

CHAPTER 237

[Engrossed Senate Bill No. 3091]

REAL ESTATE CONTRACTS—FORFEITURES

AN ACT Relating to real estate contracts; amending RCW 79.01.228; adding a new chapter to Title 61 RCW; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Contract" or "real estate contract" means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price. "Contract" or "real estate contract" does not include earnest money agreements and options to purchase.

(2) "Cure the default" or "cure" means to perform the obligations under the contract which are described in the notice of intent to forfeit and which are in default, to pay the costs and attorneys' fees prescribed in the contract, and, subject to section 9(1) of this act, to make all payments of money required of the purchaser by the contract which first become due after the notice of intent to forfeit is given and are due when cure is tendered.

(3) "Declaration of forfeiture" means the notice described in section 7(2) of this act.

(4) "Forfeit" means to cancel the purchaser's rights under a real estate contract and to terminate all right, title, and interest in the property of the purchaser and, to the extent provided in this chapter, of persons claiming by or through the purchaser because of a breach of one or more of the purchaser's obligations under the contract.

(5) "Notice of intent to forfeit" means the notice described in section 7(1) of this act.

(6) "Property" means that portion of the real property which is the subject of a real estate contract, legal title to which has not been conveyed to the purchaser.

(7) "Purchaser" means the person denominated as the purchaser of the property or an interest therein in a real estate contract or, if applicable, the purchaser's personal representative or successors or assigns in interest, whether by voluntary or involuntary transfer or transfer by operation of law. If the purchaser's interest in the property is subject to a receivership, a guardianship, or a proceeding under the federal bankruptcy laws, "purchaser" means the receiver, the guardian, the trustee in bankruptcy, or the debtor in possession, as applicable. However, "purchaser" does not include an assignee or any other person whose only interest or claim is in the nature of a lien or other security interest.

(8) "Required notices" means the notice of intent to forfeit and the declaration of forfeiture.

(9) "Seller" means the person denominated as the seller of the property or an interest therein in a real estate contract or, if applicable, the seller's personal representative or successors or assigns in interest, whether by voluntary or involuntary transfer or transfer by operation of law. If the seller's interest in the property is subject to a receivership, a guardianship, or a proceeding under the federal bankruptcy laws, "seller" means the receiver, the guardian, the trustee in bankruptcy, or the debtor in possession, as applicable. However, "seller" does not include an assignee or any other person whose only interest or claim is in the nature of a lien or other security interest and does not include an assignee who has not been conveyed legal title to any portion of the property.

(10) "Time for cure" means the time provided in section 7(1)(e) of this act, or as provided by court order under section 11 of this act, or any longer period agreed to by the seller.

NEW SECTION. Sec. 2. A purchaser's rights under a real estate contract shall not be forfeited except as provided in this chapter. Forfeiture shall be accomplished by giving and recording the required notices as specified in this chapter. This chapter shall not be construed as prohibiting or limiting any remedy which is not governed or restricted by this chapter and which is otherwise available to the seller or the purchaser.

NEW SECTION. Sec. 3. It shall be a condition to forfeiture of a real estate contract that:

(1) The contract being forfeited, or a memorandum thereof, is recorded in each county in which any of the property is located;

(2) A breach has occurred in one or more of the purchaser's obligations under the contract and the contract provides that as a result of such breach the seller is entitled to forfeit the contract; and

(3) Except for petitions for the appointment of a receiver, no action is pending on a claim made by the seller against the purchaser on any obligation secured by the contract.

NEW SECTION. Sec. 4. (1) The required notices shall be given to each purchaser last known to the seller or the seller's agent or attorney giving the notice and to each person who, at the time the notice of intent to forfeit is recorded, is the last holder of record of the purchaser's interest. Failure to comply with this subsection shall render any purported forfeiture based upon the required notices void.

(2) The required notices shall also be given to each of the following persons whose interest the seller desires to forfeit if the default is not cured:

(a) The holders of record at the time the notice of intent to forfeit is recorded of security interests in or liens against the purchaser's interest in

the contract or the purchaser's interest in the property or any portion of either;

(b) The holders of record at the time the notice of intent to forfeit is recorded of the seller's or the purchaser's interest in any real estate contract affecting the property which is subordinate to the contract being forfeited; and

(c) All other persons occupying the property at the time the notice of intent to forfeit is recorded and whose identities may be ascertained by reasonable inquiry.

Any forfeiture based upon the required notices shall be void as to each person described in this subsection to whom the notices are not given.

(3) The required notices shall also be given to all persons who at the time the notice of intent to forfeit is recorded have recorded in each county in which any of the property is located a request to receive the required notices, which request (a) identifies the contract being forfeited by reference to its date, the original parties thereto, the property description, and the recording number of the contract or memorandum thereof; (b) contains the name and address for notice of the person making the request; and (c) is executed and acknowledged by the requesting person.

(4) Except as otherwise provided in the contract or other agreement with the seller and except as otherwise provided in this section, the seller shall not be required to give any required notice to any person whose interest in the purchaser's rights under the contract or the property or any portion of either is not of record or if such interest is first acquired after the time the notice of intent to forfeit is recorded. Subject to subsection (5) of this section, all such persons hold their interest subject to the potential forfeiture described in the recorded notice of intent to forfeit and shall be bound by any forfeiture made pursuant thereto as permitted in this chapter as if the required notices were given to them.

(5) Before the commencement of the time for cure, the notice of intent to forfeit shall be recorded in each county in which any of the property is located. If, not later than one year after the time for cure stated in a recorded notice of intent to forfeit or any recorded extension thereof, no declaration of forfeiture based upon the recorded notice of intent to forfeit has been recorded, no lis pendens has been filed incident to an action under this chapter, and no extension of the time for cure executed by the seller and the purchaser has been recorded, the notice of intent to forfeit shall not be effective for any purpose under this chapter nor shall it impart any constructive or other notice to third persons acquiring an interest in the purchaser's interest in the contract or the property or any portion of either.

(6) The declaration of forfeiture shall be recorded in each county in which any of the property is located after the time for cure has expired without the default having been cured.

NEW SECTION. Sec. 5. (1) The required notices shall be given in writing. The notice of intent to forfeit shall be signed by the seller or by the seller's agent or attorney. The declaration of forfeiture shall be signed and sworn to by the seller.

(2) The required notices shall be given:

(a) In any manner provided in the contract or other agreement with the seller; and

(b) By either personal service in the manner required for civil actions in any county in which any of the property is located or by mailing a copy to the person for whom it is intended, postage prepaid, by certified or registered mail with return receipt requested and by regular first class mail, addressed to the person at the person's address last known to the seller or the seller's agent or attorney giving the notice. For the purposes of this subsection, the seller or the seller's agent or attorney giving the notice may rely upon the address stated in any document which entitles a person to receive the required notices unless the seller or the seller's agent or attorney giving the notice knows such address to be incorrect.

If the address of a person for whom the required notices are intended is not known to or reasonably discoverable by the seller or the seller's agent or attorney giving the notice, the required notices shall be given to such person by posting a copy which is directed to the attention of the person in a conspicuous place on the property.

If the identity of a person for whom the required notices are intended is not known to or reasonably discoverable by the seller or the seller's agent or attorney giving the notice, the required notices shall be given to such person by posting in a conspicuous place on the property a copy which is directed to the attention of all persons who fall within a general description of those for whom the notice is intended (such as "the unknown heirs of" a named person or "all persons unknown claiming an interest in the property described herein") and by publishing a copy thereof. The publication shall be made in a newspaper approved pursuant to RCW 65.16.040 and published in each county in which any of the property is located or, if no approved newspaper is published in the county, in an adjoining county, and if no approved newspaper is published in the county or adjoining county, then in an approved newspaper published in the capital of the state. The notice of intent to forfeit shall be published once a week for two consecutive weeks, the first publication of which shall be not less than ten days after the notice of intent is recorded. The declaration of forfeiture shall be published once.

(3) Notices which are served, mailed, or posted as provided in subsection (2)(b) of this section are given for purposes of this chapter when served, mailed, or posted. Notices which must be posted and published as provided in subsection (2)(b) of this section are given for the purposes of this chapter when posted and first published.

NEW SECTION. Sec. 6. The notice of intent to forfeit shall be given not later than ten days after it is recorded. The declaration of forfeiture shall be given not later than three days after it is recorded.

NEW SECTION. Sec. 7. (1) The notice of intent to forfeit shall contain at least the following:

(a) The name, address, and telephone number of the seller and, if any, the seller's agent or attorney giving the notice;

(b) A description of the contract, including the names of the original parties to the contract, the date of the contract, and the recording number of the contract or memorandum thereof;

(c) A legal description of the property;

(d) A description of each default under the contract on which the notice is based;

(e) A statement that the contract will be forfeited by a date stated in the notice which is not less than ninety days after the notice of intent to forfeit is recorded or any longer period specified in the contract or other agreement with the seller;

(f) A statement of the effect of forfeiture, including, to the extent applicable and provided in the contract: (i) All right, title, and interest in the property of the purchaser and, to the extent elected by the seller, of all persons claiming through the purchaser shall be terminated; (ii) the purchaser's rights under the contract shall be canceled; (iii) all sums previously paid under the contract shall belong to and be retained by the seller or other person to whom paid and entitled thereto; (iv) all improvements made to and unharvested crops on the property shall belong to the seller; and (v) the purchaser shall be required to surrender possession of the property, improvements, and unharvested crops to the seller ten days after the forfeiture;

(g) An itemized statement or, to the extent not known at the time the notice of intent to forfeit is recorded, a reasonable estimate of all payments of money in default and, for defaults not involving the failure to pay money, a statement of the action required to cure the default;

(h) An itemized statement of all other payments, charges, fees, and costs, if any, that are or may be required to cure the defaults if the defaults are cured before the declaration of forfeiture is recorded;

(i) A statement that the purchaser or any person claiming through the purchaser has the right to contest the forfeiture or to seek an extension of time to cure the default, or both, by commencing a court action prior to the effective date of forfeiture; and

(j) Any additional information required by the contract or other agreement with the seller and any additional information the seller elects to include which is consistent with this section and with the contract or other agreement with the seller.

(2) If the default is not cured as provided in section 9 of this act, the seller may forfeit the contract by giving and recording a declaration of forfeiture which contains at least the following:

(a) The name, address, and telephone number of the seller;

(b) A description of the contract, including the names of the original parties to the contract, the date of the contract, and the recording number of the contract or memorandum thereof;

(c) A legal description of the property;

(d) To the extent applicable and provided in the contract, a statement that all the purchaser's rights under the contract are canceled and all right, title, and interest in the property of the purchaser and of all persons claiming an interest in the contract, the property, or any portion of either, are terminated except to the extent otherwise stated in the declaration of forfeiture as to persons or claims named, identified, or described;

(e) To the extent applicable, a statement that all persons whose rights in the property have been terminated and who are in or come into possession of any portion of the property (including improvements and unharvested crops) are required to surrender such possession to the seller not later than a specified date which shall not be less than ten days after the declaration of forfeiture is recorded or such longer period provided in the contract;

(f) A statement that the forfeiture was conducted in compliance with all requirements of this chapter and applicable provisions of the contract; and

(g) A statement that the purchaser and any person claiming any interest in the purchaser's rights under the contract or in the property who are given the notice of intent to forfeit and the declaration of forfeiture have the right, for a period of sixty days following the date the declaration of forfeiture is recorded, to commence a court action to set the forfeiture aside if the seller did not have the right to forfeit the contract or failed to comply with this chapter.

NEW SECTION. Sec. 8. (1) If the seller fails to give the notice of intent to forfeit to all persons whose interests the seller desires to forfeit in the manner required by this chapter, the seller may give a new set of notices as required by this chapter. However, the new notices shall contain a statement that they supersede and replace the earlier notices and shall provide a new time for cure.

(2) If the seller fails to give any required notice to all persons whose interests the seller desires to forfeit in the manner required by this chapter, and the failure is not discovered until after the seller records the declaration of forfeiture, the seller may obtain a court order setting aside the forfeiture previously made, in which case the seller may proceed as if no forfeiture had been commenced. However, no such order may be obtained without

joinder and service upon the persons whose interests the seller desires to forfeit.

NEW SECTION. Sec. 9. (1) Even if the contract contains a provision allowing the seller, because of a default in the purchaser's obligations under the contract, to accelerate the due date of some or all payments to be made or other obligations to be performed by the purchaser under the contract, the seller may not require payment of the accelerated payments or performance of the accelerated obligations as a condition to curing the default in order to avoid forfeiture except to the extent the payments or performance would be due without the acceleration. This subsection shall not apply to an acceleration because of a transfer or conveyance of any or all of the purchaser's interest in any portion or all of the property if the contract being forfeited contains a provision accelerating the unpaid balance because of such transfer or conveyance and such provision is enforceable under applicable law.

(2) Any person given rights to receive the required notices under section 4(1) and (2) of this act and any guarantor of or any surety for the purchaser's performance may cure the default. These persons may cure the default at any time before expiration of the time for cure and may act alone or in any combination.

(3) The seller may accept tender of cure after the expiration of the time for cure and prior to the recordation of the declaration of forfeiture. The seller may accept a partial cure. If the tender of such partial cure is not accompanied by a written statement of the person making the tender that such payment or other action does not fully cure the default, the seller shall notify such person in writing of the insufficiency and the amount or character thereof, which notice shall include an offer to refund any partial tender of money paid to the seller upon request. The seller shall refund such amount promptly following its receipt of such request, and the seller shall be liable to the person to whom such amount is due for that person's reasonable attorneys' fees and court costs incurred in an action brought to recover such amount in which such refund or any portion thereof is found to have been improperly withheld. If the seller's written notice of insufficiency is not given to the person making the tender at least ten days before the expiration of the time for cure, then regardless of whether the tender is accepted the time for cure shall be extended for ten days from the date the seller's written notice of insufficiency is given. The seller shall not be required to extend the time for cure more than once even though more than one insufficient tender is made.

(4) Except as provided in this subsection, a timely tender of cure shall reinstate the contract. If a default that entitles the seller to forfeit the contract is not described in a notice of intent to forfeit previously given and the seller gives a notice of intent to forfeit concerning that default, timely cure

of a default described in a previous notice of intent to forfeit shall not limit the effect of the subsequent notice.

(5) If the default is cured, the seller shall sign, acknowledge, record, and deliver or mail to the purchaser and, if different, the person who made the tender a written statement that the contract is no longer subject to forfeiture under the notice of intent to forfeit previously given, referring to the notice of intent to forfeit by its recording number. A seller who fails within thirty days of written demand to give and record the statement required by this subsection, if such demand specifies the penalties in this subsection, is liable to the person who cured the default for the greater of five hundred dollars or actual damages, if any, and for reasonable attorneys' fees and costs of the action to recover such amount or damages.

NEW SECTION. Sec. 10. (1) The recorded and sworn declaration of forfeiture shall be prima facie evidence of the extent of the forfeiture and compliance with this chapter and, except as otherwise provided in section 4 (1) and (2) of this act, conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

(2) Except as otherwise provided in this chapter and except to the extent otherwise provided in the contract or other agreement with the seller, forfeiture of a contract under this chapter shall have the following effects:

(a) The purchaser, and all persons claiming through the purchaser who were given the required notices pursuant to this chapter, shall have no further rights in the contract or the property and no person shall have any right, by statute or otherwise, to redeem the property;

(b) All sums previously paid under the contract by or on behalf of the purchaser shall belong to and be retained by the seller or other person to whom paid; and

(c) All of the rights of the purchaser to all improvements made to the property and all unharvested crops thereon at the time the declaration of forfeiture is recorded shall be forfeited to the seller and the seller shall be entitled to possession of the property ten days after the declaration of forfeiture is recorded. The seller may proceed under chapter 59.12 RCW to obtain such possession. Any person in possession who fails to surrender possession when required shall be liable to the seller for actual damages caused by such failure and for reasonable attorneys' fees and costs of the action.

(3) After the declaration of forfeiture is recorded, the seller shall have no claim against and the purchaser shall not be liable to the seller for any portion of the purchase price unpaid or for any other breach of the purchaser's obligations under the contract.

NEW SECTION. Sec. 11. (1) The forfeiture may be restrained or enjoined or the time for cure may be extended by court order only as provided in this section. A certified copy of any restraining order or injunction may be recorded in each county in which any part of the property is located.

(2) Any person entitled to cure the default may bring or join in an action under this section. No other person may bring such an action without leave of court first given for good cause shown. Any such action shall be commenced before expiration of the time for cure by filing the summons and complaint and serving the seller or the seller's agent or attorney, if any, giving either of the required notices.

(3) The forfeiture may be restrained or enjoined when the person bringing the action proves that there is no default as claimed in the notice of intent to forfeit or that the purchaser has a claim against the seller which, if successful, would release, discharge, or excuse the default claimed in the notice of intent to forfeit, including by offset, or that there exists any material noncompliance with this chapter. The time for cure may be extended when the default alleged is other than the failure to pay money, the nature of the default is such that it cannot practically be cured within the time stated in the notice of intent to forfeit, action has been taken and is diligently being pursued which would cure the default, and any person entitled to cure is ready, willing, and able to timely perform all of the purchaser's other contract obligations.

NEW SECTION. Sec. 12. (1) A public sale of the property in lieu of the forfeiture may be ordered by the court only as provided in this section. Any person entitled to cure the default may bring an action seeking an order. No other person may bring such an action without leave of court first given for good cause shown.

(2) An action under this section shall be commenced before expiration of the time for cure by filing the summons and complaint and serving the seller or the seller's agent or attorney, if any, giving either of the required notices.

(3) If the court finds the then fair market value of the property substantially exceeds the unpaid and unperformed obligations secured by the contract and any other liens against the property that would not be eliminated by the forfeiture, the court may require the property to be sold for cash to the highest bidder at a public sale by the sheriff at a courthouse of the county in which the property or any portion thereof is located. The order requiring a public sale of the property shall specify the amount which the seller is entitled to be paid from the sale proceeds and shall require any person requesting the sale to deposit with the clerk of the court, or such other person as the court may direct, the amount the court finds will be necessary to pay all of the costs and expenses of advertising and conducting the sale, including the notices to be given under subsection (5) of this section. The court shall require such deposit to be made within seven days, and if not so made the court shall vacate its order of sale and permit the seller to forfeit the contract. The sale shall serve to eliminate the interests of the

persons given the notice of intent to forfeit to the same extent that such interests would have been eliminated had the seller's forfeiture been effected pursuant to such notice.

(4) The sheriff shall endorse upon the order the time and date when the sheriff receives it and shall forthwith proceed to give the notice of sale specified in this subsection and sell the property, or so much thereof as may be necessary to discharge the amount the seller is entitled to be paid as specified in the court's order of sale. The notice of sale shall be printed or typed and contain the following information:

(a) A statement that the court has directed the sheriff to sell the property described in the notice of sale and the amount the seller is entitled to be paid from the sale proceeds as specified in the court's order;

(b) The caption, cause number, and court in which the order was entered;

(c) A legal description of the property to be sold, including the street address if any;

(d) The date and recording number of the contract;

(e) The scheduled date, time, and place of the sale;

(f) The right of the purchaser to avoid any public sale ordered by the court by paying to the seller, in cash, the amount which the seller would be entitled to be paid from the proceeds of the sale, as specified in the court's order; and

(g) A statement that no person shall have any right to redeem the property sold at the sale.

The notice of sale shall be given by posting a copy thereof for a period of not less than four weeks prior to the date of sale in three public places in the county in which the property or any portion thereof is located, one of which shall be at the courthouse door where the property is to be sold, and one of which shall be placed in a conspicuous place on the property. If the property is improved, the notice posted thereon shall be at the front door of the principal building constituting such improvement. Additionally, the notice of sale shall be published once a week for two consecutive weeks in the newspaper or newspapers prescribed for published notices in section 5(2)(b) of this act. The sale shall be scheduled to be held not more than seven days following the expiration of (i) the periods during which the notice of sale is required to be posted and published or (ii) the time for cure, whichever is later; however, the seller may, but shall not be required to, permit the sale to be scheduled for a later date. Upon the completion of the sale, the sheriff shall deliver a sheriff's deed to the property sold to the successful bidder.

(5) Within seven days following the entry of the court's order directing that the property be sold at a public sale, the seller shall, by the means described in section 5(2) of this act, give the notice of sale to all persons who were given the notice of intent to forfeit.

(6) Any person except the purchaser may bid at the sale. If the seller is the successful bidder, the seller may offset against the price bid the amount the seller is entitled to be paid as specified in the court's order. Proceeds of such sale shall be first applied to the costs and expenses of sale incurred by the sheriff, and next to the amount the seller is entitled to be paid as specified in the court's order. Any proceeds in excess of the amount necessary to pay such costs, expenses and amount, less the clerk's filing fee, shall be deposited with the clerk of the superior court of the county in which the sale took place, unless such surplus is less than the clerk's filing fee, in which event such excess shall be paid to the purchaser. The clerk shall index such funds under the name of the purchaser. Interest in or liens or claims of liens against the property eliminated by the sale shall attach to such surplus in the order of priority that they had attached to the property. The clerk shall not disburse the surplus except upon order of the superior court of such county, which order shall not be entered less than ten days following the deposit of the funds with the clerk.

(7) Following the expiration of the time for cure and prior to the sale being held, the purchaser shall have the right to satisfy its obligations under the contract and avoid any public sale ordered by the court by paying to the seller, in cash, the amount which the seller would be entitled to be paid from the proceeds of the sale as specified in the court's order.

(8) Following the public sale provided in this section neither the purchaser nor any other person shall have any right, by statute or otherwise, to redeem the property.

(9) A public sale effected under this section shall satisfy the obligations secured by the contract, regardless of the sale price or fair value, and no deficiency decree or other judgment may thereafter be obtained on such obligations.

NEW SECTION. Sec. 13. (1) If an order restraining or enjoining the forfeiture or an order of sale under section 12 of this act expires or is dissolved or vacated at least ten days before expiration of the time for cure, the seller may proceed with the forfeiture under this chapter if the default is not cured at the end of that time. If any such order expires or is dissolved or vacated at any time later than stated in the first sentence of this subsection, the seller may proceed with the forfeiture under this chapter if the default is not cured except the time for cure shall be extended for ten days after the expiration of, or entry of the order dissolving or vacating, the order.

(2) In actions under sections 11 and 12 of this act, the court may award reasonable attorneys' fees and costs of the action to the prevailing party.

(3) In actions under sections 11 and 12 of this act, on the seller's motion the court may (a) require the person commencing the action to provide a bond or other security against all or a portion of the seller's damages and (b) impose other conditions, the failure of which may be cause for entry of

an order dismissing the action and dissolving or vacating any restraining order, injunction, or other order previously entered.

NEW SECTION. Sec. 14. (1) An action to set aside the forfeiture after the declaration of forfeiture has been recorded may be commenced only as provided in this section and regardless of whether an action was previously commenced under section 11 of this act.

(2) An action to set aside the forfeiture permitted by this section may be commenced only by a person entitled to be given the required notices under section 4(1) and (2) of this act. For all persons given the required notices in accordance with this chapter, such an action shall be commenced by filing the summons and complaint and serving the seller or the seller's agent or attorney, if any, giving either of the required notices, not later than sixty days after the declaration of forfeiture is recorded. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located.

(3) The court may require that all payments specified in the notice of intent shall be paid into the court registry as a condition to maintaining an action to set aside the forfeiture. All payments falling due during the pendency of the action shall be paid into the registry of the court when due. These payments shall be calculated without regard to any acceleration provision in the contract (except an acceleration because of a transfer or conveyance of the purchaser's interest in the property) and without regard to the seller's contention the contract has been duly forfeited and shall not include the seller's costs and fees of the forfeiture. The court may make orders regarding the investment or disbursement of these funds and may authorize payments to third parties instead of the court registry.

(4) The forfeiture shall not be set aside unless (a) the rights of bona fide purchasers for value and of bona fide encumbrancers for value of the property would not thereby be adversely affected and (b) the person bringing the action establishes that the seller was not entitled to forfeit the contract at the time the seller purported to do so or that the seller did not materially comply with the requirements of this chapter.

(5) If the purchaser or other person commencing the action establishes a right to set aside the forfeiture, the court shall award the purchaser or other person commencing the action actual damages, if any, and may award the purchaser or other person its reasonable attorneys' fees and costs of the action. If the court finds that the forfeiture was conducted in compliance with this chapter, the court shall award the seller actual damages, if any, and may award the seller its reasonable attorneys' fees and costs of the action.

(6) The seller is entitled to possession of the property and to the rents, issues, and profits thereof during the pendency of an action to set aside the forfeiture: PROVIDED, That the court may provide that possession of the

property be delivered to or retained by the purchaser or some other person and may make other provision for the rents, issues, and profits.

NEW SECTION. Sec. 15. (1) Whoever knowingly swears falsely to any statement required by this chapter to be sworn is guilty of perjury and shall be liable for the statutory penalties therefor.

(2) A seller who records a declaration of forfeiture with actual knowledge or reason to know of a failure to comply with any requirement of this chapter is liable to any person whose interest in the property or the contract, or both, has been forfeited without compliance with this chapter for actual damages and actual attorneys' fees and costs of the action and, in the court's discretion, exemplary damages.

NEW SECTION. Sec. 16. An action brought under section 11, 12, or 14 of this act shall take precedence over all other civil actions except those described in RCW 59.12.130.

NEW SECTION. Sec. 17. This chapter may be known and cited as the real estate contract forfeiture act.

Sec. 18. Section 57, chapter 255, Laws of 1927 as last amended by section 162, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.01.228 are each amended to read as follows:

The purchaser of state lands under the provisions of this chapter, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state, to be signed by the commissioner of public lands on behalf of the state, with the seal of his office attached, and in a form to be prescribed by the attorney general, in which he shall covenant that he will make the payments of principal and interest, computed from the date the contract is issued, when due, and that he will pay all taxes and assessments that may be levied or assessed on such land, and that on failure to make the payments as prescribed in this chapter when due(~~(, and for six months thereafter, that he will, on demand of the commissioner of public lands, surrender said premises, and that upon such failure for six months))~~) all rights of the purchaser under said contract may, at the election of the commissioner of public lands, acting for the state, (~~(and without notice to said purchaser, be declared to))~~) be forfeited, and that when (~~(so declared))~~) forfeited the state shall be released from all obligation to convey the land. The purchaser's rights under the real estate contract shall not be forfeited except as provided in chapter 61.— RCW (sections 1 through 17 of this 1985 act).

The contract provided for in this section shall be executed in duplicate, and one copy shall be retained by the purchaser and the other shall be filed in the office of the commissioner of public lands.

The commissioner of public lands may, as he deems advisable, extend the time for payment of principal and interest on contracts heretofore issued, and contracts to be issued under this chapter.

The commissioner of public lands shall notify the purchaser of any state lands in each instance when payment on his contract is overdue, and that he is liable to forfeiture if payment is not made (~~((within six months from the time the same became))~~) when due(~~(, unless the time be extended by the commissioner of public lands))~~).

NEW SECTION. Sec. 19. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 20. Sections 1 through 17 of this act shall constitute a new chapter in Title 61 RCW.

NEW SECTION. Sec. 21. This act shall take effect January 1, 1986, and shall apply to all real estate contract forfeitures initiated on or after that date, regardless of when the real estate contract was made.

Passed the Senate March 8, 1985.

Passed the House April 12, 1985.

Approved by the Governor May 10, 1985.

Filed in Office of Secretary of State May 10, 1985.

CHAPTER 238

[Substitute Senate Bill No. 3897]

INSURANCE—RECORDS AND REPORTS OF INSURERS

AN ACT Relating to insurance reporting; adding new sections to chapter 48.05 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.05 RCW to read as follows:

The insurance commissioner shall promulgate rules requiring insurers who are authorized to write malpractice insurance in the state of Washington to record and report their Washington state loss and expense experiences and other data, as required by section 2 of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 48.05 RCW to read as follows:

(1) The report required by section 1 of this act shall include the types of insurance written by the insurer for both commercial and personal policies pertaining to medical malpractice insurance for physicians and surgeons, hospitals, other health care professions, and other health care facilities individually.

(2) The report shall include the following data by the type of insurance for the previous year ending on the thirty-first day of December:

(a) Direct premiums written;