

(5) The board shall have the power, on an emergency basis, to temporarily suspend a state pilot's license: (a) When a pilot has been involved in any vessel accident where there has been major property damage, loss of life, or loss of a vessel, or (b) where there is a reasonable cause to believe that a pilot has diminished mental capacity or is under the influence of drugs, alcohol, or other substances, when in the opinion of the board, such an accident or physical or mental impairment would significantly diminish that pilot's ability to carry out pilotage duties and that the public health, safety, and welfare requires such emergency action. The board shall make a determination within seventy-two hours whether to continue the suspension. The board shall develop rules for exercising this authority including procedures for the chairperson or vice-chairperson of the board to temporarily order such suspensions, emergency meetings of the board to consider such suspensions, the length of suspension, opportunities for hearings, and an appeal process. The board shall develop rules under chapter 34.04 RCW.

NEW SECTION. Sec. 2. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 21, 1987.

Passed the Senate April 13, 1987.

Approved by the Governor May 15, 1987.

Filed in Office of Secretary of State May 15, 1987.

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## CHAPTER 393

[Substitute House Bill No. 353]

### AGRICULTURE DEPARTMENT—REVISIONS

AN ACT Relating to the department of agriculture; amending RCW 15.04.040, 15.04.100, 15.24.070, 15.24.190, 15.65.070, 15.65.170, 15.65.250, 15.65.470, 15.65.390, 15.65.400, 16.67.120, 20.01.040, 43.23.200, 62A.9-307, 69.25.270, 22.09.040, 22.09.045, 22.09.011, 22.09.345, 22.09.371, 22.09.391, and 22.09.520; adding a new section to chapter 15.04 RCW; adding a new section to chapter 15.86 RCW; adding a new section to chapter 22.09 RCW; adding a new section to chapter 69.04 RCW; repealing RCW 16.59.010, 16.59.020, 16.59.030, 16.59.040, 16.59.050, 16.59.060, 16.59.070, and 16.59.900; prescribing penalties; and declaring an emergency.

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

Sec. 1. Section 15.04.040, chapter 11, Laws of 1961 as amended by section 11, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 15.04.040 are each amended to read as follows:

Inspectors-at-large shall pass such an examination by the director as will satisfy him they are qualified in knowledge and experience to carry on the work in the districts to which they are assigned. They shall be assigned to a horticultural inspection district and may be transferred from one district to another. Their salaries and travel expenses, as shown by vouchers

verified by them and countersigned by the director, shall be paid by warrants drawn upon the state treasurer, horticultural inspection district funds, the horticultural inspection trust fund, or from county appropriations(~~(: PROVIDED, That, not less than twenty-five percent of their total salary shall be paid by warrants drawn upon the state treasurer. Such travel expenses shall be reimbursed in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended)~~)).

Sec. 2. Section 15.04.100, chapter 11, Laws of 1961 as last amended by section 1, chapter 203, Laws of 1986 and RCw 15.04.100 are each amended to read as follows:

The director shall establish a horticulture inspection trust fund to be derived from horticulture inspection district funds. The director shall adjust district payments so that the balance in the trust fund shall not exceed three hundred thousand dollars. The director is authorized to make payments from the trust fund to:

(1) Pay fees and expenses provided in the inspection agreement between the state department of agriculture and the agricultural marketing service of the United States department of agriculture;

~~(2) ((Pay portions of salaries of inspectors-at-large as provided under RCW 15.04.040;~~

~~(3))~~ Assist horticulture inspection districts in temporary financial distress as result of less than normal production of horticultural commodities: PROVIDED, That districts receiving such assistance shall make repayment to the trust fund as district funds shall permit;

~~((4))~~ (3) Pay necessary administrative expenses for the commodity inspection division attributable to the supervision of the horticulture inspection services.

Sec. 3. Section 15.24.070, chapter 11, Laws of 1961 as last amended by section 3, chapter 203, Laws of 1986 and RCW 15.24.070 are each amended to read as follows:

The Washington state apple advertising commission is hereby declared and created a corporate body. The powers and duties of the commission shall include the following:

(1) To elect a chairman and such other officers as it deems advisable; and to adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers hereunder, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ and at its pleasure discharge a manager, secretary, agents, attorneys, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices and incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(5) To investigate and prosecute violations hereof;

(6) To conduct scientific research to develop and discover the health, food, therapeutic, and dietetic value of apples and products thereof;

(7) To keep accurate record of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To sue and be sued, adopt a corporate seal, and have all of the powers of a corporation; ((and))

(9) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient; and

(10) To borrow money and incur indebtedness.

Sec. 4. Section 15.24.190, chapter 11, Laws of 1961 and RCW 15.24.190 are each amended to read as follows:

~~((The state shall not be liable for the acts of the commission or on its contracts. No member of the commission or any employee or agent thereof shall be liable on its contracts. All liabilities incurred by the commission shall be payable only from the funds collected hereunder.))~~ Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee, or agent of the commission in his or her individual capacity. Except as otherwise provided in this chapter, neither the members of the commission nor its employees may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, save for their own individual acts of dishonesty or crime. No such person or employee may be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member is liable for the default of any other member.

Sec. 5. Section 7, chapter 256, Laws of 1961 as last amended by section 2, chapter 261, Laws of 1985 and RCW 15.65.070 are each amended to read as follows:

The director shall publish notice of any hearing called for the purpose of considering and acting upon any proposal for a period of not less than two days in ~~((a newspaper of general circulation in Olympia and such other))~~ one or more newspapers of general circulation as the director may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice shall set forth the date, time and place of said hearing, the agricultural commodity and the area covered by such proposal; a concise statement of the proposal; a concise statement of

each additional subject upon which the director will hear evidence and make a determination, and a statement that, and the address where, copies of the proposal may be obtained. The director shall also mail a copy of such notice to all producers and handlers within the affected area who may be directly affected by such proposal and whose names and addresses appear, on the day next preceding the day on which such notice is published, upon lists of such persons then on file in the department.

Sec. 6. Section 17, chapter 256, Laws of 1961 and RCW 15.65.170 are each amended to read as follows:

If the director determines that the requisite assent has been given he shall issue and put any order or amendment thereto into force, whereupon each and every provision thereof shall have the force of law. Issuance shall be accomplished by publication of a notice for one day in a newspaper of general circulation (~~in Olympia and~~) in the affected area (~~of~~). The notice ((stating)) shall state that the order has been issued and put into force and where copies of such order may be obtained. If the director determines that the requisite assent has not been given no further action shall be taken by the director upon the proposal, and the order contained in the final decision shall be without force or effect.

Sec. 7. Section 25, chapter 256, Laws of 1961 as last amended by section 9, chapter 261, Laws of 1985 and RCW 15.65.250 are each amended to read as follows:

For the purpose of nominating candidates to be voted upon for election to such board memberships, the director shall call separate meetings of the affected producers and handlers within the affected area and in case elections shall be by districts he shall call separate meetings for each district. However, at the inception any marketing agreement or order nominations may be at the issuance hearing. Nomination meetings shall be called annually and at least thirty days in advance of the date set for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all affected producers and/or handlers according to the list thereof maintained by the director pursuant to RCW 15.65.200. However, if the agreement or order provides for election by districts such written notice need be given only to the producers or handlers residing in or whose principal place of business is within such district. Nonreceipt of notice by any interested person shall not invalidate proceedings at such meetings. Any qualified person may be nominated orally for membership upon such board at the said meetings. Nominations may also be made within five days after any such meeting by written petition filed with the director signed by not less than five producers or handlers, as the case may be, entitled to have participated in said meeting.

If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers or handlers. The notice shall call for nominations in accordance with the marketing order and shall give the final date for filing nominations which shall not be less than twenty days after the notice was mailed.

When only one nominee is nominated for any position on the board the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected.

Sec. 8. Section 47, chapter 256, Laws of 1961 and RCW 15.65.470 are each amended to read as follows:

~~((The marketing act revolving fund shall be deposited in such banks and financial institutions as))~~ The director or his or her designee ~~((may select throughout the state which shall give to the director or his designee surety bonds executed by surety companies authorized to do business in the state, or collateral eligible as security for deposit of state funds, in at least the full amount of the deposit in each such bank or financial institution))~~ shall designate financial institutions which are qualified public depositories under chapter 39.58 RCW as depository or depositories of money received for the marketing act revolving fund. All moneys received by the director or his or her designee or by any administrator, board or employee, except an amount of petty cash for each day's needs as fixed by the regulations, shall be deposited each day ~~((, and as often during the day as advisable,))~~ in ~~((the authorized depository))~~ a designated depository.

Sec. 9. Section 39, chapter 256, Laws of 1961 as amended by section 13, chapter 261, Laws of 1985 and RCW 15.65.390 are each amended to read as follows:

There is hereby levied, and the director or his designee shall collect, upon each and every affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer thereof upon each and every such affected unit stored in frozen condition or sold or marketed or delivered for sale or marketed by him, and which shall be paid by the handler thereof upon each and every such unit purchased or received for sale, processing or distribution, or stored in frozen condition, by him: PROVIDED, That such assessment shall be paid by producers only, if only producers are regulated by such agreement or order, and by handlers only, if only handlers are so regulated, and by both producers and handlers if both are so regulated. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. The total amount of such annual assessment to be paid by all producers of such commodity, or by all handlers of such commodity shall not exceed four percent of the total market value of all affected units stored in frozen condition or sold or marketed or delivered for sale or marketing by all producers of such units during the year to

which the assessment applies. (~~However, the total amount of such annual assessment upon producers, or handlers, or both producers and handlers, of the below listed commodities shall not exceed the amounts per unit or the percentage of selling price stated after the names of the respective commodities below:~~

~~(1) Wheat, maximum, one-quarter cent per bushel.))~~

Sec. 10. Section 40, chapter 256, Laws of 1961 and RCW 15.65.400 are each amended to read as follows:

In every marketing agreement and order the director shall prescribe the ~~((per unit))~~ rate of such assessment~~((, and))~~. Such assessment shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited. Such rate may be altered or amended from time to time, but only upon compliance with the procedural requirements of this chapter. In every such marketing agreement, order and amendment the director shall base his determination of such rate upon the volume and price of sales of affected units (or units which would have been affected units had the agreement or order been in effect) during a period which the director determines to be a representative period. The ~~((per unit))~~ rate of assessment prescribed in any such agreement, order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such agreement or order is amended as to such rate.

Sec. 11. Section 11, chapter 133, Laws of 1969 as last amended by section 2, chapter 190, Laws of 1986 and RCW 16.67.120 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, there is hereby levied an assessment of fifty cents per head on all Washington cattle sold in this state or elsewhere to be paid by the seller at the time of sale: **PROVIDED**, That if the assessment levied pursuant to this section is greater than one percent of the sales price, the animal is exempt from the assessment unless the federal order implementing the national beef promotion and research program establishes an assessment on these animals: **PROVIDED FURTHER**, That if such sale is accompanied by a brand inspection by the department such assessment shall be collected at the same time, place and in the same manner as brand inspection fees. Such fees shall be collected by the livestock services division of the department and transmitted to the commission: **PROVIDED FURTHER**, That, if such sale is made without a brand inspection by the department the assessment shall be paid by the seller and transmitted directly to the commission not later than thirty days following the sale.

(2) While the federal order implementing the national beef promotion and research program is in effect, the assessment to be levied and the procedures for its collection shall be as required by the federal order and as described by rules adopted by the commission.

NEW SECTION. Sec. 12. A new section is added to chapter 15.86 RCW to read as follows:

The director may adopt rules establishing a certification program for producers of organic food. The rules may govern, but are not limited to governing: The number and scheduling of on-farm visits, both announced and unannounced, by certification personnel; recordkeeping requirements; and the submission of product samples for chemical analysis. The rules shall include a fee schedule that will provide for the recovery of the full cost of the certification program. Fees collected under this section shall be deposited in an account within the agricultural local fund and the revenue from such fees shall be used solely for carrying out the provisions of this section, and no appropriation is required for disbursement from the fund. The director may employ such personnel as are necessary to carry out the provisions of this section.

Sec. 13. Section 4, chapter 139, Laws of 1959 as last amended by section 3, chapter 305, Laws of 1983 and RCW 20.01.040 are each amended to read as follows:

No person may act as a commission merchant, dealer, broker, cash buyer, agent, or boom loader without a license. Any person applying for such a license shall file an application with the director on or before January 1st of each year. The application shall be accompanied by ~~((the following license fee:~~

~~(1) Commission merchant, one hundred forty-five dollars;~~

~~(2) Dealer, one hundred forty-five dollars;~~

~~(3) Limited dealer, one hundred dollars;~~

~~(4) Broker, one hundred dollars;~~

~~(5) Cash buyer, forty dollars;~~

~~(6) Agent, fifteen dollars;~~

~~(7) Boom loader, ten dollars))~~ a license fee as prescribed by the director by rule.

Sec. 14. Section 27, chapter 297, Laws of 1981 and RCW 43.23.200 are each amended to read as follows:

The ~~((dean of the college of fisheries of the University of Washington and the dean's appointed laboratory director,))~~ chief chemist of the department of agriculture dairy and food laboratory and the chief chemist of the department of agriculture ~~((chemistry))~~ chemical and hop laboratory shall be the official chemists of the department of agriculture. Official chemists of the department shall provide laboratory services and analyze all substances that the director of agriculture may send to them and report to the director

without unnecessary delay the results of any analysis so made. When called upon by the director, they or any of the additional chemists provided for pursuant to RCW 43.23.205 shall assist in any prosecution for the violation of any law enforced by the department. ~~((The dean of the college of fisheries of the University of Washington and the dean's appointed laboratory director shall provide such laboratory services without additional compensation other than their expenses incurred in the performance of such work:))~~

Sec. 15. Section 9-307, chapter 157, Laws of 1965 ex. sess. as last amended by section 13, chapter 412, Laws of 1985 and RCW 62A.9-307 are each amended to read as follows:

(1) A buyer in ordinary course of business (subsection (9) of RCW 62A.1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, unless made pursuant to a commitment entered into without knowledge of the purchase.

~~((4) Notwithstanding subsection (1) of this section, any person registered under the Federal Packers and Stockyard Act, 7 U.S.C. 181, who sells livestock for another for a fee or commission or who purchases livestock or livestock byproducts with the intent to resell takes free of a security interest created by the seller, even though the security interest is perfected, when such person is without knowledge of the security interest. For the purposes of this subsection, a person has "knowledge" if:~~

~~(a) Notice is furnished by the seller as provided in RCW 16.57.240; or~~

~~(b) A statement of the security interest is filed pursuant to chapter 16-59 RCW.))~~

Sec. 16. Section 28, chapter 201, Laws of 1975 1st ex. sess. and RCW 69.25.270 are each amended to read as follows:

Every egg handler or dealer who pays assessments required under the provisions of this chapter on a monthly basis in lieu of seals shall be subject to audit by the director ~~((on an annual basis or more frequently if necessary))~~ at such frequency as is deemed necessary by the director. The cost to the director for performing such audit shall be chargeable to and payable by the egg handler or dealer subject to audit. Failure to pay assessments when

due or refusal to pay for audit costs may be cause for a summary suspension of an egg handler's or dealer's license and a charge of one percent per month, or fraction thereof shall be added to the sum due the director, for each remittance not received by the director when due. The conditions and charges applicable to egg handlers and dealers set forth herein shall also be applicable to payments due the director for facsimiles of seals placed on egg containers.

Sec. 17. Section 4, chapter 124, Laws of 1963 as last amended by section 20, chapter 305, Laws of 1983 and RCW 22.09.040 are each amended to read as follows:

Application for a license to operate a warehouse under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation, or other entity;

(2) The full name of each member of the firm or partnership, or the names of the officers of the company, society, cooperative association, or corporation;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name or names of the person or persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant;

(5) Whether the applicant has also applied for or has been issued a grain dealer license under the provisions of this chapter;

(6) The location of each warehouse the applicant intends to operate and the location of the headquarters or main office of the applicant;

(7) The bushel storage capacity of each such warehouse to be licensed;

(8) The schedule of fees to be charged at each warehouse for the handling, conditioning, storage, and shipment of all commodities during the licensing period;

(9) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director pursuant to chapter 34.04 RCW. All financial statement information required by this subsection shall be confidential information not subject to public disclosure;

(10) Whether the application is for a terminal, subterminal, or country warehouse license;

(11) Whether the applicant has previously been denied a grain dealer or warehouseman license or whether the applicant has had either license suspended or revoked by the department;

(12) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter.

Sec. 18. Section 21, chapter 305, Laws of 1983 and RCW 22.09.045 are each amended to read as follows:

Application for a license to operate as a grain dealer under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation, or other entity;

(2) The full name of each member of the firm or partnership, or the names of the officers of the company, society, cooperative association, or corporation;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name or names of the person or persons in this state authorized to receive and accept service of summons and legal notices of all kinds for the applicant;

(5) Whether the applicant has also applied for or has been issued a warehouse license under this chapter;

(6) The location of each business location from which the applicant intends to operate as a grain dealer in the state of Washington whether or not the business location is physically within the state of Washington, and the location of the headquarters or main office of the application;

(7) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director under chapter 34.04 RCW. However, if the applicant is a subsidiary of a larger company, corporation, society, or cooperative association, both the parent company and the subsidiary company must submit a financial statement to determine whether or not the applicant meets the minimum net worth requirements established by the director under chapter 34.04 RCW. All financial statement information required by this subsection shall be confidential information not subject to public disclosure;

(8) Whether the applicant has previously been denied a grain dealer or warehouseman license or whether the applicant has had either license suspended or revoked by the department;

(9) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter.

Sec. 19. Section 16, chapter 305, Laws of 1983 and RCW 22.09.011 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.

(4) "Agricultural commodities," hereinafter referred to as "commodities," means, but is not limited to, all the grains, peas, beans, lentils, corn, sorghums, malt, peanuts, flax, and other similar agricultural products.

(5) "Warehouse," also referred to as a public warehouse, means any elevator, mill, subterminal grain warehouse, terminal warehouse, country warehouse, or other structure or enclosure located in this state that is used or useable for the storage of agricultural products, and in which commodities are received from the public for storage, handling, conditioning, or shipment for compensation. The term does not include any warehouse storing or handling fresh fruits and/or vegetables, any warehouse used exclusively for cold storage, or any warehouse that conditions yearly less than three hundred tons of an agricultural commodity for compensation.

(6) "Terminal warehouse" means any warehouse designated as a terminal by the department, and located at an inspection point where inspection facilities are maintained by the department and where commodities are ordinarily received and shipped by common carrier.

(7) "Subterminal warehouse" means any warehouse that performs an intermediate function in which agricultural commodities are customarily received from dealers rather than producers and where the commodities are accumulated before shipment to a terminal warehouse.

(8) "Station" means two or more warehouses between which commodities are commonly transferred in the ordinary course of business and that are (a) immediately adjacent to each other, or (b) located within the corporate limits of any city or town and subject to the same transportation tariff zone, or (c) at any railroad siding or switching area and subject to the same transportation tariff zone, or (d) at one location in the open country off rail, or (e) in any area that can be reasonably audited by the department as a station under this chapter and that has been established as such by the director by rule adopted under chapter 34.04 RCW, or (f) within twenty miles of each other but separated by the border between Washington and Idaho or Oregon when the books and records for the station are maintained at the warehouse located in Washington.

(9) "Inspection point" means a city, town, or other place wherein the department maintains inspection and weighing facilities.

(10) "Warehouseman" means any person owning, operating, or controlling a warehouse in the state of Washington.

(11) "Depositor" means (a) any person who deposits a commodity with a Washington state licensed warehouseman for storage, handling, conditioning, or shipment, or (b) any person who is the owner or legal holder of a warehouse receipt, outstanding scale weight ticket, or other evidence of the deposit of a commodity with a Washington state licensed warehouseman or (c) any producer whose agricultural commodity has been sold to a grain dealer through the dealer's place of business located in the state of Washington, or any Washington producer whose agricultural commodity has been sold to or is under the control of a grain dealer, (~~which dealer has negotiated the sale of the commodity or has control of the commodity in the~~) whose place of business is located outside the state of Washington.

(12) "Historical depositor" means any person who in the normal course of business operations has consistently made deposits in the same warehouse of commodities produced on the same land. In addition the purchaser, lessee, and/or inheritor of such land from the original historical depositor with reference to the land shall be considered a historical depositor with regard to the commodities produced on the land.

(13) "Grain dealer" means any person who, through his place of business located in the state of Washington, solicits, contracts for, or obtains from a producer, title, possession, or control of any agricultural commodity for purposes of resale, or any person who solicits, contracts for, or obtains from a Washington producer, title, possession, or control of any agricultural commodity for purposes of resale.

(14) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of a commodity produced on that land.

(15) "Warehouse receipt" means a negotiable or nonnegotiable warehouse receipt as provided for in Article 7 of Title 62A RCW.

(16) "Scale weight ticket" means a load slip or other evidence of deposit, serially numbered, not including warehouse receipts as defined in subsection (15) of this section, given a depositor on request upon initial delivery of the commodity to the warehouse and showing the warehouse's name and state number, type of commodity, weight thereof, name of depositor, and the date delivered.

(17) "Put through" means agricultural commodities that are deposited in a warehouse for receiving, handling, conditioning, or shipping, and on which the depositor has concluded satisfactory arrangements with the warehouseman for the immediate or impending shipment of the commodity.

(18) "Conditioning" means, but is not limited to, the drying or cleaning of agricultural commodities.

(19) "Deferred price contract" means a contract for the sale of commodities that conveys the title and all rights of ownership to the commodities represented by the contract to the buyer, but allows the seller to set the

price of the commodities at a later date based on an agreed upon relationship to a future month's price or some other mutually agreeable method of price determination. Deferred price contracts include but are not limited to those contracts commonly referred to as delayed price, price later contracts, or open price contracts.

(20) "Shortage" means that a warehouseman does not have in his possession sufficient commodities at each of his stations to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him for the station.

(21) "Failure" means:

(a) An inability to financially satisfy claimants in accordance with this chapter and the time limits provided for in it;

(b) A public declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a depositor;

(d) A failure to redeliver any commodity to a depositor or to pay depositors for commodities purchased by a licensee in the ordinary course of business and where a bona fide dispute does not exist between the licensee and the depositor;

(e) A failure to make application for license renewal within sixty days after the annual license renewal date; or

(f) A denial of the application for a license renewal.

Sec. 20. Section 47, chapter 305, Laws of 1983 and RCW 22.09.345 are each amended to read as follows:

(1) The department may give written notice to the warehouseman or grain dealer to submit to inspection, and/or furnish required reports, documents, or other requested information, under such conditions and at such time as the department may deem necessary whenever a warehouseman or grain dealer fails to:

(a) Submit his books, papers, or property to lawful inspection or audit;

(b) Submit required reports or documents to the department by their due date; or

(c) Furnish the department with requested information, including but not limited to correction notices.

(2) If the warehouseman or grain dealer fails to comply with the terms of the notice within twenty-four hours from the date of its issuance, or within such further time as the department may allow, the department shall levy a fine of fifty dollars per day from the final date for compliance allowed by this section or the department. In those cases where the failure to comply continues for more than thirty days or where the director determines the failure to comply creates a threat of loss to depositors, the department may, in lieu of levying further fines petition the superior court of the county where the licensee's principal place of business in Washington is located, as shown by the license application, for an order:

(a) Authorizing the department to seize and take possession of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouseman's or grain dealer's business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the warehouseman or grain dealer from interfering with the department in the discharge of its duties as required by this chapter.

(3) All necessary costs and expenses, including attorneys' fees, incurred by the department in carrying out the provisions of this section may be recovered at the same time and as part of the action filed under this section.

Sec. 21. Section 50, chapter 305, Laws of 1983 and RCW 22.09.371 are each amended to read as follows:

(1) When a depositor stores a commodity with a warehouseman or sells a commodity to a grain dealer, the depositor has a first priority statutory lien on the commodity or the proceeds therefrom or on commodities owned by the warehouseman or grain dealer if the depositor has written evidence of ownership disclosing a storage obligation or written evidence of sale. The lien arises at the time the title is transferred from the depositor to the warehouseman or grain dealer, or if the commodity is under a storage obligation, the lien arises at the commencement of the storage obligation. The lien terminates when the liability of the warehouseman or grain dealer to the depositor terminates or if the depositor sells his commodity to the warehouseman or grain dealer, then thirty days after the ~~((time of the sale))~~ date title passes. If, however, the depositor is tendered payment by check or draft, then the lien shall not terminate until forty days after the ~~((time of sale))~~ date title passes.

(2) The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouseman or grain dealer, regardless of whether the creditor's lien or security interest attached to the commodity or proceeds before or after the date on which the depositor's lien attached under subsection (1) of this section.

(3) A depositor who claims a lien under subsection (1) of this section need not file any notice of the lien in order to perfect the lien.

(4) The lien created by subsection (1) of this section is discharged, except as to the proceeds therefrom and except as to commodities owned by the warehouseman or grain dealer, upon sale of the commodity by the warehouseman or grain dealer to a buyer in the ordinary course of business.

Sec. 22. Section 52, chapter 305, Laws of 1983 and RCW 22.09.391 are each amended to read as follows:

Upon the failure of a grain dealer or warehouseman, the statutory lien created in RCW 22.09.371 shall be liquidated by the department to satisfy the claims of depositors in the following manner:

(1) The department shall take possession of all commodities in the warehouse, including those owned by the warehouseman or grain dealer,

and those that are under warehouse receipts or any written evidence of ownership that discloses a storage obligation by a failed warehouseman, including but not limited to scale weight tickets, settlement sheets, and ledger cards. These commodities shall be distributed or sold and the proceeds distributed to satisfy the outstanding warehouse receipts or other written evidences of ownership. If a shortage exists, the department shall distribute the commodities or the proceeds from the sale of the commodities on a prorated basis to the depositors. To the extent the commodities or the proceeds from their sale are inadequate to satisfy the claims of depositors with evidence of storage obligations, the depositors have a first priority lien against any proceeds received from commodities sold while under a storage obligation or against any commodities owned by the failed warehouseman or grain dealer.

(2) Depositors possessing written evidence of the sale of a commodity to the failed warehouseman or grain dealer, including but not limited to scale weight tickets, settlement sheets, deferred price contracts, or similar commodity delivery contracts, who have completed delivery and (~~(pricing)~~) passed title during a thirty-day period immediately before the failure of the failed warehouseman or grain dealer have a second priority lien against the commodity, the proceeds of the sale, or warehouse-owned or grain dealer-owned commodities. If the commodity, commodity proceeds, or warehouse-owned or grain dealer-owned commodities are insufficient to wholly satisfy the claim of depositors possessing written evidence of the sale of the commodity to the failed warehouseman or grain dealer, each depositor shall receive a pro rata share thereof.

(3) Upon the satisfaction of the claims of depositors qualifying for first or second priority treatment, all other depositors possessing written evidence of the sale of the commodity to the failed warehouseman or grain dealer have a third priority lien against the commodity, the proceeds of the sale, or warehouse-owned or grain dealer-owned commodities. If the commodities, commodity proceeds, or warehouse-owned or grain dealer-owned commodities are insufficient to wholly satisfy these claims, each depositor shall receive a pro rata share thereof.

(4) The director of agriculture may represent depositors whom, under RCW 22.09.381, the director has determined have claims against the failed warehouseman or failed grain dealer in any action brought to enjoin or otherwise contest the distributions made by the director under this section.

Sec. 23. Section 52, chapter 124, Laws of 1963 and RCW 22.09.520 are each amended to read as follows:

Whenever any commodity shall be delivered to a warehouse under this chapter, and the scale ticket or warehouse receipt issued therefor provides for the return of a like amount of like kind, grade, and class to the holder thereof, such delivery shall be a bailment and not a sale of the commodity so delivered. In no case shall such commodities be liable to seizure upon process of any court in an action against such bailee, except action by the

legal holder of the warehouse receipt to enforce the terms thereof. Such commodities, in the event of failure or insolvency of such bailee, shall be applied exclusively to the redemption of such outstanding warehouse receipts and scale weight tickets covering commodities so stored with such bailee. The commodities on hand in any warehouse or warehouses with a particular license, as provided in RCW 22.09.030, shall be applied to the redemption and satisfaction of warehouse receipts and scale weight tickets which were issued pursuant to the particular license. Commodities in special piles or special bins shall be applied exclusively against the warehouse receipts or scale weight tickets issued therefor.

**NEW SECTION.** Sec. 24. A new section is added to chapter 22.09 RCW to read as follows:

Every person who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than one thousand dollars for every such violation. Each and every violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section.

**NEW SECTION.** Sec. 25. A new section is added to chapter 69.04 RCW to read as follows:

All retail sales of fresh or frozen lamb products which are imported from another country shall be labelled with the country of origin. For the purposes of this section "imported lamb products" shall include but not be limited to, live lambs imported from another country but slaughtered in the United States.

**NEW SECTION.** Sec. 26. A new section is added to chapter 15.04 RCW to read as follows:

The department of agriculture is authorized to develop, in cooperation with Washington State University and other state agencies, an informational guide to programs offered by state and federal agencies which would be of assistance to farm families. The informational guide shall be made available to farmers and ranchers through county extension offices, farm organizations, and other appropriate means.

**NEW SECTION.** Sec. 27. The following acts or parts of acts are each repealed:

- (1) Section 14, chapter 412, Laws of 1985 and RCW 16.59.010;
- (2) Section 15, chapter 412, Laws of 1985 and RCW 16.59.020;
- (3) Section 17, chapter 412, Laws of 1985 and RCW 16.59.030;
- (4) Section 18, chapter 412, Laws of 1985 and RCW 16.59.040;
- (5) Section 16, chapter 412, Laws of 1985 and RCW 16.59.050;
- (6) Section 19, chapter 412, Laws of 1985 and RCW 16.59.060;
- (7) Section 20, chapter 412, Laws of 1985 and RCW 16.59.070; and

(8) Section 24, chapter 412, Laws of 1985 and RCW 16.59.900.

**NEW SECTION.** Sec. 28. Sections 15 and 27 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 24, 1987.

Passed the Senate April 23, 1987.

Approved by the Governor May 15, 1987.

Filed in Office of Secretary of State May 15, 1987.

## CHAPTER 394

[Substitute House Bill No. 231]

### GROUND WATER MANAGEMENT—WATER WELL CONSTRUCTION

AN ACT Relating to ground water management; amending RCW 18.104.070; and adding new sections to chapter 18.104 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 18.104 RCW to read as follows:

The department of ecology may levy a civil penalty of up to one hundred dollars per day for violation of this chapter or rules or orders of the department adopted or issued pursuant to it. Procedures of RCW 90.48.144 shall be applicable to all phases of levying of such a penalty as well as review and appeal of them. For each notice regarding a violation, resulting from the improper construction of a well, that is sent to a water well contractor or water well construction operator, the department shall send a copy of the notice for information purposes only to the owner of the land on which the improperly constructed well is located.

Sec. 2. Section 7, chapter 212, Laws of 1971 ex. sess. and RCW 18.104.070 are each amended to read as follows:

Except as provided in RCW 18.104.180, no person may contract to engage in the construction of a water well and no person may act as an operator without first obtaining a license by applying to the department.

A person shall be qualified to receive a water well construction operators license if he:

(1) Has made application therefor to the department and has paid to the department an application fee of twenty-five dollars; and

(2) Has at least two years of field experience with a licensed well driller or one year of field experience and an equivalent of at least one school year of qualifying educational training that satisfies the criteria established by department rule; and

(3) Has passed a written examination as provided for in RCW 18.104.080: PROVIDED, That should any applicant establish his illiteracy to the