of excess bond retirement levies shall be adopted by three-fifths of the voters voting thereon, at which election the total number of persons voting on the proposition shall constitute not less than forty percent of the total number of votes cast in the water district at the last preceding general election. Such bonds shall not be issued to run for a period longer than twenty years from the date of the issue. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. When the general comprehensive plan has been adopted the commissioners shall carry it out to the extent specified in the proposition to incur general indebtedness. [1984 c 186 § 51; 1974 ex.s. c 31 § 1. Prior: 1973 1st ex.s. c 195 § 69; 1959 c 108 § 7; 1959 c 18 § 7; prior: 1953 c 251 § 5; 1951 2nd ex.s. c 25 § 1; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—**Effective dates and termination dates**—**Construction**—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Limitation on

levies: State Constitution Art. 7 § 2; RCW 84.52.010, 84.52.050 through 84.52.056.

municipal corporation indebtedness: State Constitution Art. 8 § 6.

57.16.030 Revenue bonds authorized—**Use.** (1) The commissioners may, without submitting a proposition to the voters, authorize by resolution the district to issue revenue bonds for the construction costs, interest during the period of construction and six months thereafter, working capital or other costs of any part or all of the general comprehensive plan or for other purposes or functions of a water district authorized by statute. The amount of the bonds to be issued shall be included in the resolution submitted.

Any resolution authorizing the issuance of revenue bonds may include provision for refunding any local improvement district bonds of a district, out of the proceeds of sale of revenue bonds, and a district may pay off any outstanding local improvement bonds with such funds either by purchase in the open market below their par value and accrued interest or by call at par value and accrued interest at the next succeeding interest payment date. The bonds may be in any form, including bearer bonds or registered bonds as provided by RCW 39.46.030.

When a resolution authorizing revenue bonds has been adopted the commissioners may forthwith carry out the general comprehensive plan to the extent specified.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1987 c 449 § 14; 1983 c 167 § 160; 1977 ex.s. c 299 § 4; 1959 c 108 § 8; 1959 c 18 § 8.

Prior: 1953 c 251 § 6; 1951 c 112 § 1; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part.]

Liberal construction—**Severability**—1983 c 167: See RCW 39.46.010 and note following.

57.16.035 Additional revenue bonds for increased cost of improvements. Whenever a water district shall have adopted a general comprehensive plan and bonds to defray the cost thereof shall have been authorized by resolution of the board of water commissioners, and before the completion of the improvements the board of water commissioners shall find by resolution that the authorized bonds are not sufficient to defray the cost of such improvements due to the increase of costs of construction subsequent to the adoption of said plan, the board of water commissioners may by resolution authorize the issuance and sale of additional water revenue bonds for such purpose in excess of those previously issued. [1977 ex.s. c 299 § 5; 1959 c 108 § 10.]

57.16.040 Additions and betterments. In the same manner as provided for the adoption of the original general comprehensive plan, a plan providing for additions and betterments to the original general comprehensive plan may be adopted. Without limiting its generality "additions and betterments" shall include any necessary change in, amendment of or addition to the general comprehensive plan.

The district may incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations for the construction of the additions and betterments in the same way that general indebtedness may be incurred for the construction of the original general comprehensive plan after submission to the voters of the entire district in the manner the original proposition to incur indebtedness was submitted as provided in RCW 57.16.020. Upon ratification the additions and betterments may be carried out by the commissioners to the extent specified or referred to in the proposition to incur the general indebtedness.

The district may issue revenue bonds to pay for the construction of the additions and the betterments pursuant to resolution of the board of water commissioners. [1984 c 186 § 52; 1977 ex.s. c 299 § 6; 1973 1st ex.s. c 195 § 70; 1959 c 108 § 9; 1959 c 18 § 9. Prior: 1953 c 251 § 7; 1951 2nd ex.s. c 25 § 2; 1951 c 112 § 2; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—**Effective dates and termination dates**—**Construction**—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

57.16.050 Districts authorized—**Special assessments**—**Bonds.** (1) A district may establish local improvement districts within its territory; levy special assessments under the mode of annual installments extending over a period not exceeding twenty years, on all property specially benefited by a local improvement, on the basis of special benefits to pay in whole or in part

the damage or costs of any improvements ordered in the district; and issue local improvement bonds in the local improvement district to be repaid by the collection of special assessments. Such bonds may be of any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The levying, collection and enforcement of such special assessments and issuance of bonds shall be as provided for the levying, collection, and enforcement of special assessments and the issuance of local improvement district bonds by cities and towns insofar as consistent herewith. The duties devolving upon the city or town treasurer are hereby imposed upon the county treasurer of the county in which the real property is located for the purposes hereof. The mode of assessment shall be determined by the water commissioners by resolution. When in the petition or resolution for the establishment of a local improvement district, and in the approved comprehensive plan or approved amendment thereto or plan providing for additions and betterments to the original plan, previously adopted, it is provided that, except as set forth in this section, the special assessments shall be for the sole purpose of payment into the revenue bond fund for the payment of revenue bonds, then the local improvement district shall be designated as a "utility local improvement district." No warrants or bonds shall be issued in a utility local improvement district, but the collection of interest and principal on all special assessments in the utility local improvement district shall be paid into the revenue bond fund, except that special assessments paid before the issuance and sale of bonds may be deposited in a fund for the payment of costs of improvements in the utility local improvement district.

(2) Such bonds may also be issued and sold in accordance with chapter 39.46 RCW. [1987 c 169 § 2; 1983 c 167 § 161; 1982 1st ex.s. c 17 § 15; 1953 c 251 § 13; 1939 c 128 § 1; 1929 c 114 § 9; RRS § 11587. Cf. 1913 c 161 § 9.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Local improvement bonds: Chapter 35.45 RCW.

57.16.060 Resolution or petition to form district—Procedure—Written protest—Notice—Appeal—Improvement ordered—Divestment of power to order. Local improvement districts or utility local improvement districts to carry out the whole or any portion of the general comprehensive plan of improvements or plan providing for additions and betterments to the original general comprehensive plan previously adopted may be initiated either by resolution of the board of water commissioners or by petition signed by the owners according to the records of the office of the applicable county auditor of at least fifty-one percent of the area of the land within the limits of the local improvement district to be created.

In case the board of water commissioners desires to initiate the formation of a local improvement district or a utility local improvement district by resolution, it shall first pass a resolution declaring its intention to order

such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed local improvement district or utility local improvement district, and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

In case any such local improvement district or utility local improvement district is initiated by petition, such petition shall set forth the nature and territorial extent of the proposed improvement requested to be ordered and the fact that the signers thereof are the owners according to the records of the applicable county auditor of at least fifty-one percent of the area of land within the limits of the local improvement district or utility local improvement district to be created. Upon the filing of such petition the board shall determine whether the petition is sufficient, and the board's determination thereof shall be conclusive upon all persons. No person may withdraw his name from the petition after it has been filed with the board of water commissioners. If the board finds the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of the improvement, designating the number of the proposed local district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

Notice of the adoption of the resolution of intention, whether the resolution was adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of water commissioners. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed improvement district by mailing the notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer of the county in which the real property is located at the address shown thereon. Whenever such notices are mailed, the water commissioners shall maintain a list of such reputed property owners, which list shall be kept on file at a location within the water district and shall be made available for public perusal. The notices shall refer to the resolution of intention and designate the proposed improvement district by number. The notices shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the date, time, and place of the hearing

before the board of water commissioners. In the case of improvements initiated by resolution, the notice shall also: (1) State that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board of water commissioners no later than ten days after the public hearing; (2) state that if owners of at least forty percent of the area of land within the proposed district file written protests with the secretary of the board, the power of the water commissioners to proceed with the creation of the proposed district shall be divested; (3) provide the name and address of the secretary of the board; and (4) state the hours and location within the water district where the names of the property owners within the proposed district are kept available for public perusal. In the case of the notice given each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, parcel of land, or other property.

Whether the improvement is initiated by petition or resolution, the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in the plans for the proposed improvement as shall be deemed necessary. The board may not change the boundaries of the district to include property not previously included in it without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time provided in this chapter for the original notice.

After the hearing the commissioners shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution. The jurisdiction of the commissioners to proceed with any improvement initiated by resolution shall be divested by protests filed with the secretary of the board before the public hearing signed by the owners, according to the records of the applicable county auditor, of at least forty percent of the area of land within the proposed local district.

If the commissioners find that the district should be formed, they shall by resolution form the district and order the improvement. After execution of the resolution forming the district, the secretary of the board of commissioners shall publish, in a legal publication that serves the area subject to the district, a notice setting forth that a resolution has been passed forming the district and that a lawsuit challenging the jurisdiction or authority of the water district to proceed with the improvement and creating the district must be filed, and notice to the water district served, within thirty days of the publication of the notice. The notice shall set forth the nature of the appeal. Property owners bringing the appeal shall follow the procedures as set forth under appeal under RCW 57.16.090. Whenever a resolution forming a district has been adopted, the formation is conclusive in all things upon all parties, and cannot be

contested or questioned in any manner in any proceeding whatsoever by any person not commencing a lawsuit in the manner and within the time provided in this section, except for lawsuits made under RCW 57.16.090.

Following an appeal, if it is unsuccessful or if no appeal is made under RCW 57.16.090, the commissioners may proceed with the improvement and provide the general funds of the water district to be applied thereto, adopt detailed plans of the local improvement district or utility local improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the water district such eminent domain proceedings as may be necessary to entitle the district to proceed with the work. The board shall thereupon proceed with the work and file with the county treasurer of the county in which the real property is located its roll levying special assessments in the amount to be paid by special assessment against the property situated within the improvement district in proportion to the special benefits to be derived by the property therein from the improvement. [1986 c 256 § 3; 1982 1st ex.s. c 17 § 16; 1977 ex.s. c 299 § 7; 1965 ex.s. c 39 § 1; 1959 c 18 § 11. Prior: 1953 c 251 § 14; 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12, part.]

57.16.065 Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district or utility local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 11.]

57.16.070 Hearing on assessment roll—Notice. Before approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the local district, stating that the roll is on file and open to inspection in the office of the secretary, and fixing the time, not less than fifteen or more than thirty days from the date of the first publication of the notice, within which protests must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing will be held by the commissioners on the protests. Notice shall also be given by mailing, at least fifteen days before the hearing, a similar notice to the owners or reputed owners of the land in the local district as they appear on the books of the treasurer of the county in which the real property is located. At the hearing, or any adjournment thereof, the commissioners may correct, change or modify the roll, or any part thereof, or set aside the roll and order a new assessment, and may then by resolution approve it. If an assessment is raised a new notice similar to the first shall be given, after which final approval of the roll may be made. When property has been entered originally upon the roll and the assessment thereon is not raised, no objection thereto shall be considered by the

commissioners or by any court on appeal unless the objection is made in writing at, or prior, to the date fixed for the original hearing upon the roll. [1982 1st ex.s. c 17 § 17; 1959 c 18 § 12. Prior: 1953 c 251 § 15; 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12, part.]

57.16.073 Potable water facilities—Notice to certain property owners. Whenever it is proposed that a local improvement district or utility local improvement district finance potable water facilities, additional notice of the public hearing on the proposed improvement district shall be mailed to the owners of any property located outside of the proposed improvement district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific water facilities installed by the local improvement district. The notice shall include information about this restriction. [1987 c 315 § 6.]

57.16.075 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

57.16.080 Enlarged district. In the event that any portion of the system after its installation is not adequate for the purpose for which it was intended, or that for any reason changes, alterations or betterments are necessary in any portion of the system after its installation then a local improvement district with boundaries which may include one or more existing local improvement districts may be created in the water district in the same manner as is provided herein for the creation of local improvement districts; that upon the organization of such a local improvement district as provided for in this paragraph the plan of the improvement and the payment of the cost of the improvement shall be carried out in the same manner as is provided herein for the carrying out of and the paying for the improvement in the local improvement districts previously provided for in *this act. [1959 c 18 § 13. Prior: 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12.]

*Reviser's note: For "this act," see note following RCW 57.04.080.

57.16.090 Review. The decision of the water district commission upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the secretary of said water district commission and with the clerk of the superior court in the county in which the real property is situated within ten days after publication of a notice that the resolution confirming such assessment roll has been adopted, and such notice of appeal shall describe the property and set forth the objections of such appellant to such assessment; and within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of the court, a transcript consisting of the assessment roll and the appellant's objections thereto, together with the resolution

confirming such assessment roll and the record of the water district commission with reference to the assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by the secretary of the water district commission certified by the secretary to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of said court, conditioned to prosecute such appeal without delay, and if unsuccessful to pay all costs to which the water district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, the appellant shall give written notice to the secretary of such water district, that such transcript is filed. The notice shall state a time, not less than three days from the service thereof, when the appellant will call up the cause for hearing; and the superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury; and such cause shall have preference over all civil causes pending in the court, except proceedings under an act relating to eminent domain and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, who shall modify and correct such assessment roll in accordance with such decision. Appellate review of the judgment of the superior court may be sought as in other civil cases. However, the review must be sought within fifteen days after the date of the entry of the judgment of such superior court. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [1988 c 202 § 53; 1982 1st ex.s. c 17 § 18; 1971 c 81 § 126; 1965 ex.s. c 39 § 2; 1929 c 114 § 13; RRS § 11591. Cf. 1913 c 161 § 13.]

Rules of court: Cf. RAP 5.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

57.16.100 Conclusiveness of roll. Whenever any assessment roll for local improvements shall have been confirmed by the water district commission of such water district as herein provided, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefor, including the action of the water district commission upon such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any

manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in this act, and not appealing from the action of the water district commission in confirming such assessment roll in the manner and within the time in *this act provided. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: *Provided*, That this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds (1) that the property about to be sold does not appear upon the assessment roll, or (2) that said assessment had been paid. [1929 c 114 § 14; RRS § 11592. Cf. 1913 c 161 § 14.]

*Reviser's note: For "this act," see note following RCW 57.04.080.

57.16.110 Segregation of assessment—Procedure—Fee—Charges. Whenever any land against which there has been levied any special assessment by any water district shall have been sold in part or subdivided, the board of water commissioners of such district shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of commissioners of the water district which levied the assessment. If the water commissioners determine that a segregation should be made, they shall by resolution order the treasurer of the county in which the real property is located to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the treasurer of the county in which the real property is located who shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to such charge the board of water commissioners may require as a condition to the order of segregation that the person seeking it pay the district the reasonable engineering and clerical costs incident to making the segregation. [1982 1st ex.s. c 17 § 19; 1953 c 251 § 23.]

Segregation duties of county treasurer: RCW 36.29.160.

57.16.120 Acquisition of property subject to local improvement assessments—Payment. See RCW 79.44.190.

57.16.140 Excess water supply capacity not grounds for zoning decision challenge. The construction of or existence of water supply capacity in excess of the needs of the density allowed by zoning shall not be grounds for any legal challenge to any zoning decision by the county. [1982 c 213 § 4.]

57.16.150 Foreclosure of assessments—Attorneys' fees. Judgments foreclosing local improvement assessments pursuant to RCW 35.50.260 may also allow to water districts, in addition to delinquent installments, interest, penalties, and costs, such attorneys' fees as the court may adjudge reasonable. [1987 c 449 § 16.]

**Chapter 57.20
FINANCES**

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Election to authorize revenue bonds: RCW 57.16.030.

57.20.010 General obligation bonds—Term—Issuance—Excess bond retirement levies. When general district indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations has been authorized, the district may issue its general obligation bonds in payment thereof.

The bonds shall not have terms in excess of twenty years and shall as nearly as practicable be issued for a period which will not exceed the life of the improvement to be acquired by the issuance of the bonds. The bonds shall be issued and sold in accordance with chapter 39.46 RCW. The election at which the voters are presented with a ballot proposition authorizing both the bond issue and imposition of excess bond retirement levies shall be held as provided in RCW 39.36.050.

Whenever the proposition to issue such bonds and impose such excess bond retirement levies has been approved, there shall be levied by the officers or governing body charged with the duty of levying taxes, annual levies in excess of the constitutional and/or statutory tax limitations sufficient to meet the annual or semiannual payments of principal and interest on the bonds upon all taxable property within the district. [1984 c 186 § 53; 1983 c 167 § 162; 1973 1st ex.s. c 195 § 71; 1970 ex.s. c 56 § 83; 1969 ex.s. c 232 § 87; 1953 c 251 § 12; 1951 2nd ex.s. c 25 § 3; 1931 c 72 § 2; 1929 c 114 § 11; RRS § 11589. Cf. 1913 c 161 § 11.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—**Severability**—1983 c 167: See RCW 39.46.010 and note following.

Severability—**Effective dates and termination dates**—**Construction**—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—**Saving**—**Severability**—1969 ex.s. c 232: See notes following RCW 39.52.020.

57.20.015 Refunding general obligation bonds. (1)

The board of water commissioners of any water district may by resolution, without submitting the matter to the voters of the district, provide for the issuance of refunding general obligation bonds to refund any outstanding general obligation bonds, or any part thereof, at maturity thereof, or before the maturity thereof if they are subject to call for prior redemption or all of the owners thereof consent thereto.

(2) The total cost to the district over the life of the refunding bonds shall not exceed the total cost to the district which the district would have incurred but for such refunding over the remainder of the life of the bonds to be refunded thereby.

(3) The refunding bonds may be exchanged for the bonds to be refunded thereby, or may be sold in such manner as the board of water commissioners deems to be for the best interest of the district, and the proceeds of such sale used exclusively for the purpose of paying, retiring, and canceling the bonds to be refunded and interest thereon. Such bonds may be of any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(4) The provisions of RCW 57.20.010, concerning the issuance and sale of general obligation bonds and providing for annual tax levies in excess of the constitutional and/or statutory tax limitations shall apply to the refunding general obligation bonds issued under this section. [1984 c 186 § 54; 1983 c 167 § 163; 1973 1st ex.s. c 195 § 72; 1953 c 251 § 16.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—**Severability**—1983 c 167: See RCW 39.46.010 and note following.

Severability—**Effective dates and termination dates**—**Construction**—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Election to authorize revenue bonds: RCW 57.16.030.

57.20.020 Revenue bonds—Special fund—Classification of service—Adequate rates and charges to be fixed. (1) Whenever any issue or issues of water revenue bonds have been authorized in compliance with

the provisions of RCW 57.16.010 through 57.16.040, said bonds shall be in bearer form or registered as to principal or interest or both, as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds; shall be in such denominations, shall be numbered, shall bear such date, and shall be payable at such time or times up to a maximum period of not to exceed thirty years as shall be determined by the board of water commissioners of the district; shall bear interest at such rate or rates payable at such time or times as authorized by the board; shall be payable at the office of the county treasurer of the county in which the water district is located and may also be payable at such other place or places as the board of water commissioners may determine; shall be executed by the president of the board of water commissioners and attested and sealed by the secretary thereof, one of which signatures may, with the written permission of the signator whose facsimile signature is being used, be a facsimile; and may have facsimile signatures of said president or secretary imprinted on any interest coupons in lieu of original signatures.

The water district commissioners shall have power and are required to create a special fund or funds for the sole purpose of paying the interest and principal of such bonds into which special fund or funds the said water district commissioners shall obligate and bind the water district to set aside and pay a fixed proportion of the gross revenues of the water supply system or any fixed amount out of and not exceeding a fixed proportion of such revenues, or a fixed amount or amounts without regard to any fixed proportion and such bonds and the interest thereof shall be payable only out of such special fund or funds, but shall be a lien and charge against all revenues and payments received from any utility local improvement district or districts pledged to secure such bonds, subject only to operating and maintenance expenses.

In creating any such special fund or funds the water district commissioners of such water district shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to and to any proportion or part of the revenue previously pledged as a fund for the payment of bonds, warrants or other indebtedness, and shall not set aside into such special fund a greater amount or proportion of the revenue and proceeds than in their judgment will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. Any such bonds and interest thereon issued against any such fund as herein provided shall be a valid claim of the owner thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such water district within the meaning of the constitutional provisions and limitations. Each such bond shall state upon its face that it is payable from a special fund, naming the said fund and the resolution creating it. Said bonds shall be sold in such manner, at such price and at such rate or rates of interest as the water district commissioners shall deem for the best

interests of the water district, either at public or private sale, and the said commissioners may provide in any contract for the construction and acquirement of the proposed improvement (and for the refunding of outstanding local improvement district obligations, if any) that payment therefor shall be made in such bonds at par value thereof.

When any such special fund shall have been heretofore or shall be hereafter created and any such bonds shall have been heretofore or shall hereafter be issued against the same a fixed proportion or a fixed amount out of and not to exceed such fixed proportion, or a fixed amount or amounts without regard to any fixed proportion, of revenue shall be set aside and paid into said special fund as provided in the resolution creating such fund or authorizing such bonds, and in case any water district shall fail thus to set aside and pay said fixed proportion or amount as aforesaid, the owner of any bond payable from such special fund may bring suit or action against the water district and compel such setting aside and payment.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

(3) The water district commissioners of any water district, in the event that such water revenue bonds are issued, shall provide for revenues by fixing rates and charges for the furnishing of water supply to those receiving such service, such rates and charges to be fixed as deemed necessary by such water district commissioners, so that uniform charges will be made for the same class of customer or service.

In classifying customers served or service furnished by such water supply system, the board of water commissioners may in its discretion consider any or all of the following factors: The difference in cost of service to the various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the water furnished; the time of its use; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Such rates shall be made on a monthly basis as may be deemed proper by such commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements and all other charges necessary for efficient and proper operation of the system. [1983 c 167 § 164; 1975 1st ex.s. c 25 § 3; 1970 ex.s. c 56 § 84; 1969 ex.s. c 232 § 88; 1959 c 108 § 11; 1939 c 128 § 3; RRS § 11588-1.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Authority to adjust or delay rates or charges for poor persons: RCW 57.08.014.

57.20.023 Covenants to guarantee payment of revenue bonds—Bonds payable from same source may be issued on parity. The board of water commissioners may make such covenants as it may deem necessary to secure and guarantee the payment of the principal of and interest on water revenue bonds of the district, including but not being limited to covenants for the establishment and maintenance of adequate reserves to secure or guarantee the payment of such principal and interest; the protection and disposition of the proceeds of sale of such bonds; the use and disposition of the gross revenues of the water supply system of the district and any additions or betterments thereto or extensions thereof; the use and disposition of any utility local improvement district assessments; the creation and maintenance of funds for renewals and replacements of the system; the establishment and maintenance of rates and charges adequate to pay principal and interest of such bonds and to maintain adequate coverage over debt service; the maintenance, operation and management of the system and the accounting, insuring and auditing of the business in connection therewith; the terms upon which such bonds or any of them may be redeemed at the election of the district; limitations upon the right of the district to dispose of its system or any part thereof; the appointment of trustees, depositaries and paying agents to receive, hold, disburse, invest and reinvest all or any part of the proceeds of sale of the bonds and all or any part of the income, revenue and receipts of the district, and the board of water commissioners may make such other covenants as it may deem necessary to accomplish the most advantageous sale of such bonds. The board of water commissioners may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. [1959 c 108 § 12.]

57.20.025 Refunding revenue bonds. The board of water commissioners of any water district may by resolution provide for the issuance of refunding revenue bonds to refund outstanding general obligation bonds and/or revenue bonds, or any part thereof, and/or all outstanding local improvement district bonds, at maturity thereof, or before maturity thereof if they are subject to call for prior redemption or all of the holders thereof consent thereto. The total interest cost to the district over the life of the refunding bonds shall not exceed the total cost to the district which the district would have incurred but for such refunding over the remainder of the life of the bonds to be refunded thereby. The refunding bonds may be exchanged for the bonds to be refunded thereby, or may be sold in such manner as the board of water commissioners deems to be for the best interest of the district, and the proceeds used, except as hereinafter provided, exclusively for the purpose of paying, retiring and canceling the bonds to be refunded and interest thereon.

All unpaid utility local improvement district assessments payable into the revenue bond redemption fund

established for payment of the bonds to be refunded shall thereafter when collected be paid into the revenue bond redemption fund established for payment of the refunding revenue bonds.

Whenever local improvement district bonds have been refunded as provided by RCW 57.16.030 as now or hereafter amended, or pursuant to this section, all local improvement district assessments remaining unpaid shall thereafter when collected be paid into the revenue bond redemption fund established for payment of the refunding revenue bonds, and the cash balance, if any, in the local improvement guaranty fund of the district and the proceeds received from any other assets owned by such fund shall be used in whole or in part as a reserve fund for the refunding revenue bonds or be transferred in whole or in part to any other funds of the district as the board of water commissioners may determine. In the event that any warrants are outstanding against the local improvement guaranty fund of the district at the time of the issuance of such refunding revenue bonds, said bonds shall be issued in an amount sufficient also to fund and pay such outstanding warrants.

The provisions of RCW 57.20.020 shall apply to the refunding revenue bonds issued under this title. [1977 ex.s. c 299 § 8; 1959 c 108 § 13; 1953 c 251 § 17.]

57.20.027 Revenue warrants and revenue bonds anticipation warrants. Water districts may also issue revenue warrants and revenue bond anticipation warrants for the same purposes for which such districts may issue revenue bonds. The provisions of this chapter relating to the authorization, terms, conditions, covenants, issuance and sale of revenue bonds (exclusive of provisions relating to refunding) shall be applicable to such warrants. Water districts issuing revenue bond anticipation warrants may make covenants relative to the issuance of revenue bonds to provide funds for the redemption of part or all of such warrants and may contract for the sale of such bonds and warrants. [1975 1st ex.s. c 25 § 5.]

57.20.030 Local improvement guaranty fund. Every water district in the state is hereby authorized to create a fund for the purpose of guaranteeing, to the extent of such fund, and in the manner hereinafter provided, the payment of all of its local improvement bonds issued, subsequent to June 9, 1937, to pay for any local improvement within its confines. Such fund shall be designated "Local Improvement Guaranty Fund, Water District No. -----," and shall be established by resolution of the board of water commissioners. For the purpose of maintaining such fund, every water district, after the establishment thereof, shall at all times set aside and pay into such a fund such proportion of the monthly gross revenues of the water supply system of such water district as the commissioners thereof may direct by resolution. This proportion may be varied from time to time as the commissioners deem expedient or necessary: *Provided, however,* That under the existence of the conditions set forth in subsections (1) and (2) next hereunder, then the proportion must be as therein specified, to wit:

(1) Whenever any bonds of any local improvement district have been guaranteed under *this act and the guaranty fund does not have a cash balance equal to twenty percent of all bonds originally guaranteed under *this act, (excluding issues which have been retired in full) then twenty percent of the gross monthly revenues derived from all water users in the territory included in said local improvement district (but not necessarily from users in other parts of the water district as a whole) shall be set aside and paid into the guaranty fund: *Provided, however,* That whenever, under the requirements of this subsection, said cash balance accumulates so that it is equal to twenty percent of all bonds guaranteed, or to the full amount of all bonds guaranteed, outstanding and unpaid (which amount might be less than twenty percent of the original total guaranteed), then no further moneys need be set aside and paid into said guaranty fund so long as said condition shall continue.

(2) Whenever any warrants issued against the guaranty fund, as hereinbelow provided, remain outstanding and uncalled for lack of funds for six months from date of issuance thereof; or whenever any coupons or bonds guaranteed under *this act have been matured for six months and have not been redeemed either in cash or by issuance and delivery of warrants upon the guaranty fund, then twenty percent of the gross monthly revenues (or such portion thereof as the commissioners of the water district determine will be sufficient to retire said warrants or redeem said coupons or bonds in the ensuing six months) derived from all water users in the water district shall be set aside and paid into the guaranty fund: *Provided, however,* That whenever under the requirements of this subsection all warrants, coupons, or bonds specified in this subsection above have been redeemed, no further income need be set aside and paid into said guaranty fund under the requirements of this subsection until and unless other warrants remain outstanding and unpaid for six months or other coupons or bonds default.

(3) For the purpose of complying with the requirements of setting aside and paying into the local improvement guaranty fund a proportion of the monthly gross revenues of the water supply system of any water district, as hereinabove provided, said water district shall bind and obligate itself to maintain and operate said system and further bind and obligate itself to establish, maintain and collect such rates for water as will produce gross revenues sufficient to maintain and operate said water supply system and to make necessary provision for the local improvement guaranty fund as specified by this section and RCW 57.20.080 and 57.20.090. And said water district shall alter its rates for water from time to time and shall vary the same in different portions of its territory to comply with the said requirements.

(4) Whenever any coupon or bond guaranteed by *this act shall mature and there shall not be sufficient funds in the appropriate local improvement district bond redemption fund to pay same, then the applicable county treasurer shall pay same from the local improvement guaranty fund of the water district; if there shall not be sufficient funds in the said guaranty fund to pay same,

then the same may be paid by issuance and delivery of a warrant upon the local improvement guaranty fund.

(5) Whenever the cash balance in the local improvement guaranty fund is insufficient for the required purposes, warrants drawing interest at a rate determined by the commissioners may be issued by the applicable county auditor, against the said fund to meet any liability accrued against it and must be issued upon demand of the holders of any maturing coupons and/or bonds guaranteed by this section, or to pay for any certificates of delinquency for delinquent installments of assessments as provided in subsection (6) of this section. Guaranty fund warrants shall be a first lien in their order of issuance upon the gross revenues set aside and paid into said fund.

(6) Within twenty days after the date of delinquency of any annual installment of assessments levied for the purpose of paying the local improvement bonds of any water district guaranteed under the provisions of *this act, it shall be mandatory for the county treasurer of the county in which the real property is located to compile a statement of all installments delinquent, together with the amount of accrued interest and penalty appurtenant to each of said installments. Thereupon the applicable county treasurer shall forthwith purchase (for the water district) certificates of delinquency for all such delinquent installments. Payment for all such certificates of delinquency shall be made from the local improvement guaranty fund and if there shall not be sufficient moneys in said fund to pay for such certificates of delinquency, the applicable county treasurer shall accept said local improvement guaranty fund warrants in payment therefor. All such certificates of delinquency shall be issued in the name of the local improvement guaranty fund and all guaranty fund warrants issued in payment therefor shall be issued in the name of the appropriate local improvement district fund. Whenever any market is available and the commissioners of the water district so direct, the applicable county treasurer shall sell any certificates of delinquency belonging to the local improvement guaranty fund: *Provided*, That any such sale must not be for less than face value thereof plus accrued interest from date of issuance to date of sale.

Such certificates of delinquency, as above provided, shall be issued by the county treasurer of the county in which the real property is located, shall bear interest at the rate of ten percent per annum, shall be in each instance for the face value of the delinquent installment, plus accrued interest to date of issuance of certificate of delinquency, plus a penalty of five percent of such face value, and shall set forth:

- (a) Description of property assessed;
- (b) Date installment of assessment became delinquent;
- (c) Name of owner or reputed owner, if known.

Such certificates of delinquency may be redeemed by the owner of the property assessed at any time up to two years from the date of foreclosure of such certificate of delinquency.

If any such certificate of delinquency be not redeemed on the second occurring first day of January subsequent

to its issuance, the county treasurer who issued the certificate of delinquency shall then proceed to foreclose such certificate of delinquency in the manner specified for the foreclosure of the lien of local improvement assessments, pursuant to chapter 35.50 RCW and if no redemption be made within the succeeding two years shall execute and deliver a deed conveying fee simple title to the property described in the foreclosed certificate of delinquency. [1982 1st ex.s. c 17 § 20; 1981 c 156 § 20; 1937 c 102 § 1; 1935 c 82 § 1; RRS § 11589-1. Formerly RCW 57.20.030 through 57.20.070.]

***Reviser's note:** The term "this act" first appears in 1937 c 102, codified as RCW 57.20.030, 57.20.080, and 57.20.090.

57.20.080 Guaranty fund—Subrogation of district as trustee. Whenever there shall be paid out of a guaranty fund any sum on account of principal or interest upon a local improvement bond, or on account of purchase of certificates of delinquency, the water district, as trustee for the fund, shall be subrogated to all rights of the owner of the bonds, or any interest, or delinquent assessment installments, so paid; and the proceeds thereof, or of the assessment or assessments underlying the same, shall become a part of the guaranty fund. There shall also be paid into each guaranty fund the interest received from the bank deposits of the fund, as well as any surplus remaining in the local improvement funds guaranteed by the guaranty fund, after the payment of all outstanding bonds payable primarily out of such local improvement funds. As among the several issues of bonds guaranteed by the fund, no preference shall exist, but defaulted bonds and any defaulted interest payments shall be purchased out of the fund in the order of their presentation.

The commissioners of every water district operating under RCW 57.20.030, 57.20.080, and 57.20.090 shall prescribe, by resolution, appropriate rules and regulations for the guaranty fund, not inconsistent herewith. So much of the money of a guaranty fund as is necessary and is not required for other purposes under RCW 57.20.030, 57.20.080, and 57.20.090 may, at the discretion of the commissioners of the water district, be used to purchase property at county tax foreclosure sales or from the county after foreclosure in cases where such property is subject to unpaid local improvement assessments securing bonds guaranteed by the guaranty fund and such purchase is deemed necessary for the purpose of protecting the guaranty fund. In such cases the said fund shall be subrogated to all rights of the water district. After so acquiring title to real property, the water district may lease or resell and convey the same in the same manner that county property is authorized to be leased or resold and for such prices and on such terms as may be determined by resolution of the board of water commissioners. Any provision of law to the contrary notwithstanding, all proceeds resulting from such resales shall belong to and be paid into the guaranty fund. [1983 c 167 § 165; 1937 c 102 § 2; 1935 c 82 § 2; RRS § 11589-2.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

57.20.090 Rights and remedies of bond owner. The owner of any local improvement bonds guaranteed under the provisions of RCW 57.20.030, 57.20.080, and 57.20.090 shall not have any claim therefor against the water district by which the same is issued, except for payment from the special assessments made for the improvement for which said local improvement bonds were issued, and except as against the local improvement guaranty fund of said water district; and the water district shall not be liable to any owner of such local improvement bond for any loss to the guaranty fund occurring in the lawful operation thereof by the water district. The remedy of the owner of a local improvement bond, in case of non-payment, shall be confined to the enforcement of the assessment and to the guaranty fund. A copy of the foregoing part of this section shall be plainly written, printed or engraved on each local improvement bond guaranteed by RCW 57.20.030, 57.20.080, and 57.20.090. The establishment of a local improvement guaranty fund by any water district shall not be deemed at variance from any comprehensive plan heretofore adopted by such water district.

In the event any local improvement guaranty fund hereunder authorized at any time has a balance therein in cash, and the obligations guaranteed thereby have all been paid off, then such balance shall be transferred to the maintenance fund of the water district. [1983 c 167 § 166; 1937 c 102 § 3; 1935 c 82 § 3; RRS § 11589-3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

57.20.100 Annual tax levy. A district may, in addition to the levies mentioned in RCW 57.16.020, 57.16.040 and 57.20.010, levy a general tax on all property located in the district each year not to exceed fifty cents per thousand dollars of assessed value against the assessed valuation of the property where such water district maintains a fire department as authorized by RCW 57.16.010 to 57.16.040, inclusive, but such levy shall not be made where any property within such water district lies within the boundaries of any fire protection district created under Title 52 RCW. The taxes so levied shall be certified for collection as other general taxes, and the proceeds, when collected, shall be placed in such water district funds as the commissioners may direct and paid out on warrants issued for water district purposes. [1984 c 230 § 84; 1983 c 3 § 163; 1973 1st ex.s. c 195 § 73; 1951 2nd ex.s. c 25 § 4; 1951 c 62 § 1; 1929 c 114 § 18; RRS § 11595. Cf. 1913 c 161 § 17.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.
Excess tax levies authorized: RCW 84.52.052.

57.20.110 Limitation of indebtedness. Each and every water district that may hereafter be organized pursuant to *this act is hereby authorized and empowered by and through its board of water commissioners to contract indebtedness for water purposes, and the maintenance thereof not exceeding one-half of one percent of the value of the taxable property in such water district, as the term "value of the taxable property" is defined in

RCW 39.36.015. [1970 ex.s. c 42 § 35; 1929 c 114 § 19; RRS § 11596. Cf. 1913 c 161 § 18.]

***Reviser's note:** For "this act," see note following RCW 57.04.080.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Limitation on municipal corporation indebtedness: State Constitution Art. 8 § 6.

57.20.120 Additional indebtedness. Each and every water district hereafter to be organized pursuant to this title, may contract indebtedness in excess of the amount named in RCW 57.20.110, but not exceeding in amount, together with existing indebtedness, two and one-half percent of the value of the taxable property in said district, as the term "value of the taxable property" is defined in RCW 39.36.015, whenever three-fifths of the voters voting at said election in such water district assent thereto, at which election the total number of persons voting on the proposition shall constitute not less than forty percent of the total number of votes cast in the water district at the last preceding general election, at an election to be held in said water district in the manner provided by this title and RCW 39.36.050: *Provided*, That all bonds so to be issued shall be subject to the provisions regarding bonds as set out in RCW 57.20.010. [1984 c 186 § 55; 1970 ex.s. c 42 § 36; 1929 c 114 § 20; RRS § 11597. Cf. 1913 c 161 § 19.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

57.20.130 Bonds—Payment of interest. Any coupons for the payment of interest on said bonds shall be considered for all purposes as warrants drawn upon the general fund of the said water district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such water district at maturity, or thereafter, and when so presented, if there are not funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to endorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as the bond to which it was attached. When there are no funds in the treasury to make interest payments on bonds not having coupons, the overdue interest payment shall continue bearing interest at the bond rate until it is paid, unless otherwise provided in the proceedings authorizing the sale of the bonds. [1983 c 167 § 167; 1929 c 114 § 22; RRS § 11599. Cf. 1913 c 161 § 21.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

57.20.135 Treasurer—Designation—Approval—Powers and duties—Bond. Upon obtaining the approval of the county treasurer, the board of commissioners of a water district with more than twenty-five hundred customers may designate by resolution some other person having experience in financial or fiscal matters as the treasurer of the district. Such a treasurer

shall possess all of the powers, responsibilities, and duties of, and shall be subject to the same restrictions as provided by law for, the county treasurer with regard to a water district, and the county auditor with regard to water district financial matters. Such treasurer shall be bonded for not less than twenty-five thousand dollars. Approval by the county treasurer authorizing such a water district to designate its treasurer shall not be arbitrarily or capriciously withheld. [1988 c 162 § 11; 1983 c 57 § 4.]

Ratification—1988 c 162 §§ 10, 11: See note following RCW 56.16.135.

57.20.140 Maintenance or general fund and special funds. Unless the board of commissioners of a water district designates a treasurer under RCW 57.20.135, the county treasurer shall create and maintain a separate fund designated as the maintenance fund or general fund of the district into which shall be paid all money received by him from the collection of taxes other than taxes levied for the payment of general obligation bonds of the district and all revenues of the district other than assessments levied in local improvement districts or utility local improvement districts, and no money shall be disbursed therefrom except upon warrants of the county auditor issued by authority of the commissioners or upon a resolution of the commissioners ordering a transfer to any other fund of the district. The county treasurer shall also maintain such other special funds as may be prescribed by the water district, into which shall be placed such moneys as the board of water commissioners may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by authority of the board of water commissioners. [1983 c 57 § 3; 1959 c 108 § 14; 1929 c 114 § 23; RRS § 11600. Cf. 1913 c 161 § 22.]

57.20.150 Maintenance or general fund and special funds—Use of surplus in maintenance or general fund. Whenever a water district has accumulated moneys in the maintenance fund or general fund of the district in excess of the requirements of such fund, the board of water commissioners may in its discretion use any of such surplus moneys for any of the following purposes: (1) Redemption or servicing of outstanding obligations of the district, (2) maintenance expenses of the district, (3) construction or acquisition of any facilities necessary to carry out the purpose of the district. [1959 c 108 § 15.]

57.20.160 Maintenance or general fund and special funds—Deposits and investments. Whenever there shall have accumulated in any general or special fund of a water district moneys, the disbursement of which is not yet due, the board of water commissioners may, by resolution, authorize the county treasurer to deposit or invest such moneys in qualified public depositories, or to invest such moneys in any investment permitted at any time by RCW 36.29.020: *Provided*, That the county treasurer

may refuse to invest any district moneys the disbursement of which will be required during the period of investment to meet outstanding obligations of the district. [1986 c 294 § 13; 1983 c 66 § 22; 1981 c 24 § 4; 1973 1st ex.s. c 140 § 3; 1959 c 108 § 16.]

Severability—1983 c 66: See note following RCW 39.58.010.
Public depositories: Chapter 39.58 RCW.

57.20.165 Deposit account requirements. Water district moneys shall be deposited by the district in an account, which may be interest-bearing, subject to such requirements and conditions as may be prescribed by the state auditor. The account shall be in the name of the district except, upon request by the treasurer, the accounts shall be in the name of the " (name of county) county treasurer." The treasurer may instruct the financial institutions holding the deposits to transfer them to the treasurer at such times as the treasurer may deem appropriate, consistent with regulations governing and policies of the financial institution. [1981 c 24 § 2.]

57.20.170 Maintenance or general fund and special funds—Loans from maintenance or general funds to construction funds. The board of water commissioners of any water district may, by resolution, authorize and direct a loan or loans from maintenance funds or general funds of the district to construction funds of the district: *Provided*, That such loan does not, in the opinion of the board of water commissioners, impair the ability of the district to operate and maintain its water supply system. [1959 c 108 § 17.]

Chapter 57.22

CONTRACTS FOR WATER SYSTEM EXTENSIONS

Sections	
57.22.010	Contracts—Conditions.
57.22.020	Reimbursement to owner.
57.22.030	Scope of reimbursement.
57.22.040	Reimbursement—Procedures.
57.22.050	District participation in financing project.

57.22.010 Contracts—Conditions. If the water district approves an extension to the water system, the district shall contract with owners of real estate located within the district boundaries, at an owner's request, for the purpose of permitting extensions to the district's water system to be constructed by such owner at such owner's sole cost where such extensions are required as a prerequisite to further property development. The contract shall contain such conditions as the district may require pursuant to the district's adopted policies and standards. The district shall request comprehensive plan approval for such extension, if required, and connection of the extension to the district system is conditioned upon:

- (1) Construction of such extension according to plans and specifications approved by the district;
- (2) Inspection and approval of such extension by the district;

(3) Transfer to the district of such extension without cost to the district upon acceptance by the district of such extension;

(4) Payment of all required connection charges to the district;

(5) Full compliance with the owner's obligations under such contract and with the district's rules and regulations;

(6) Provision of sufficient security to the district to ensure completion of the extension and other performance under the contract;

(7) Payment by the owner to the district of all of the district's costs associated with such extension including, but not limited to, the district's engineering, legal, and administrative costs; and

(8) Verification and approval of all contracts and costs related to such extension. [1989 c 389 § 11.]

57.22.020 Reimbursement to owner. The contract shall also provide, subject to the terms and conditions in this section, for the reimbursement to the owner or the owner's assigns for a period not to exceed fifteen years of a portion of the costs of the water facilities constructed pursuant to such contract from connection charges received by the district from other property owners who subsequently connect to or use the water facilities within the fifteen-year period and who did not contribute to the original cost of such water facilities. [1989 c 389 § 12.]

57.22.030 Scope of reimbursement. The reimbursement shall be a pro rata share of construction and reimbursement of contract administration costs of the water project. Reimbursement for water projects shall include, but not be limited to, design, engineering, installation, and restoration. [1989 c 389 § 13.]

57.22.040 Reimbursement—Procedures. The procedures for reimbursement contracts shall be governed by the following:

(1) A reimbursement area shall be formulated by the board of commissioners within a reasonable time after the acceptance of the extension. The reimbursement shall be based upon a determination by the board of commissioners of which parcels would require similar water improvements upon development.

(2) The contract must be recorded in the appropriate county auditor's office after the final execution of the agreement. [1989 c 389 § 14.]

57.22.050 District participation in financing project. As an alternative to financing projects under this chapter solely by owners of real estate, a water district may join in the financing of improvement projects and may be reimbursed in the same manner as the owners of real estate who participate in the projects, if the water district has specified the conditions of its participation in a resolution. [1989 c 389 § 15.]

Chapter 57.24

ANNEXATION OF TERRITORY

Sections	
57.24.001	Actions subject to review by boundary review board.
57.24.010	Annexation authorized—Petition—Notice of hearing.
57.24.020	Hearing procedure—Boundaries—Election, notice, judges.
57.24.040	Election—Qualification of voters.
57.24.050	Expense of election.
57.24.060	Petition method is alternative to election method.
57.24.070	Petition method—Petition—Signers—Content—Certain public properties excluded from local improvement districts.
57.24.080	Petition method—Hearing—Notice.
57.24.090	Petition method—Resolution providing for annexation.
57.24.100	Petition method—Effective date of annexation—Prior indebtedness.
57.24.150	Water district activities to be approved—Criteria for approval by county legislative authority.
57.24.170	Annexation of certain unincorporated territory—Authorized—Hearing.
57.24.180	Annexation of certain unincorporated territory—Opportunity to be heard—Effective date of annexation resolution—Notice—Referendum.
57.24.190	Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation.
57.24.200	Expenditure of funds to provide certain information authorized—Limits.
57.24.210	Annexation of certain unincorporated territory with boundaries contiguous to two districts—Procedure.

57.24.001 Actions subject to review by boundary review board. Actions taken under chapter 57.24 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 58.]

57.24.010 Annexation authorized—Petition—Notice of hearing. Territory within the county or counties in which a district is located, or territory adjoining or in close proximity to a district but which is located in another county, may be annexed to and become a part of the district. All annexations shall be accomplished in the following manner: Twenty percent of the number of registered voters residing in the territory proposed to be annexed who voted at the last election may file a petition with the district commissioners and cause the question to be submitted to the electors of the territory whether such territory will be annexed and become a part of the district. If the commissioners concur in the petition, they shall file it with the county election officer of each county in which the real property proposed to be annexed is located, who shall, within ten days, examine and validate the signatures thereon and certify to the sufficiency or insufficiency thereof; and for such purpose the county election officer shall have access to all registration books in the possession of the officers of any city or town in the proposed district. If the petition contains a sufficient number of signatures, the county election officer of the county in which the real property proposed to be annexed is located shall transmit it, together with a certificate of sufficiency attached thereto to the water commissioners of the district. If there are no electors residing in the territory to be annexed, the petition may be

signed by such a number as appear of record to own at least a majority of the acreage in the territory, and the petition shall disclose the total number of acres of land in the territory and the names of all record owners of land therein. If the commissioners are satisfied as to the sufficiency of the petition and concur therein, they shall send it, together with their certificate of concurrence attached thereto to the county legislative authority of each county in which the territory proposed to be annexed is located.

The county legislative authority, upon receipt of a petition certified to contain a sufficient number of signatures of electors, or upon receipt of a petition signed by such a number as own at least a majority of the acreage, together with a certificate of concurrence signed by the water commissioners, at a regular or special meeting shall cause to be published once a week for at least two weeks in a newspaper in general circulation throughout the territory proposed to be annexed a notice that the petition has been filed, stating the time of the meeting at which it shall be presented, and setting forth the boundaries of the territory proposed to be annexed. [1989 c 308 § 4; 1988 c 162 § 14; 1982 1st ex.s. c 17 § 21; 1959 c 18 § 15. Prior: 1951 2nd ex.s. c 25 § 5; 1931 c 72 § 5, part; 1929 c 114 § 15, part; RRS § 11593, part. Cf. 1913 c 161 § 15, part.]

57.24.020 Hearing procedure—Boundaries—Election, notice, judges. When such petition is presented for hearing, the legislative authority of each county in which the territory proposed to be annexed is located shall hear the petition or may adjourn the hearing from time to time not exceeding one month in all, and any person, firm, or corporation may appear before the county legislative authority and make objections to the proposed boundary lines or to annexation of the territory described in the petition. Upon a final hearing each county legislative authority shall make such changes in the proposed boundary lines within the county as they deem to be proper and shall establish and define such boundaries and shall find whether the proposed annexation as established by the county legislative authority to the water district will be conducive to the public health, welfare and convenience and will be of special benefit to the land included within the boundaries of the territory proposed to be annexed to the water district of the territory proposed to be annexed to the water district. No lands which will not, in the judgment of the county legislative authority, be benefited by inclusion therein, shall be included within the boundaries of the territory as so established and defined. No change shall be made by the county legislative authority in the boundary lines, including any territory outside of the boundary lines described in the petition. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the petition with the board of water commissioners.

Upon the entry of the findings of the final hearing each county legislative authority, if they find the proposed annexation to be conducive to the public health,

welfare and convenience and to be of special benefit to the land proposed to be annexed and included within the boundaries of the district, shall give notice of a special election to be held within the boundaries of the territory proposed to be annexed to the water district for the purpose of determining whether the same shall be annexed to the water district. The notice shall particularly describe the boundaries established by the county legislative authority, and shall state the name of the water district to which the territory is proposed to be annexed, and the notice shall be published in a newspaper of general circulation in the territory proposed to be annexed at least once a week for a minimum of two successive weeks prior to the election and shall be posted for the same period in at least four public places within the boundaries of the territory proposed to be annexed, which notice shall designate the places within the territory proposed to be annexed where the election shall be held, and the proposition to the voters shall be expressed on ballots which contain the words:

For Annexation to Water District
or
Against Annexation to Water District

The county legislative authority shall name the persons to act as judges at such election. [1982 1st ex.s. c 17 § 22; 1959 c 18 § 16. Prior: 1931 c 72 § 5; 1929 c 114 § 15; RRS § 11593. Cf. 1913 c 161 § 15. Formerly RCW 57.24.010, 57.24.020 and 57.24.030.]

57.24.040 Election—Qualification of voters. The said election shall be held on the date designated in such notice and shall be conducted in accordance with the general election laws of the state. In the event the original petition for annexation is signed by qualified electors then only qualified electors, at the date of election, residing in the territory proposed to be annexed, shall be permitted to vote at the said election. In the event the original petition for annexation is signed by property owners as provided for in *this act then no person shall be entitled to vote at such election unless at the time of the filing of the original petition he owned land in the district of record and in addition thereto at the date of election shall be a qualified elector of the county in which such district is located. It shall be the duty of the county auditor, upon request of the county commissioners, to certify to the election officers of any such election, the names of all persons owning land in the district at the date of the filing of the original petition as shown by the records of his office; and at any such election the election officers may require any such landowner offering to vote to take an oath that he is a qualified elector of the county before he shall be allowed to vote; *Provided*, That at any election held under the provisions of *this act an officer or agent of any corporation having its principal place of business in said county and owning land at the date of filing the original petition in the district duly authorized thereto in writing may cast a vote on behalf of such corporation. When so voting he shall file with the election officers such a written instrument of his authority. The judge or judges at such election

shall make return thereof to the board of water commissioners, who shall canvass such return and cause a statement of the result of such election to be entered on the record of such commissioners. If the majority of the votes cast upon the question of such election shall be for annexation, then such territory shall immediately be and become annexed to such water district and the same shall then forthwith be a part of the said water district, the same as though originally included in such district. [1929 c 114 § 16; RRS § 11593-1.]

*Reviser's note: For "this act," see note following RCW 57.04.080.

57.24.050 Expense of election. All elections held pursuant to *this act, whether general or special, shall be conducted by the county election board of the county in which the district is located.

The expense of all such elections shall be paid for out of the funds of such water district. [1929 c 114 § 17; RRS § 11594. Cf. 1913 c 161 § 16.]

*Reviser's note: For "this act," see note following RCW 57.04.080.

57.24.060 Petition method is alternative to election method. The method of annexation provided for in RCW 57.24.070 through 57.24.100 shall be an alternative method to that specified in RCW 57.24.010 through 57.24.050. [1953 c 251 § 22.]

57.24.070 Petition method—Petition—Signers—Content—Certain public properties excluded from local improvement districts. A petition for annexation of an area contiguous to a water district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation. [1985 c 141 § 8; 1953 c 251 § 18.]

57.24.080 Petition method—Hearing—Notice. If the petition for annexation filed with the board of commissioners complies with the requirements of law, as proved to the satisfaction of the board of commissioners, it may entertain the petition, fix the date for public hearing thereon, and cause notice of the hearing to be published in one issue of a newspaper of general circulation in the area proposed to be annexed and also posted

in three public places within the area proposed for annexation. The notice shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of publication and posting of the notice shall be borne by the signers of the petition. [1953 c 251 § 19.]

57.24.090 Petition method—Resolution providing for annexation. Following the hearing the board of commissioners shall determine by resolution whether annexation shall be made. It may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the resolution a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [1953 c 251 § 20.]

57.24.100 Petition method—Effective date of annexation—Prior indebtedness. Upon the date fixed in the resolution the area annexed shall become a part of the district.

No property within the limits of the territory so annexed shall ever be taxed or assessed to pay any portion of the indebtedness of the district to which it is annexed contracted prior to or existing at the date of annexation; nor shall any such property be released from any taxes or assessments levied against it or from liability for payment of outstanding bonds or warrants issued prior to such annexation. [1953 c 251 § 21.]

57.24.150 Water district activities to be approved—Criteria for approval by county legislative authority. See RCW 57.02.040 and 56.02.070.

57.24.170 Annexation of certain unincorporated territory—Authorized—Hearing. When there is, within a water district, unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to the water district, the board of commissioners may resolve to annex such territory to the water district. The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the water district and one or more newspapers of general circulation within the area to be annexed. [1982 c 146 § 4.]

57.24.180 Annexation of certain unincorporated territory—Opportunity to be heard—Effective date of annexation resolution—Notice—Referendum. On the date set for hearing under RCW 57.24.170, residents or property owners of the area included in the resolution for annexation shall be afforded an opportunity to be heard. The board of commissioners may provide by resolution for annexation of the territory described in the resolution, but the effective date of the resolution shall

be not less than forty-five days after the passage thereof. The board of commissioners shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the resolution, in one or more newspapers of general circulation within the water district and in one or more newspapers of general circulation within the area to be annexed. Upon the filing of a timely and sufficient referendum petition under RCW 57.24.190, a referendum election shall be held under RCW 57.24.190, and the annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto. After the expiration of the forty-fifth day from, but excluding the date of passage of the annexation resolution, if no timely and sufficient referendum petition has been filed, under RCW 57.24.190, the area annexed shall become a part of the water district upon the date fixed in the resolution of annexation. [1982 c 146 § 5.]

57.24.190 Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation. Such annexation resolution under RCW 57.24.180 shall be subject to referendum for forty-five days after the passage thereof. Upon the filing of a timely and sufficient referendum petition with the board of commissioners, signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of such area in a general election if one is to be held within ninety days or at a special election called for that purpose not less than forty-five days nor more than ninety days after the filing of the referendum petition. Notice of such election shall be given under RCW 57.24.020 and the election shall be conducted under RCW 57.24.040. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation resolution, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the water district upon the date fixed in the resolution of annexation upon transmitting the resolution to the county legislative authority. [1982 c 146 § 6.]

57.24.200 Expenditure of funds to provide certain information authorized—Limits. Water districts may expend funds to inform residents in areas proposed for annexation into the district of the following:

- (1) Technical information and data;
- (2) The fiscal impact of the proposed improvement;
- (3) The types of improvements planned.

Expenditures under this section shall be limited to research, preparation, printing, and mailing of the information. [1986 c 258 § 2.]

57.24.210 Annexation of certain unincorporated territory with boundaries contiguous to two districts—Procedure. When there is unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to two water districts or contiguous to a water district and a sewer district, the board of commissioners of one of the districts may resolve to annex such territory to that district, provided a majority of the board of commissioners of the other water or sewer district concurs. In such event, the district resolving to annex such territory may proceed to effect the annexation by complying with RCW 57.24.170 through 57.24.190. [1987 c 449 § 17.]

Chapter 57.28

WITHDRAWAL OF TERRITORY

Sections

57.28.001	Actions subject to review by boundary review board.
57.28.010	Withdrawal authorized—Petition.
57.28.020	Petition of residents.
57.28.030	Petition of landowners.
57.28.035	Alternative procedure—Resolution.
57.28.040	Notice of hearing—Bond for costs.
57.28.050	Hearing—Findings.
57.28.060	Transmission to county legislative authorities.
57.28.070	Notice of hearing before county legislative authority.
57.28.080	Hearing—Findings.
57.28.090	Election on withdrawal.
57.28.100	Notice of election—Election—Canvass.
57.28.110	Taxes and assessments unaffected.
57.28.150	Water district activities to be approved—Criteria for approval by county legislative authority.

57.28.001 Actions subject to review by boundary review board. Actions taken under chapter 57.28 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 59.]

57.28.010 Withdrawal authorized—Petition. Territory within an established water district for public supply systems may be withdrawn therefrom in the following manner and upon the following conditions: The petition for withdrawal shall be in writing and shall designate the boundaries of the territory proposed to be withdrawn from the district and shall be signed by at least twenty-five percent of the qualified electors residing within the territory so designated who are qualified electors on the date of filing such petition. The petition shall set forth that the territory proposed to be withdrawn is of such location or character that water cannot be furnished to it by such water district at reasonable cost, and shall further set forth that the withdrawal of such territory will be of benefit to such territory and conducive to the general welfare of the balance of the district. [1941 c 55 § 1; Rem. Supp. 1941 § 11604-1.]

57.28.020 Petition of residents. The petition for withdrawal shall be filed with the county election officer of each county in which the water district is located, and after the filing no person having signed the petition shall be allowed to withdraw his name therefrom. Within ten

days after such filing, each county election officer shall examine and verify the signatures of signers residing in the county. For such purpose the county election officer shall have access to all appropriate registration books in the possession of the election officers of any incorporated city or town within the water district. The petition shall be transmitted to the election officer of the county in which the largest land area of the district is located, who shall certify to the sufficiency or insufficiency of the signatures. If such petition be found by such county election officer to contain sufficient signatures, the petition, together with a certificate of sufficiency attached thereto, shall be transmitted to the commissioners of the water district. [1982 1st ex.s. c 17 § 23; 1941 c 55 § 2; Rem. Supp. 1941 § 11604-2.]

57.28.030 Petition of landowners. In the event there are no qualified electors residing within the territory proposed to be withdrawn, then the petition for withdrawal may be signed by such persons as appear of record to own at least a majority of the acreage within such territory, in which event the petition shall also state the total number of acres and the names of all record owners of the land within such territory. The petition so signed shall be filed with the commissioners of the water district, and after such filing no person having signed the same shall be allowed to withdraw his name. [1941 c 55 § 3; Rem. Supp. 1941 § 11604-3.]

57.28.035 Alternative procedure—Resolution. As an alternative procedure to those set forth in RCW 57.28.010 through 57.28.030, the withdrawal of territory within a water district may be commenced by a resolution of the board of commissioners that sets forth boundaries of the territory to be withdrawn and sets a date for the public hearing required under RCW 57.28.050. Upon the final hearing, the commissioners shall make such changes in the proposed boundaries as they deem proper, except that no changes in the boundary lines may be made by the commissioners to include lands not within the boundaries of the territory as described in such resolution.

Whenever the board of commissioners proposes to commence the withdrawal of any portion of their territory located within a city or town using the alternative procedures herein authorized, they shall first notify such city or town of their intent to withdraw said territory. If the legislative authority of the city or town takes no action within sixty days of receipt of notification, the district may proceed with the resolution method.

If the city or town legislative authority disapproves of use of the alternative procedures, the board of commissioners may proceed using the process established pursuant to RCW 57.28.010 through 57.28.030.

A withdrawal procedure commenced under this section shall be subject to the procedures and requirements set forth in RCW 57.28.040 through 57.28.110. [1985 c 153 § 1.]

57.28.040 Notice of hearing—Bond for costs. Upon receipt by the commissioners of a petition and

certificate of sufficiency of the auditor, or if the petition is signed by landowners and the commissioners are satisfied as to the sufficiency of the signatures thereon, they shall at a regular or special meeting fix a date for hearing on the petition and give notice that the petition has been filed, stating the time and place of the meeting of the commissioners at which the petition will be heard and setting forth the boundaries of the territory proposed to be withdrawn. The notice shall be published at least once a week for two successive weeks in a newspaper of general circulation therein, and if no such newspaper is printed in the county, then in some newspaper of general circulation in the county and district. Any additional notice of the hearing may be given as the commissioners may by resolution direct.

Prior to fixing the time for a hearing on any such petition, the commissioners in their discretion may require the petitioners to furnish a satisfactory bond conditioned that the petitioners shall pay all costs incurred by the water district in connection with the petition, including the cost of an election if one is held pursuant thereto, and should the petitioners fail or refuse to post such a bond, if one is required by the water commissioners, then there shall be no duty on the part of the commissioners to act upon the petition. [1985 c 469 § 59; 1951 c 112 § 3; 1941 c 55 § 4; Rem. Supp. 1941 § 11604-4.]

57.28.050 Hearing—Findings. The petition for withdrawal shall be heard at the time and place specified in such notice or the hearing may be adjourned from time to time, not exceeding one month in all, and any person may appear at such hearing and make objections to the withdrawal of such territory or to the proposed boundary lines thereof. Upon final hearing on the petition for withdrawal, the commissioners of the water district shall make such changes in the proposed boundary lines as they deem to be proper, except that no changes in the boundary lines shall be made by the commissioners to include lands not within the boundaries of the territory as described in such petition. In establishing and defining such boundaries the commissioners shall exclude any property which is then being furnished with water by the water district or which is included in any distribution system the construction of which has been duly authorized or which is included within any duly established local improvement district or utility local improvement district, and the territory as finally established and defined must be substantial in area and consist of adjoining or contiguous properties. The commissioners shall thereupon make and by resolution adopt findings of fact as to the following questions:

(1) Would the withdrawal of such territory be of benefit to such territory?

(2) Would such withdrawal be conducive to the general welfare of the balance of the district?

Such findings shall be entered in the records of the water district, together with any recommendations the commissioners may by resolution adopt. [1986 c 109 § 1; 1941 c 55 § 5; Rem. Supp. 1941 § 11604-5.]

57.28.060 Transmission to county legislative authorities. Within ten days after the final hearing the commissioners of the water district shall transmit to the county legislative authority of each county in which the water district is located the petition for withdrawal together with a copy of the findings and recommendations of the commissioners of the water district certified by the secretary of the water district to be a true and correct copy of such findings and recommendations as the same appear on the records of the water district. [1982 1st ex.s. c 17 § 24; 1941 c 55 § 6; Rem. Supp. 1941 § 11604-6.]

57.28.070 Notice of hearing before county legislative authority. Upon receipt of the petition and certified copy of the findings and recommendation adopted by the water commissioners, the county legislative authority of each county in which the district is located at a regular or special meeting shall fix a time and place for hearing thereon and shall cause to be published at least once a week for two or more weeks in successive issues of a newspaper of general circulation in the water district, a notice that such petition has been presented to the county legislative authority stating the time and place of the hearing thereon, setting forth the boundaries of the territory proposed to be withdrawn as such boundaries are established and defined in the findings or recommendations of the commissioners of the water district. [1982 1st ex.s. c 17 § 25; 1941 c 55 § 7; Rem. Supp. 1941 § 11604-7.]

57.28.080 Hearing—Findings. Such petition shall be heard at the time and place specified in such notice, or the hearing may be adjourned from time to time, not exceeding one month in all, and any person may appear at such hearing and make objections to the withdrawal of such territory. Upon final hearing on such petition the said county commissioners shall thereupon make, enter and by resolution adopt their findings of fact on the questions above set forth. If such findings of fact answer said questions affirmatively, and if they are the same as the findings made by the water district commissioners, then the county commissioners shall by resolution declare that such territory be withdrawn from such water district, and thereupon such territory shall be withdrawn and excluded from such water district the same as if it had never been included therein except for the lien of taxes as hereinafter set forth, provided, that the boundaries of the territory withdrawn shall be the boundaries established and defined by the said water district commissioners and shall not be altered or changed by the county commissioners unless the unanimous consent of the water district commissioners be given in writing to any such alteration or change. [1941 c 55 § 8; Rem. Supp. 1941 § 11604-8.]

57.28.090 Election on withdrawal. If the findings of any county legislative authority answer any of such questions of fact in the negative, or if any of the findings of the county legislative authority are not the same as the findings of the water district commissioners upon the same question, then in either of such events, the petition

for withdrawal shall be deemed denied. Thereupon, and in such event, the county legislative authority of each county in which the district is located shall by resolution cause a special election to be held not less than thirty days or more than sixty days from the date of the final hearing of any county legislative authority upon the petition for withdrawal, at which election the proposition expressed on the ballots shall be substantially as follows:

"Shall the territory established and defined by the water district commissioners at their meeting held on the ----- (insert date of final hearing of water district commissioners upon the petition for withdrawal) be withdrawn from water district ----- (naming it).

YES NO

[1982 1st ex.s. c 17 § 26; 1941 c 55 § 9; Rem. Supp. 1941 § 11604-9.]

57.28.100 Notice of election—Election—Canvass. Notice of such election shall be posted and published in the same manner provided by law for the posting and publication of notice of elections to annex territory to water districts. The territory described in the notice shall be that established and defined by the water district commissioners. All qualified voters residing within the water district shall have the right to vote at the election. If a majority of the votes cast favor the withdrawal from the water district of such territory, then within ten days after the official canvass of such election the county legislative authority of each county in which the district is located, shall by resolution establish that the territory has been withdrawn, and the territory shall thereupon be withdrawn and excluded from the water district the same as if it had never been included therein except for the lien of any taxes as hereinafter set forth. [1982 1st ex.s. c 17 § 27; 1941 c 55 § 10; Rem. Supp. 1941 § 11604-10.]

57.28.110 Taxes and assessments unaffected. Any and all taxes or assessments levied or assessed against property located in territory withdrawn from a water district shall remain a lien and be collectible as by law provided when such taxes or assessments are levied or assessed prior to such withdrawal or when such levies or assessments are duly made to provide revenue for the payment of general obligations or general obligation bonds of the water district duly incurred or issued prior to such withdrawal. [1941 c 55 § 11; Rem. Supp. 1941 § 11604-11.]

57.28.150 Water district activities to be approved—Criteria for approval by county legislative authority. See RCW 57.02.040 and 56.02.070.

Chapter 57.32

CONSOLIDATION OF DISTRICTS—TRANSFER OF PART OF DISTRICT

Sections

57.32.001 Actions subject to review by boundary review board.

- 57.32.010 Consolidation authorized—Petition method—Resolution method.
- 57.32.020 Certificate of sufficiency.
- 57.32.021 Procedure upon receipt of certificate of sufficiency—Agreement, contents—Comprehensive plan.
- 57.32.022 Certification of agreement—Election, notice and conduct.
- 57.32.023 Consolidation effected—Cessation of former districts—Rights and powers of consolidated district.
- 57.32.024 Vesting of funds and property in consolidated district—Outstanding indebtedness.
- 57.32.130 Commissioners—Number.
- 57.32.150 Water district activities to be approved—Criteria for approval by county legislative authority.
- 57.32.160 Transfer of part of district—Procedure.

Assumption of jurisdiction over water or sewer district by city: Chapter 35.13A RCW.

57.32.001 Actions subject to review by boundary review board. Actions taken under chapter 57.32 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 60.]

57.32.010 Consolidation authorized—Petition method—Resolution method. Two or more water districts may be joined into one consolidated water district. The consolidation may be initiated in either of the following ways: Ten percent of the legal electors residing within each of the water districts proposed to be consolidated may petition the board of water commissioners of each of their respective water districts to cause the question to be submitted to the legal electors of the water districts proposed to be consolidated; or the boards of water commissioners of each of the water districts proposed to be consolidated may by resolution determine that the consolidation of the districts shall be conducive to the public health, welfare, and convenience and to be of special benefit to the lands of the districts. [1989 c 308 § 11; 1982 1st ex.s. c 17 § 28; 1967 ex.s. c 39 § 1; 1943 c 267 § 1; Rem. Supp. 1943 § 11604–20.]

57.32.020 Certificate of sufficiency. If the consolidation proceedings are initiated by petition, upon the filing of such petitions with the boards of water commissioners of the water districts, the boards of water commissioners of each district shall file such petitions with the election officer of each county in which any district is located who shall within ten days examine and verify the signatures of the signers residing in the county. The petition shall be transmitted by the other county election officers to the county election officer of the county in which the largest land area involved in the petitions is located, who shall certify to the sufficiency or insufficiency of the signatures. If all of such petitions shall be found to contain a sufficient number of signatures, the county election officer shall transmit the same, together with a certificate of sufficiency attached thereto, to the boards of water commissioners of each of the districts proposed for consolidation. In the event that there are no legal electors residing in one or more of the water districts proposed to be consolidated, such petitions may be signed by such a number as appear of record to own at least a majority of the acreage in the pertinent water district, and the petitions shall disclose the total number

of acres of land in the said water district and shall also contain the names of all record owners of land therein. [1982 1st ex.s. c 17 § 30; 1967 ex.s. c 39 § 2; 1943 c 267 § 2; Rem. Supp. 1943 § 11604–21.]

57.32.021 Procedure upon receipt of certificate of sufficiency—Agreement, contents—Comprehensive plan. Upon receipt by the boards of water commissioners of the districts proposed for consolidation, hereinafter referred to as the "consolidating districts", of the county auditor's certificate of sufficiency of the petitions, or upon adoption by the boards of water commissioners of the consolidating districts of their resolutions for consolidation, the boards of water commissioners of the consolidating districts shall, within ninety days, enter into an agreement providing for consolidation. The agreement shall set forth the method and manner of consolidation, a comprehensive plan or scheme of water supply for the consolidated district and, if the comprehensive plan or scheme of water supply provides that one or more of the consolidating districts or the proposed consolidated district issue revenue bonds for the construction and/or other costs of any part or all of said comprehensive plan, then the details thereof shall be set forth. The requirement that a comprehensive plan or scheme of water supply for the consolidated district be set forth in the agreement for consolidation, shall be satisfied if the existing comprehensive plans or schemes of the consolidating districts are incorporated therein by reference and any changes or additions thereto are set forth in detail. [1967 ex.s. c 39 § 8.]

57.32.022 Certification of agreement—Election, notice and conduct. The respective boards of water commissioners of the consolidating districts shall certify the agreement to the county election officer of each county in which the districts are located. A special election shall be called by the county election officer under RCW 57.02.060 for the purpose of submitting to the voters of each of the consolidating districts the proposition of whether or not the several districts shall be consolidated into one water district. The proposition shall give the title of the proposed consolidated district. Notice of the election shall be given and the election conducted in accordance with the general election laws. [1982 1st ex.s. c 17 § 31; 1967 ex.s. c 39 § 9.]

57.32.023 Consolidation effected—Cessation of former districts—Rights and powers of consolidated district. If at the election a majority of the voters in each of the consolidating districts vote in favor of the consolidation, the county canvassing board shall so declare in its canvass under RCW 57.02.060 and the return of such election shall be made within ten days after the date thereof. Upon the return the consolidation shall be effective and the consolidating districts shall cease to exist and shall then be and become a new water district and municipal corporation of the state of Washington. The name of such new water district shall be "Water District No. _____", which shall be the name appearing on the ballot. The district shall have all and every power, right,

and privilege possessed by other water districts of the state of Washington. The district may issue revenue bonds to pay for the construction of any additions and betterments set forth in the comprehensive plan of water supply contained in the agreement for consolidation and any future additions and betterments to the comprehensive plan of water supply, as its board of water commissioners shall by resolution adopt, without submitting a proposition therefor to the voters of the district. [1982 1st ex.s. c 17 § 32; 1967 ex.s. c 39 § 10.]

57.32.024 Vesting of funds and property in consolidated district—Outstanding indebtedness. Upon the formation of any consolidated water district, all funds, rights and property, real and personal, of the former districts, shall vest in and become the property of the consolidated district. Unless the agreement for consolidation provides to the contrary, any outstanding indebtedness of any form, owed by the districts, shall remain the obligation of the area of the original debtor district and the water commissioners of the consolidated water district shall make such levies, assessments or charges for service upon that area or the water users therein as shall pay off the indebtedness at maturity. [1967 ex.s. c 39 § 11.]

57.32.130 Commissioners—Number. The water commissioners of all water districts consolidated into any new consolidated water district shall become water commissioners thereof until their respective terms of office expire. At each election of water commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of water commissioners in the consolidated water district shall be reduced to three. [1985 c 141 § 9; 1943 c 267 § 13; Rem. Supp. 1943 § 11604–32.]

57.32.150 Water district activities to be approved—Criteria for approval by county legislative authority. See RCW 57.02.040 and 56.02.070.

57.32.160 Transfer of part of district—Procedure. A part of one water or sewer district may be transferred into an adjacent water district if the area can be better served thereby. Such transfer can be accomplished by a petition, directed to both districts, signed by the owners according to the records of the county auditor of not less than sixty percent of the area of land to be transferred. If a majority of the commissioners of each district approves the petition, copies of the approving resolutions shall be filed with the county legislative authority which shall act upon the petition as a proposed action in accordance with RCW 57.02.040. [1987 c 449 § 18.]

**Chapter 57.36
MERGER OF DISTRICTS**

Sections	
57.36.001	Actions subject to review by boundary review board.
57.36.010	Merger of districts authorized.
57.36.020	Initiation of merger—Procedure.

57.36.030	Agreement—Certification to county election officer—Election in merging district, notice, conduct.
57.36.040	Return of election—When merger effective—Cessation of merging district—Commissioners—Terms.
57.36.050	Vesting of funds and property in merger district—Outstanding indebtedness.
57.36.100	Water district activities to be approved—Criteria for approval by county legislative authority.

57.36.001 Actions subject to review by boundary review board. Actions taken under chapter 57.36 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 61.]

57.36.010 Merger of districts authorized. Whenever two water districts desire to merge, either district, hereinafter referred to as the "merging district", may merge into the other district, hereinafter referred to as the "merger district", and the merger district will survive under its original number. [1989 c 308 § 12; 1982 1st ex.s. c 17 § 29; 1967 ex.s. c 39 § 3; 1961 c 28 § 1.]

57.36.020 Initiation of merger—Procedure. A merger of two water districts may be initiated in either of the following ways:

(1) Whenever the boards of water commissioners of both such districts determine by resolution that the merger of such districts shall be conducive to the public health, welfare and convenience and to be of special benefit to the lands of such districts.

(2) Whenever ten percent of the legal electors residing within the merging district petition the board of water commissioners of the merging water district for a merger, and the board of water commissioners of the merger district determines by resolution that the merger of the districts shall be conducive to the public health, welfare and convenience of the two districts. [1967 ex.s. c 39 § 4; 1961 c 28 § 2.]

57.36.030 Agreement—Certification to county election officer—Election in merging district, notice, conduct. Whenever a merger is initiated in either of the two ways provided under this chapter, the boards of water commissioners of the two districts shall enter into an agreement providing for the merger. Said agreement must be entered into within ninety days following completion of the last act in initiation of the merger.

The respective boards of water commissioners shall certify the agreement to the county election officer of each county in which the districts are located. The county election officer shall call a special election for the purpose of submitting to the voters of the merging district the proposition of whether the merging district shall be merged into the merger district. Notice of the election shall be given and the election conducted in accordance with the general election laws. [1982 1st ex.s. c 17 § 33; 1967 ex.s. c 39 § 5; 1961 c 28 § 3.]

57.36.040 Return of election—When merger effective—Cessation of merging district—Commissioners—Terms. If at such election a majority of the voters of the merging water district shall vote in favor of

the merger, the county canvassing board shall so declare in its canvass and the return of such election shall be made within ten days after the date thereof, and upon such return the merger shall be effective and the merging water district shall cease to exist and shall become a part of the merger water district. The water commissioners of the merging district shall hold office as commissioners of the new consolidated water district until their respective terms of office expire or until they resign from office if the resignation is before the expiration of their terms of office. At the district election immediately preceding the time when the total number of remaining water commissioners is reduced to two through expiration of terms of office, one water commissioner shall be elected for a four year term of office. At the next district election, one water commissioner shall be elected for a four year term of office and one shall be elected for a six year term of office. Thereafter, each water commissioner shall be elected for a six-year term of office in the manner provided by RCW 57.12.020 and 57.12.030 for elections in an existing district. [1982 c 104 § 2; 1967 ex.s. c 39 § 6; 1961 c 28 § 4.]

57.36.050 Vesting of funds and property in merger district—Outstanding indebtedness. All funds and property, real and personal, of the merging district, shall vest in and become the property of the merger district. Unless the agreement of merger provides to the contrary, any outstanding indebtedness of any form, owed by the districts, shall remain the obligation of the area of the original debtor district; and the water commissioners of the merger water district shall make such levies, assessments or charges for service upon said area or the water users therein as shall pay off such indebtedness at maturity. [1967 ex.s. c 39 § 7; 1961 c 28 § 5.]

57.36.100 Water district activities to be approved—Criteria for approval by county legislative authority. See RCW 57.02.040 and 56.02.070.

Chapter 57.40

MERGER OF WATER DISTRICTS INTO SEWER DISTRICTS—MERGER OF SEWER DISTRICTS INTO WATER DISTRICTS

Sections	
57.40.001	Actions subject to review by boundary review board.
57.40.010	Merger of water districts into sewer districts.
57.40.020	Water district activities to be approved—Criteria for approval by county legislative authority.
57.40.100	Merger of sewer districts into water districts—Authorized.
57.40.110	Initiating merger—Alternative methods.
57.40.120	Agreement of merger—Board review—Special election.
57.40.130	Election—Results—Effect—Commissioners—Terms.
57.40.135	Persons serving on both boards to hold only one position after merger.
57.40.140	Disposition of funds, rights, and property—Indebtedness of merged sewer districts.
57.40.150	Powers of water district.

57.40.001 Actions subject to review by boundary review board. Actions taken under chapter 57.40 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 62.]

57.40.010 Merger of water districts into sewer districts. See chapter 56.36 RCW.

57.40.020 Water district activities to be approved—Criteria for approval by county legislative authority. See RCW 57.02.040 and 56.02.070.

57.40.100 Merger of sewer districts into water districts—Authorized. Any sewer district, acting alone or in conjunction with any other sewer district or districts similarly situated as hereafter described, the territory of which lies wholly or partly within, or which is adjoining or in proximity to a water district, may merge into the water district, and the water district will survive under its original name. The term "in proximity to" as used herein shall mean within one mile of each other, measured in a straight line between the closest points of approach of the territorial boundaries of the respective districts. [1982 1st ex.s. c 17 § 34; 1971 ex.s. c 146 § 1.]

57.40.110 Initiating merger—Alternative methods. A merger of one or more sewer districts into a water district may be initiated in any one of the following ways:

(1) Whenever the board of commissioners of the water district, on the one hand, and the board of commissioners of the sewer district or of the respective sewer districts seeking to merge into the water district, on the other hand, each determine by resolution that the merger of such sewer district or sewer districts into the water district shall be conducive to the public health, welfare and convenience and to be of special benefit to the lands of such district so desiring to merge.

(2) Whenever ten percent of the qualified electors residing within each of the water districts and the sewer district or districts involved petition the board of commissioners of their respective districts for a merger of such district into the water district.

(3) Whenever ten percent of the qualified electors residing within the water district petition the board of water commissioners for such a merger, and the board of sewer commissioners of the district or each sewer district to be merged determines by resolution that the merger of such district into the water district will be conducive to the public health, welfare and convenience of the two districts. [1971 ex.s. c 146 § 2.]

57.40.120 Agreement of merger—Board review—Special election. Whenever a merger is initiated in any of the three ways provided in RCW 57.40.110, the boards of the water and sewer commissioners of the respective districts involved shall enter into an agreement providing for the merger. The agreement must be entered into within ninety days following completion of the last act required for initiation of the merger by any one of the means above specified, as provided in RCW

57.40.110. Where two or more sewer districts seek to merge into a water district at or about the same time, there need be but one agreement of merger signed by the water district and such two or more sewer districts if the parties so agree.

Upon entry of such agreement, the boards of the water and sewer commissioners shall file a notice of intention to merge together with a copy of said agreement with the boundary review board, if any, of the county and the board shall review the proposed merger under the provisions of RCW 36.93.150 through 36.93.180.

The respective boards of water and sewer commissioners of such districts shall certify such agreement to the county auditor of the county in which the districts are located within twenty days from date of execution of such agreement, with a certified copy thereof filed with the clerk of the board of county commissioners of such county. Thereupon, unless the boundary review board has disapproved the proposed merger the county auditor shall call a special election for the purpose of submitting to the voters of the sewer district or of each of the two or more sewer districts involved the proposition of whether the sewer district shall be merged into the water district. Notice of the election shall be given, and the election conducted, in accordance with the general election laws. [1971 ex.s. c 146 § 3.]

57.40.130 Election—Results—Effect—Commissioners—Terms. If at such election a majority of the voters in the sewer district or all or either of the sewer districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the water district and each sewer district in which the majority of voters voted in favor of the merger, and each such sewer district shall cease to exist as a separate entity and the area within such sewer district shall become a part of the water district. The sewer commissioners of any sewer district so merged shall hold office as commissioners of the water district into which the sewer district was merged until their respective terms of office expire or until they resign from office if the resignation is before the expiration of their terms of office. At the district election immediately preceding the time when the total number of remaining water commissioners is reduced to two through expiration of terms of office or resignations, one water commissioner shall be elected for a four year term of office. At the next district election, one water commissioner shall be elected for a four [year] term of office and one shall be elected for a six year term of office. Thereafter, each water commissioner shall be elected for a six-year term of office in the manner provided by RCW 57.12.020 and 57.12.030 for elections in an existing district. [1982 c 104 § 3; 1981 c 45 § 12; 1971 ex.s. c 146 § 4.]

Legislative declaration—"District" defined—Severability—
1981 c 45: See notes following RCW 56.36.060.

57.40.135 Persons serving on both boards to hold only one position after merger. A person who serves on the board of commissioners of a sewer district that merges under this chapter into a water district, for which the person also serves on the board of commissioners, shall only hold one position on the board of commissioners of the district that results from the merger and shall only receive compensation, expenses, and benefits that are available to a single commissioner. [1988 c 162 § 4.]

57.40.140 Disposition of funds, rights, and property—Indebtedness of merged sewer districts. All funds, rights and property, real and personal, of any sewer district merging into a water district shall vest in and become the property of the water district. Unless the agreement of merger provides to the contrary, any outstanding indebtedness of any form, owned by the sewer district, shall remain the obligation of and, as applicable, a lien upon the land, assets and/or revenue of the original district. The board of commissioners of the water district shall make such levies, assessments or charges upon said land or the sewer or water users therein as are necessary to pay any indebtedness of the merged sewer districts as and when the same mature. [1971 ex.s. c 146 § 5.]

57.40.150 Powers of water district. Following merger, the water district and the board of commissioners thereof shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area and shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other power granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area. The water district shall have the power to issue revenue bonds to which are pledged sewer revenue, water revenue, or both sewer and water revenue, as well as the power to levy assessments against property specially benefited in local improvement districts or utility local improvement districts, for improvements to the sewer system or the water system or both. [1981 c 45 § 13; 1971 ex.s. c 146 § 6.]

Legislative declaration—"District" defined—Severability—
1981 c 45: See notes following RCW 56.36.060.

Chapter 57.42

DISPOSITION OF PROPERTY TO PUBLIC UTILITY DISTRICT

Sections	
57.42.010	Authorized.
57.42.020	Disposition must be in public interest—Filings— Indebtedness.
57.42.030	Hearing—Notice—Decree.

57.42.010 Authorized. Subject to the provisions of RCW 57.42.020 and 57.42.030, any water district created under the provisions of this title may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to a public utility district in the same county on such terms as may be mutually agreed upon by the commissioners of each district. [1973 1st ex.s. c 56 § 1.]

57.42.020 Disposition must be in public interest—Filings—Indebtedness. No water district shall dispose of its property to a public utility district unless the respective commissioners of each district shall determine by resolution that such disposition is in the public interest and conducive to the public health, welfare and convenience. Copies of each resolution together with copies of the proposed disposition agreement shall be filed with the legislative authority of the county in which the water district is located, and with the superior court of that county. Unless the proposed agreement provides otherwise, any outstanding indebtedness of any form, owed by the water district, shall remain the obligation of the area of the water district and the public utility district commissioners shall be empowered to make such levies, assessments or charges upon that area or the water users therein as shall pay off the indebtedness at maturity. [1973 1st ex.s. c 56 § 2.]

57.42.030 Hearing—Notice—Decree. Within ninety days after the resolutions and proposed agreement have been filed with the court, the court shall fix a date for a hearing and shall direct that notice of the hearing be given by publication. After reviewing the proposed agreement and considering other evidence presented at the hearing, the court may determine by decree that the proposed disposition is in the public interest and conducive to the public health, welfare and convenience. In addition, the decree shall authorize the payment of all or a portion of the indebtedness of the water district relating to property disposed of under such decree. Pursuant to the court decree, the water district shall dispose of its property under the terms of the disposition agreement with the public utility district. [1973 1st ex.s. c 56 § 3.]

Chapter 57.90

DISINCORPORATION OF WATER AND OTHER DISTRICTS IN CLASS A OR AA COUNTIES

Sections

57.90.001	Actions subject to review by boundary review board.
57.90.010	Disincorporation authorized.
57.90.020	Proceedings, how commenced—Public hearings.
57.90.030	Findings—Order—Supervision of liquidation.
57.90.040	Distribution of assets.
57.90.050	Assessments to retire indebtedness.
57.90.100	Disposal of real property on abandonment of irrigation district right of way—Right of adjacent owners.

Dissolution of

port districts: RCW 53.46.060.

water districts: Chapter 57.04 RCW.

57.90.001 Actions subject to review by boundary review board. Actions taken under chapter 57.90 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 63.]

57.90.010 Disincorporation authorized. Water, sewer, park and recreation, metropolitan park, county rural library, cemetery, flood control, mosquito control, diking and drainage, irrigation or reclamation, weed, health, or fire protection districts, and any air pollution control authority, hereinafter referred to as "special districts", which are located wholly or in part within a class AA or A county may be disincorporated when the district has not actively carried out any of the special purposes or functions for which it was formed within the preceding consecutive five year period. [1979 ex.s. c 30 § 11; 1963 c 55 § 1.]

57.90.020 Proceedings, how commenced—Public hearings. Upon the filing with the county legislative authority of each county in which the district is located of a resolution of any governmental unit calling for the disincorporation of a special district, or upon the filing with the county legislative authority of each county in which the district is located of the petition of twenty percent of the qualified electors within a special district calling for the disincorporation of a special district the county legislative authority shall hold public hearings to determine whether or not any services have been provided within a consecutive five year period and whether the best interests of all persons concerned will be served by the proposed dissolution of the special district. [1982 1st ex.s. c 17 § 35; 1963 c 55 § 2.]

57.90.030 Findings—Order—Supervision of liquidation. If the board of county commissioners finds that no services have been provided within the preceding consecutive five year period and that the best interests of all persons concerned will be served by disincorporating the special district it shall order that such action be taken, specify the manner in which it is to be accomplished and supervise the liquidation of any assets and the satisfaction of any outstanding indebtedness. [1963 c 55 § 3.]

57.90.040 Distribution of assets. In the event a special district is disincorporated the proceeds of the sale of any of its assets, together with moneys on hand in the treasury of the special district, shall after payment of all costs and expenses and all outstanding indebtedness be paid to the county treasurer to be placed to the credit of the school district, or districts, in which such special district is situated. [1963 c 55 § 4.]

57.90.050 Assessments to retire indebtedness. In the event a special district is disincorporated and the proceeds of the sale of any of its assets, together with moneys on hand in the treasury of the special district are insufficient to retire any outstanding indebtedness together with all costs and expenses of liquidation, the board of county commissioners shall levy assessments in

the manner provided by law against the property in the special district in amounts sufficient to retire said indebtedness and pay such costs and expenses. [1963 c 55 § 5.]

57.90.100 Disposal of real property on abandonment of irrigation district right of way—Right of adjacent owners. Whenever as the result of abandonment of an irrigation district right of way real property held by an irrigation district is to be sold or otherwise disposed of, notice shall be given to the owners of lands adjoining that real property and such owners shall have a right of first refusal to purchase at the appraised price all or any part of the real property to be sold or otherwise disposed of which adjoins or is adjacent to their land.

Real property to be sold or otherwise disposed of under this section shall have been first appraised by the county assessor or by a person designated by him.

Notice under this section shall be sufficient if sent by registered mail to the owner, and at the address, as shown in the tax records of the county in which the land is situated. Notice under this section shall be in addition to any other notice required by law.

After sixty days from the date of sending of notice, if no applications for purchase have been received by the irrigation district or other person or entity sending notice, the rights of first refusal of owners of adjoining lands shall be deemed to have been waived, and the real property may be sold or otherwise disposed of.

If two or more owners of adjoining lands apply to purchase the same real property, or apply to purchase overlapping parts of the real property, the respective rights of the applicants may be determined in the superior court of the county in which the real property is situated; and the court may divide the real property in question between some or all of the applicants or award the whole to one applicant, as justice may require. [1971 ex.s. c 125 § 1.]

NOTES