

NEW SECTION. Sec. 4. Sections 1 through 3 of this act shall constitute a new chapter in Title 70 RCW.

Passed the House March 11, 1986.

Passed the Senate March 11, 1986.

Approved by the Governor April 2, 1986.

Filed in Office of Secretary of State April 2, 1986.

CHAPTER 206

[Engrossed Substitute House Bill No. 1382]

OUTDOOR RECREATION OFF-ROAD VEHICLES

AN ACT Relating to outdoor recreation; amending RCW 46.09.020, 46.09.030, 46.09.050, 46.09.070, 46.09.080, 46.09.110, 46.09.130, 46.09.170, 46.09.240, and 46.09.250; adding a new section to chapter 43.30 RCW; adding new sections to chapter 46.09 RCW; creating a new section; repealing RCW 46.09.060, 46.09.090, 46.09.260, and 46.09.270; and providing an effective date.

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

Sec. 1. Section 7, chapter 47, Laws of 1971 ex. sess. as last amended by section 129, chapter 158, Laws of 1979 and RCW 46.09.020 are each amended to read as follows:

As used in this chapter the following words and phrases ((~~shall~~)) have the designated meanings unless a different meaning is expressly provided or the context otherwise clearly indicates:

"Person" ((~~shall~~)) means any individual, firm, partnership, association, or corporation.

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

Nonhighway vehicle does not include:

- (1) Any vehicle designed primarily for travel on, over, or in the water;
- (2) Snowmobiles or any military vehicles; or
- (3) Any vehicle eligible for a motor vehicle fuel tax exemption or rebate under chapter 82.36 RCW while an exemption or rebate is claimed. This exemption includes but is not limited to farm, construction, and logging vehicles.

"Off-road vehicle" or "ORV" means any nonhighway vehicle when used for cross-country travel on trails or on any one of the following or a

combination thereof: Land, water, snow, ice, marsh, swampland and other natural terrain.

"ORV use permit" ~~((shall))~~ means ~~((the))~~ a permit ~~((system-established))~~ issued for operation of an off-road vehicle~~((s in this state))~~ under this chapter.

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

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

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

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

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

~~(("ORV moneys" shall mean those moneys derived from motor vehicle excise taxes on fuel used and purchased for providing the motive power for nonhighway vehicles as described in RCW 46.09.150, ORV use permit fees, and ORV dealer permit fees, provided these moneys are:~~

~~(1) Credited to the outdoor recreation account; or~~

~~(2) Credited to the ORV account for user education or for acquisition, planning, development, maintenance, and management of designated off-road vehicle trails and areas.))~~

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

"Department" ~~((shall))~~ means the department of licensing.

~~(("Director" shall mean the director of licensing.~~

~~"Committee" shall mean the interagency committee for outdoor recreation.))~~

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

"Nonhighway road" ~~((shall))~~ means any road owned or managed by a public agency, or any private road for which the owner has granted a permanent easement for public use of the road, other than a highway generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles and ~~((which are private roads or controlled and maintained by the department of natural resources, the state parks and recreation commission and the state game department:~~

~~PROVIDED, That such roads are~~) that is not built or maintained ~~((by))~~ with appropriations from the motor vehicle fund.

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

"Organized competitive event" ~~((shall))~~ means any competition, advertised in advance through written notice to organized clubs or published in local newspapers, sponsored by recognized clubs, and conducted at a predetermined time and place.

Sec. 2. Section 8, chapter 47, Laws of 1971 ex. sess. as last amended by section 2, chapter 220, Laws of 1977 ex. sess. and RCW 46.09.030 are each amended to read as follows:

The department shall provide for the issuance of use permits for off-road vehicles and may appoint agents for collecting fees and issuing permits. The provisions of RCW 46.01.130 and 46.01.140 ~~((shall))~~ apply to the issuance of use permits for off-road vehicles as they do to the issuance of vehicle licenses, the appointment of agents and the collection of application fees ~~((: PROVIDED, That filing fees for ORV use permits collected by the director shall be certified to the state treasurer and deposited as specified in RCW 46.09.110)).~~

Sec. 3. Section 10, chapter 47, Laws of 1971 ex. sess. as last amended by section 4, chapter 220, Laws of 1977 ex. sess. and RCW 46.09.050 are each amended to read as follows:

ORV use permits and ORV tags shall be required under the provisions of this chapter except for the following:

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

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

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

(4) Off-road vehicles operated on lands owned or leased by the ORV owner or operator or on lands which the operator has permission to operate without an ORV use permit.

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

granted under the laws of that state(~~(, except that any off-road vehicle which is validly registered in another state and which is physically located in this state for a period of more than fifteen consecutive days shall be required to obtain a Washington state ORV use permit)~~).

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

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

(8) Vehicles which are licensed pursuant to chapter 46.16 RCW or in the case of nonresidents, vehicles which are validly licensed for operation over public highways in the jurisdiction of the owner's residence.

Sec. 4. Section 12, chapter 47, Laws of 1971 ex. sess. as last amended by section 6, chapter 220, Laws of 1977 ex. sess. and RCW 46.09.070 are each amended to read as follows:

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

(2) An application for an annual permit shall be signed by at least one ~~((such))~~ owner, and shall be accompanied by a ~~((use permit))~~ fee of five dollars. Upon receipt of the annual permit application and the application fee, the off-road vehicle shall be assigned a use permit number tag or decal, which shall be affixed to the off-road vehicle in a manner prescribed by the department. ~~((The department may utilize applications, registration and license forms, and registration numbering provided for use prior to September 21, 1977.))~~ The ~~((ORV use))~~ annual permit ~~((provided in this section shall be))~~ is valid for a period of one year~~((Use permits shall be))~~ and is renewable each year in such manner as the department may prescribe for an additional period of one year upon payment of a renewal fee of five dollars.

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

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

(4) Except as provided in RCW 46.09.050, any out-of-state ((owner)) operator of an off-road vehicle shall, when operating in this state, comply with ((the provisions of)) this chapter, and if an ORV use permit is required under this chapter, the ((owner)) operator shall obtain ((a nonresident

~~ORV use)) an annual or temporary permit ((number)) and tag((, valid for not more than sixty days or an annual permit and tag. Application for such a permit shall state name and address of each owner of the off-road vehicle; shall be signed by at least one such owner, and shall be accompanied by a fee of two dollars. The permit shall be carried on the vehicle at all times during its operation in this state)).~~

Sec. 5. Section 13, chapter 47, Laws of 1971 ex. sess. as last amended by section 7, chapter 220, Laws of 1977 ex. sess. and RCW 46.09.080 are each amended to read as follows:

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

(2) The ~~((ORV))~~ fee for ~~((dealers))~~ ORV dealer permits shall be twenty-five dollars per year, which ~~((shall be deposited in the outdoor recreation account, and such fee shall))~~ covers all of the off-road vehicles owned by a dealer and not rented~~((: PROVIDED, That))~~. Off-road vehicles rented on a regular, commercial basis by a dealer shall have separate use permits.

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

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

(5) ORV dealer permit numbers shall be nontransferable.

(6) ~~((On and after January 1, 1978,))~~ It ((shall be)) is unlawful for any dealer to sell any off-road vehicle at wholesale or retail(;) or to test or demonstrate any off-road vehicle within the state(;) unless he has a motor vehicle dealers' license pursuant to chapter 46.70 RCW or an ORV dealer permit number in accordance with ~~((the provisions of))~~ this section.

Sec. 6. Section 16, chapter 47, Laws of 1971 ex. sess. as last amended by section 60, chapter 57, Laws of 1985 and RCW 46.09.110 are each amended to read as follows:

The moneys collected by the department (~~(as ORV use permit fees)~~) under this chapter shall be distributed from time to time but at least once a year in the following manner:

~~((1))~~ The department shall retain enough money to cover expenses incurred in the administration of this chapter: **PROVIDED**, That such retention shall never exceed eighteen percent of fees collected.

~~((2))~~ Twenty percent of the moneys shall be placed in the ORV account, which is hereby established, in the state treasury and shall be administered by the department of natural resources as ORV moneys. The department of natural resources shall use these moneys to develop a state-wide program of ORV user education and information. Any portion of these moneys not used to develop an ORV user education and information program shall be deposited in the outdoor recreation account and shall be distributed by the interagency committee for outdoor recreation under RCW 46.09.240. All earnings of investments of balances in the ORV account shall be credited to the general fund.

~~((3))~~ The remaining moneys shall be ~~((credited to the outdoor recreation account of the state treasury as ORV moneys and shall be))~~ distributed by the interagency committee for outdoor recreation ~~((as specified in RCW 46.09.240. All earnings of investments of balances in the outdoor recreation account shall be credited to the general fund))~~ in accordance with RCW 46.09.170(1)(d).

Sec. 7. Section 18, chapter 47, Laws of 1971 ex. sess. as amended by section 11, chapter 220, Laws of 1977 ex. sess. and RCW 46.09.130 are each amended to read as follows:

No person ~~((shall))~~ may operate a nonhighway vehicle in such a way as to endanger human life or to run down or harass ~~((deer, elk, or))~~ any ~~((other))~~ wildlife~~((, or any domestic))~~ or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt from, any nonhighway vehicle: **PROVIDED**, That it shall not be unlawful to carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.

Violation of this section ~~((shall constitute))~~ is a gross misdemeanor.

Sec. 8. Section 22, chapter 47, Laws of 1971 ex. sess. as last amended by section 130, chapter 158, Laws of 1979 and RCW 46.09.170 are each amended to read as follows:

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

(a) ~~((Twenty-five))~~ Forty percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural

resources solely for ~~((the acquisition;))~~ planning, ~~((development;))~~ maintenance, and management of ORV recreation facilities, nonhighway roads, and nonhighway road recreation facilities. The funds under this subsection shall be expended in accordance with the following limitations:

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

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

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

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

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

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

(c) ~~((Twenty percent shall be credited to the ORV account and administered by the department of natural resources and shall be designated as ORV moneys to be used only for the acquisition, planning, development, maintenance, and management of designated off-road vehicle trails and areas, to construct campgrounds and trailheads which are necessary for the convenient use of designated ORV trails and areas, and to maintain those campgrounds and trailheads specifically constructed with ORV moneys: PROVIDED, HOWEVER, That the department of natural resources, two months prior to the acquisition and development of such trails, areas, campgrounds and trailheads for off-road vehicles, shall conduct a public hearing at a suitable location in the nearest town of five hundred population or more, and the department shall publish a notice of such hearing on the same day of each week for two consecutive weeks in a legal newspaper of general circulation in the county or counties where the property which is the subject of the proposed facility is located. The department of natural resources shall further file such notice of hearing with the department of ecology at the main office in Olympia and shall comply with the provisions of the state environmental policy act, chapter 43.21C RCW and regulations promulgated thereunder))~~ Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the maintenance and management of ORV use areas and facilities; and

(d) ~~((Fifty-one))~~ Fifty-four and one-half percent, together with the funds received by the interagency committee for outdoor recreation under RCW 46.09.110, shall be credited to the outdoor recreation account ~~((and designated as ORV moneys))~~ to be administered by the ~~((interagency))~~ committee for ~~((outdoor recreation and distributed in accordance with RCW 46.09.240))~~ planning, acquisition, development, maintenance, and management of ORV recreation facilities and nonhighway road recreation facilities; ORV user education and information; and ORV law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:

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

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

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

(2) On a yearly basis ~~((no))~~ an agency may not, except as provided in RCW 46.09.110, expend more than ((thirteen)) ten percent of ((its share of the above amounts)) the funds it receives under this chapter for general administration expenses incurred in carrying out ((the provisions of)) this chapter((, and not more than fifty percent of its share of said amount for education and law enforcement programs related to nonhighway vehicles.

~~(3) ORV moneys shall be expended only for the acquisition, planning, development, maintenance, and management of off-road vehicle trails and areas; for education and law enforcement programs related to nonhighway vehicles; to construct campgrounds and trailheads which are necessary for the convenient use of designated ORV trails and areas; and to maintain those campgrounds and trailheads specifically constructed with ORV moneys)).~~

Sec. 9. Section 17, chapter 220, Laws of 1977 ex. sess. and RCW 46.09.240 are each amended to read as follows:

(1) ~~((The moneys deposited in the outdoor recreation account of the general fund derived from ORV use permit fees, ORV dealer permit fees, and motor vehicle excise taxes on fuel used and purchased for providing the motive power for nonhighway vehicles shall be administered by))~~ After deducting administrative expenses and the expense of any programs conducted under this chapter, the interagency committee for outdoor recreation ((and)) shall ((be distributed)), at least once each year, distribute the funds it receives under RCW 46.09.110 and 46.09.170 to state agencies, counties, ((and)) municipal, ~~local~~ local agencies, and Indian tribes. ~~((The interagency committee for outdoor recreation may make intergovernmental agreements with federal agencies for the use of ORV moneys. The agreements shall contain the conditions for the use of these moneys:))~~

The committee shall ~~((prescribe methods,))~~ adopt rules ~~((, and standards by which agencies may apply for and obtain moneys))~~ governing applications for funds administered by the agency under this chapter and shall determine the amount of money distributed to each applicant ~~((PROVIDED, That)).~~ Agencies ~~((constructing off-road vehicle trails, campgrounds, and recreational areas and facilities))~~ receiving funds under this chapter for capital purposes shall consider the possibility of contracting with the state parks and recreation commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews ~~((to construct or assist in construction of such off-road vehicle trails, campgrounds, and recreational areas and facilities))~~ in completing the project.

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

(a) In ~~((a))~~ the newspaper of general circulation ~~((in the county or counties where the property which is subject of))~~ published nearest the proposed ~~((facility is located prior to the submission of its application))~~ project;

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

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

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

~~((3))~~ The interagency committee for outdoor recreation shall retain enough money from ORV moneys to cover expenses incurred in the administration of this chapter except that after June 30, 1979, the retention shall not exceed, on a yearly basis, three percent of the ORV moneys deposited in the outdoor recreation account.)

NEW SECTION. Sec. 10. The legislative budget committee shall review allocations and limitations on allocations of moneys made in this act. The review shall include an analysis of requests for moneys compared to allocations made in calendar years 1986 and 1987 and shall include the specific functions for which law enforcement and education funds have been

expended by grant recipients. The report shall be submitted to the legislature by January 1, 1988.

Sec. 11. Section 18, chapter 220, Laws of 1977 ex. sess. and RCW 46.09.250 are each amended to read as follows:

~~((Between June 30, 1977 and June 30, 1979))~~ The interagency committee for outdoor recreation shall ~~((develop or cause to be developed))~~ maintain a state-wide ~~((ORV))~~ plan which shall ~~((determine and reflect user densities and preferences and suitability and availability of designated ORV trails and areas within the state. The plan shall be maintained on a continuing basis with the plan document))~~ be updated at least once every third biennium and shall be used by all participating agencies to guide distribution and expenditure of ~~((nonhighway vehicle))~~ funds under this chapter.

NEW SECTION. Sec. 12. A new section is added to chapter 43.30 RCW to read as follows:

The department of natural resources shall establish a recreation advisory committee, composed of persons having an interest in the recreational use of land managed by the department, to provide advice regarding outdoor recreation needs and the effect of proposed departmental actions on recreational opportunities.

NEW SECTION. Sec. 13. The interagency committee for outdoor recreation shall establish a committee of nonhighway road recreationists, including representatives of organized ORV groups, to provide advice regarding the administration of this chapter. Only representatives of organized ORV groups may be voting members of the committee with respect to expenditure of funds received under RCW 46.09.110.

NEW SECTION. Sec. 14. All earnings of investments of balances in the ORV and nonhighway vehicle account and the outdoor recreation account shall be credited to the general fund.

NEW SECTION. Sec. 15. The following acts or parts of acts are each repealed:

(1) Section 11, chapter 47, Laws of 1971 ex. sess., section 7, chapter 153, Laws of 1972 ex. sess., section 5, chapter 220, Laws of 1977 ex. sess. and RCW 46.09.060;

(2) Section 14, chapter 47, Laws of 1971 ex. sess., section 10, chapter 153, Laws of 1972 ex. sess., section 8, chapter 220, Laws of 1977 ex. sess. and RCW 46.09.090;

(3) Section 19, chapter 220, Laws of 1977 ex. sess. and RCW 46.09-.260; and

(4) Section 20, chapter 220, Laws of 1977 ex. sess. and RCW 46.09-.270.

NEW SECTION. Sec. 16. Sections 13 and 14 of this act shall be added to chapter 46.09 RCW.

NEW SECTION. Sec. 17. This act shall take effect on June 30, 1986.

Passed the House March 8, 1986.

Passed the Senate March 6, 1986.

Approved by the Governor April 2, 1986.

Filed in Office of Secretary of State April 2, 1986.

CHAPTER 207

[Senate Bill No. 3193]

OCCUPATIONAL DISEASES—INDUSTRIAL INSURANCE CLAIMS

AN ACT Relating to occupational disease; and amending RCW 41.40.200.

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

Sec. 1. Section 21, chapter 274, Laws of 1947 as last amended by section 3, chapter 18, Laws of 1982 and RCW 41.40.200 are each amended to read as follows:

(1) Subject to the provisions of RCW 41.40.310 and 41.40.320, upon application of a member, or his or her employer, a member who becomes totally incapacitated for duty as the natural and proximate result of an accident occurring in the actual performance of duty or who becomes totally incapacitated for duty and qualifies to receive benefits under Title 51 RCW as a result of an occupational disease, as now or hereafter defined in RCW 51.08.140, while in the service of an employer, without wilful negligence on his or her part, shall be retired: PROVIDED, The medical adviser after a medical examination of such member made by or under the direction of the said medical adviser shall certify in writing that such member is mentally or physically totally incapacitated for the further performance of his or her duty ((to his employer)) and that such member should be retired: PROVIDED FURTHER, That the ((retirement board)) director concurs in the recommendation of the medical adviser: AND PROVIDED FURTHER, No application shall be valid or a claim thereunder enforceable unless in the case of an accident the claim is filed within two years after the date upon which the injury occurred or, in the case of an occupational disease, the claim is filed within two years after the member separated from service with the employer. The coverage provided for occupational disease under this section may be restricted in the future by the legislature for all current and future members.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (House Joint Resolution No. 37, approved by the voters November 4, 1980), with the concurrence of the